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Analysis of Expert Evidence in the Light of Ram Mandir Verdict

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ABSTRACT

The secular fabric of the quasi federal statehood of India as enshrined and protected by the Constitution, has woven cultures, linguistic diversities and religious differences into one common shared united identity. However the utopian concept of unity in diversity as found in writings and speeches seem to hold little relevance when issues concerning religious fundamentalism and dogmatism get flared up by communal flames and the so cherished unity gets a backstage. The Court, as the room of legal adjudication and as the resort for a obligatory decision is reckoned for and the due process of law is thereby set in motion. What remains a mystical proposition is that how a technical verdict from the merits of a said dispute serves to solve it, either with the satisfaction of one party overpowering on the other, or with a general satisfaction and compromise slowly resolving the 'lis' in question. However, pragmatically evaluating, this is not the case always, as a verdict cannot satisfy the emotional claims that adverse parties contest while fighting a case in a court of law. Evidence is indeed one parameter, an altar of impartial discretion on which claims come to be tested and justified, and hence Indian Evidence Act, 1872 is 'lex fori.' With the procedural obligations unfurling in each case, evidence paves the way for adjudication, finally culminating in disposal of justice with a decision. Over the years and tracing the long path of jurisprudence, dynamic shifts have been observed in the application of Evidence Law itself. One such point that remains in the crux of our research paper is the rule of Expert Evidence, as enshrined under Section 45 of the Act. At this note, the researcher shall progress with the intricacies of the paper thereof.

Having cited a background of secularism in India as a constitutionally enshrined principle, our research paper quite ironically has chosen the case of Ram Mandir or Babri Masjid or Ayodhya Land Dispute, stretching across centuries and obliterating the national integrity and brotherhood at the same time fanning communal flames in the country.

Keywords: *Expert Evidence, Ram Mandir, Secular, Archaeology, Analysis, Historical*

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I. INTRODUCTION

The origins of the case technically date back to Rama, the incarnation of Vishnu, as believed and revered by the faith of Hinduism. It has been observed that Ayodhya is the birthplace of Rama, as mentioned in the Valmiki Ramayana epic, but claims to the modern city of Ayodhya to be the one mentioned in the epic is again one of dispute and myth. In the period of Gupta Empire, the capital was reinstated at Ayodhya. The next phase begins in the Medieval History, when the land was subjugated under Mughal domination, by the then ruler Babur. In 1528, one of emperor's generals Mir Baqi built the Babri Masjid, and supposedly on a previously built remnant of some structure, that has been vocally debated to be a temple dedicated to Rama, of Hindu faith. Subsequently 18th and 19th Centuries witnessed increased pilgrimage to the site, by Hindus as commemorating the birthplace of Rama, and literature began popularising the demolition of some temple as a background to Babri Masjid erection. The British had made segregation, with Muslims allowed inside and the Hindus worshipping the altar outside. Law suits were filed in 1883 and 1885, and Hindu claims of reinstating the land was not upheld blaming the incident on the past. In 1949, when some Hindus tried to reinstate an idol in the place and tried to stage a divine revelation that was exposed as a sham, Court ordered the place to be shut down in the face of growing communal tensions. After some decades the latent fire burst forth with the aid of fascist organisations that relied on extremist tactics, there were nationwide declarations of liberating the place from the clutches of an Islamic mosque- an order for opening of the place to Hindus was passed attracting protests from the Muslim community, and some negotiations were arranged by the ruling party, the failure of which was quite evident in the light of growing fervour. Finally in 1992, a an ugly twist of events, Hindu fascists backed by political support had organised a mob violence on the site and demolished Babri Masjid, even made a make shift Ram Mandir to mark their claim on the land. There were mass scale riots, thousands were killed, national integrity took a backseat as law and order collapsed, and once again such a rally was organised in 2001, resulting in more deaths, slaughter of innocent lives and riots. 2003, was the year when it was decided to try the accused in the demolition case, and subsequently Allahabad High Court heard the case, ordered an investigation to the Archaeological Survey of India (ASI) and a verdict dividing the land was passed. Subsequent appeals have been made, contesting claims made and finally in November 2019, Supreme Court passed the verdict to build the Ram Mandir on the disputed land, and additional land to be allocated for the reconstruction of the Babri Masjid as well. Supreme Court took into account the ASI report as well. In the said case, that has a constellation of angles and

perspectives, this research paper shall focus principally on the Expert Evidence, as furnished in this case by ASI – the state agency responsible for preservation and maintenance of national heritage and authorised to carry out excavation works as well.

Review of Literature

1. Ayodhya; Was There a Temple? by Athith Krishna, 2015

The paper scrutinises archaeological evidence and different reports, it also ensembles various perspectives and confusions about the expert reports being presented in the case. The aim and scope of the paper has inspired the researcher to chalk out a similar approach.

2. Was There A Temple Under The Babri Masjid? Reading The Archaeological Evidence. By Jaya Menon, Supriya Varma. 11th December, 2010.

One of the most phenomenal sources of all the rebuttable propositions that had been advanced after the Allahabad HC verdict and it comes from the most reliable sources of people who were engaged in the ASI excavations as spectators by the Court. The paper aims to expose certain flaws in ASI, which has been important for the researcher to expand his scope of study.

3. Archaeology as Evidence; Looking Back from Ayodhya Debate by Tapati Guha Thakurata, 1997.

The most important source of information, wide and holistic, brave and outspoken, almost shattering common notions and phenomenal in advancing the pieces of information and referencing that were most relevant for the study.

4. The Use and Misuse of History and Archaeology in the Ayodhya Disput by Thomas Van Damme, 2010

A comprehensive account of the Ayodhya dispute, this paper has been helpful in advancing some precious expert opinions and rare reports and surveys.

5. A Study on the Admissibility of expert evidence in Indian Evidence Act by S.Sadhana, K.Roja, 2018.

A detailed study about the expert evidence, its legal principle, needs, cases, how it has been interpreted over the years and what are the possible flaws in the ways of interpreting the same.

Materials and Methods

Doctrinal research has been undertaken for the purposes of this research. Secondary data with

reference to articles and research papers by experts have been studied thoroughly. Primary data with reference to acts and legislations, and original reports and judgements by Allahabad High Court and Supreme Court have been analysed for the same. The range of information collected has been analysed as per the modus operandi of a theoretical doctrinal study. The researcher has attempted to incorporate a broad spectrum of opinions, facts, case study based approach towards the principle case referred, as also expert opinions relevant towards the chosen hypothesis.

Research Question

How Far Was Expert Evidence an Ambiguous Factor For Delivering The Ram Mandir Judgement In 2019 By Supreme Court?

Hypothesis

Expert Evidence Has Been an Ambiguous Factor For Ram Mandir Judgement

Objectives of Research

1. To determine the validity of expert evidence in a court of law.
2. To ascertain the importance of archaeological evidence in the Ram Mandir Case.
3. To fix the scope of ASI (Archaeological Survey of India) as an expert evidence or not.

Scope of Research

The present study is limited to

1. Case judgements that have been traced to the historic land dispute at Ayodhya.
2. Significant ASI reports on the same as forwarded to the Court for adjudication.
3. Only the Expert evidentiary aspect of the Ayodhya dispute has been taken into consideration for this study.

Relevance of the Study:

The study aims to incorporate the landmark ruling of Supreme Court in November 2019 on the historic and communally heated debate of Ram Mandir Babri Masjid case or the famous Ayodhya Land Dispute Case. The relevance lies in the fact that with increasing role of expert evidence in cases and reliance on it by a court of law, what and how far the pre- requisites for expert evidence have been described and implemented, are certain questions which need to be addressed.

Expected Contribution

The present study is expected to provide a greater clarity on the ruling made in Ayodhya Verdict with reference to expert evidence of Archaeology. This also would serve in formulating some reformative guidelines with reference to section 45 of Indian Evidence Act, 1872.

II. ANALYSIS AND DISCUSSION

EXPERT EVIDENCE – DEFINING THE AMBITS

Section 45 of Indian Evidence Act, 1872 –

“When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity handwriting or finger impressions, the opinions upon these points of persons especially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.”

Section 45 defines an expert as a person who is especially skilled in a given field. An expert is a person who has special knowledge and skill in a particular calling to which the inquiry relates. An expert witness is one who has devoted time and study to a special branch of learning, thus is especially skilled on those points on which he is asked to state his opinion.²

Wigmore, who is a famous American Jurist, has opined certain views on the issue of an Expert Evidence as follows -

“...whenever inferences and conclusions can be drawn by the jury as well as by the witness, the witness is superfluous: and that thus an expert’s opinion is received because and whenever his skill is greater than the jury's...”³

- The important point to be noted here is the reliance of judicial wisdom on the wisdom of expertise, an attempt founded on the principles of fairness to integrate the capacity to give a judicial decision with the competence that a person earns in a particular field or occupation by way of expertise. The Court has its full discretion to admit or refuse the expert evidence that is furthered to it, after considering such advances by both the parties to the dispute. The rule of Expert evidence is quite an exception to the general rules and serves to ensure some fairness in cases that require exceptional diligence.

Malek (2007)- while discussing about production of a belief system in a court of law, expert

² Baweja,Akshay “Expert Opinion under the Indian Evidence Act.”

³ Wigmore,J.H, *Wigmore on Evidence*, Vol VII, Chapter 67, Section 1917: Opinion Rule - History, (Little, Brown & Co, Boston, 1983).

evidence seems to be an exception⁴ as to the general rules of admissibility and relevance, and the same view is found to be widely shared by Jurists.

The most important conception around the expert evidence lies grounded in the common sense that judicial wisdom may have certain subjects beyond their competence and skill to discern, so in such cases it becomes an unjustified burden on the judge, so in such cases this special path is described. However with reference to Expert evidence, some salient features may be noted by way of case laws and opinions –

1. In the case of *R v Davies*⁵, it was held that-

“Evidence given by experts who possess some special knowledge on subject matter is beyond the range of common knowledge of the Court”. This shows that while encouraging expert evidence, a matter of special interest has to be evident in the apparent case in dispute. The matter of special interest supercedes general or mundane litigational intricacies and is deemed in judicial opinion to be ‘special’

2. Further, about the nature and application of expert evidence in a case, it was held in the case of *-Magan Bihari Lal v. State of Punjab*⁶ -

Expert evidence to be always used with caution. It is by its nature quite weak and would simply guide the Judge in forming an independent opinion of his own.

3. The same direction and overtones have been found in the direction applied in the case of *Kamala Kuer v. Ratan Lal*⁷, where it was opined ;

Expert evidence is not conclusive in nature.

4. As held in the case of *Gopeswar v. Biseswar*⁸-An emphasis was laid to test if the witness is sufficiently qualified by experience. This justifies an aspect that is found to be rather open to judicial interpretation; the competency and general rule of being and posing as a witness. It is noteworthy that there is a possible lacuna in *Section 45* in its inclusional ambit of interpretation that it does not clearly specify a qualification for expertise – it becomes generally accepted that the issue goes beyond the competence of general wisdom, but when it encroaches upon the territory of judicial discretion, having no safeguards is a lacuna.

5. However, some prerequisites of Expert evidence has been summarised⁹ as under –

⁴ Malek, Hodge M. *Phipson on Evidence*. First Supplement to the 16th Edition. 2007.

⁵ [1962] 3 All ER 97

⁶ AIR 1977 SC 1091

⁷ AIR 1971 All 304

⁸ 16 CWN 265 (285).

⁹ Singh, Abhiraj, “Admissibility And Relevancy of Expert Evidence”, *LegalservicesIndia*, available at

- a. Subject is such that the expert testimony is very essential,
- b. The witness called in must really be an expert to advance the said opinion on the matter. The same was reiterated in the case of *Parat v. Bissessar*¹⁰ where the Court relied upon these tests of competence. This brings forth a question – whether and to what extent shall the relevance of the opinion of an expert be appreciated and if at all it can alter the merits of the case.

RAM MANDIR CASE AND EXPERT EVIDENCE

The gainful insights on the dimensions of expert evidence are appreciated while dealing with the expert evidentiary aspect in the chosen case. The case initially stems from a disputed land, and the cause for dispute lies obscured in the realms of history, covered with myths and legends, and prefabricated from time to time by the lores shared by people on the same. Further with the subject of faith of millions affixed, it becomes imperative for the Court to decide on the merits of the case with a high degree of sensitivity and precaution. In the *Ayodhya Verdicts*, we find significance of expert evidence of archaeology; the discipline which serves to define the structures existing as products of defined material history. While relying on archaeology is indeed a pragmatic step, and the aid of a neutral discipline to efficiently decide a case so inseparably woven with religious foundations is a mark of securing secularism, there are certain issues when ASI as the sole representative of the discipline moves to Court and advances its expert evidence, being admissible under Section 45 of the Indian Evidence Act, 1872. These shall be dealt in detail taking into consideration the delicate issues involved since the inception of archaeological involvement in the area, government initiatives and subsequent Court orders.

Archaeology as a science¹¹ has again itself consumed overtones of some debate, but it has been clearly defined, as a methodological use of information and its application towards creating a relationship of cause and effect. Archaeology, too, like history has to depend on speculative hypotheses, and conjectures, but at each stage to be tested with scientific testimony so as to perfect its conclusions.

One fundamental question that has been the centre of debate is the existence or non existence of a Hindu temple dedicated to Lord Ram, making the sacred spot with reverence that was maybe demolished to give way to Babri Masjid. In the light of this fact, there are disputes

<http://www.legalserviceindia.com/legal/article-1205-admissibility-and-relevancy-of-expert-evidence.html>
Last modified on 22/09/2020.

¹⁰ ILR 39 Cal 245.

¹¹ "Archaeological Fieldwork in India: Planning Ahead", A Source-book of Indian Archaeology, p.44

among scholars –

While one view¹² holds that there was a Hindu temple precedent to the Islamic Masjid, while misrepresentation and over representation of Muslim evidence has been wrongly claimed in the same,

The other view¹³ refuting any claims that a Rama temple existed on the site has on the contrary opposed the Hindu favoured opinion. This view further goes at lengths of discussing how historical facts have been twisted to suit political and communal vendetta.

At the very outset of the discussion, it is noteworthy how the domains of a vast discipline encourage different schools of thought to amalgamate opinions centred on the same discoveries. As constructive as it seems, the creative liberty often assumes overtones of personal bias, vendetta, influence, and a misconstruction of an apparent truth to suit specific purposes. This hints at a lack of specificity, and while the same is issued to determine an objective point of law, it culminates in ambiguity. It is indeed notable again, that when the same proposition yields distinctive interpretations, there must be a parameter for evaluating the better one, that is quite inappropriately absent *prima facie*.

Bernbeck and Pollock's views are important for consideration-

“..., archaeology and archaeologists found themselves at what appeared to be the nerve center of a conflict that goes well beyond academic squabbles, one that reached the Supreme Court of India and has cost hundreds of lives.”¹⁴ This demonstrates that in a debate such as this, the creation and widening of the scope of the discipline of archaeology to create an identity, a valid argument as against an adverse party is no neutral undertaking and will obviously get polarised. Situational and circumstantial forces can plague the mind of the researcher, which will invariably surface in the results of the investigation.

“As engaged members of society, archaeologists must find ways to argue against the use of the past for racist, sexist, and other oppressive purposes.”¹⁵

So as to preserve the scope of the subject, it has been widely argued that neutrality of the approach and a fearless, positive revelation often rebutting mass propaganda be made, in order to prevent propagandists and people with vendetta to abuse the pristine supremacy of

¹² K.Elst 2002. *Ayodhya: The Case Against the Temple*, New Delhi: Voice of India.

¹³ Srivastava, S, 1994. *The Abuse of History: A Study of the White Papers on Ayodhya*, *Social Scientist* 22, 39-51.

¹⁴ Bernbeck, R, Pollock S., 1996. *Ayodhya, Archaeology, and Identity*, *Current anthropology* 37, S140.

¹⁵ *Ibid*

knowledge. Though it is often difficult¹⁶ to obtain a balanced view, it is important that historians and archaeologists try to be objective and neutral in their research. This is particularly true in such cases, where unusual attention and importance is given to historical and archaeological sources to justify, consolidate and strengthen ideologies of religion or politics. Archaeology, as Shereen Ratnagar points out, is not merely a branch of history, and not just to be listed alongside epigraphy or numismatics as a 'source' for 'ancient India'. It is, and has to be acknowledged as, "a discipline on its own track".¹⁷ Also points out¹⁸ it has been a disgrace to the subject that contenders of political interests misused the subject, not knowing its scope to further propaganda. Comments such as these are not cynicism of the initiatives of ASI in providing a strong ground to the Court in the adjudication of the dispute. They serve one purpose, explicitly, that is to explain the confabulation that may result in all probability when persons undertaking the work under ASI, fall victims to these nuanced incidents, and the same gets carried on to the Court looking at the expert evidence.

SCRUTINY OF REPORTS – AS PRESENTED AND PERCEIVED

It has been contended that¹⁹ the Allahabad High Court verdict and direction of investigation into the Archaeological evidence at the disputed land had spurred up the issue of definitive concrete historical evidence about the same. Considerations of the sanctity of the site deem relevant as are the cryptic lore and traditions of the Hindu Deity Rama and his birthplace lore. The link of the dispute lay with the history itself, or rather was projected in that way. The court relied extensively on the investigation and the subsequent report that it had authorised ASI to present.

The ASI report after the investigation directed by the Allahabad High Court had suggested a superstructure beneath the erstwhile Babri Masjid, but again the same was disputed by the Muslims engaged in the activity.²⁰

A Canadian report²¹ that had used ground penetrating radar to examine, and here is an excerpt from the report –

“There is some structure under the mosque. The structures were ranging from 0.5 to 5.5

¹⁶ Van Damme, Thomas, *The Use and Misuse of History and Archaeology in the Ayodhya Dispute*, 2010.

¹⁷ Ratnagar, Shereen "In Search of the Impossible", p.2901.

¹⁸ Shereen Rntnagar, "Archaeology: In Search of the Impossible", Economic and Political Weekly. November 5-12, 1994, p.2901.

¹⁹ Elst, Koenraad, *The Three Ayodhya Debates*, Academia, available at , https://www.academia.edu/14614579/The_Three_Ayodhya_Debates

²⁰ Van Damme, Thomas, *The Use and Misuse of History and Archaeology in the Ayodhya Dispute*,.

²¹ Bharat, A, Ayodhya – Archaeological survey of India report, Arise Bharat's Weblog (<http://arisebharat.wordpress.com/2010/09/19/ayodhya-archaeological-survey-on-india-report/>) last modified on 29.11.2010

*meters in depth that could be associated with ancient and contemporaneous structures such as pillars, foundation walls, slab flooring, extending over a large portion of the site”.*²²

However, people engaged in the activity with ASI did point out their serious concerns with what was furnished to the court in a landmark case ;Some points²³ from the survey as directed by the Allahabad High Court in 2003 and as pointed out have been summarised as below-

(A) ASI went ahead with the theory of the “circular shrine” as belonging to the post Gupta-Rajput period (AD 9th-10th centuries), whereas a study of the stratigraphy and the site notebooks indicate that the structure belongs to the Gupta period (AD 4th-6th centuries) –this shows an active concealment on the part of the organisation to fit its own formulated hypothesis about the circular shrine. This has been gravely criticised as a professional misconduct, on part of a deemed expert.

B. There has been another interesting view, yet not accepted and vociferously rebutted, but finds immense relevance when the same comes in the form of a proper report with facts and figures that enable in a better understanding of the same-

It has been pointed out that the pillar bases excavated from the site, which bears the primary proof to sustain the presence of some temple beneath the disputed Masjid, are non uniform. The northern pillar bases do not match with the other ones on the sites. Further the deciphering of the pillar bases on the site plan was hasty and with a driving preconceived notion by the ASI to prove a temple beneath the structure. It has been noted that the structure so made out did not resemble any temple plans from North India to as to substantiate the claim. This particular anomaly in the report has been upheld by²⁴ M S Mate, retired professor of art, architecture and medieval archaeology at the Deccan College in Pune. The report went on to delve into the similarities of the excavated structure bearing resemblance to a mosque.

It is interesting to note that while ASI as an independent agency in the investigation should be free from biased considerations and preconceived notions, and affirmatively try to reconstruct a material proof from the relics of history, its action has been criticised as garnering evidence in support of the presence of Ram Mandir – which still not proved, remains a mere supposition and in the eyes of political vendetta and mass ideology – a piece of faith around

²² <https://arisebharat.com/2010/09/19/ayodhya-archaeological-survey-on-india-report/> by Arise Bharat.

²³ Menon, Jaya, Varma, Supriya, *Was There A Temple Under The Babri Masjid?*

Reading The Archaeological Evidence, Economic And Political Weekly, Volume 45, Issue No. 50, 11/12/2010, available at -<https://www.epw.in/journal/2010/50/verdict-ayodhya-special-issues/was-there-temple-under-babri-masjid-reading>

²⁴ Mate, M.S(2009): “*Book Review of Ayodhya: Archaeology after Excavation*”, Man and Environment, XXXIV(1), pp 117-19.

which disputes have coalesced and been fuelled. The question on whether or not there is a temple is a debate for the general people, but being professionally engaged in unearthing important information, the stance of ASI has been perceived with reservations.

Tapati Guha Thakurata in her comprehensive report²⁵ has further opined on a concept called – “extra – archaeological, “which she states eludes the popular findings, propositions and counter propositions to the Ayodhya land – these are matters of faith, belief, conjecture. While the Ayodhya case has brought to display archaeological science and findings, it has also brought a deeper sense of understanding, one that shows how attitudes and belief systems develop and operate towards historical monuments and relics. Such sphere of cognition lies well beyond the scope of scientific knowledge.

The next part of the report involves the recent hearing, and judgement by The Supreme Court in November 2019-

Some excerpts from the ASI report ; *“Now, viewing in totality and taking into account the archaeological evidence of a massive structure just below the disputed structure and evidence of continuity in structural phases from the tenth century onwards upto the construction of the disputed structure along with the yield of stone and decorated bricks as well as mutilated sculpture of divine couple and carved architectural members including foliage patters, amalaka, kapotapali doorjamb with semi-circular pilaster, broken octagonal shaft of black schist pillar, lotus motif, circular shrine having pranala (waterchute) in the north, fifty pillar bases in association of the huge structure, are indicative of remains which are distinctive features found associated with the temples of north India”* – Quoted from the judgement²⁶

Ms Arora, learned Senior Counsel had raised objections to the ASI reports on several grounds with reference to the pillar bases as being dissimilar, too thin to be referred to as bases, inefficiency of the operations carried out by the ASI in light of the entire public focus on them for the time being, that it is an inferential science and bears a very weak evidence in the said case. It was also contended that being expert evidence by the ASI, there was no corroboration by witnesses, except the particular specialists and their testimonies. The point as to the demolition of a pre existing structure still remains an open ended question in the said case. It must be however notes, that according to such excavations and findings, the articles

²⁵ Thakurata, Guha, Tapati, *Archaeology as Evidence; Looking back from the Ayodhya Debate*, Pg-13 to 14, CENTRE FOR STUDIES IN SOCIAL SCIENCES, CALCUTTA 10 Lake Terrace, Calcutta 700 029, April-1997.

²⁶ Point 455, page 554, Part N9.

discovered did bear resemblance with Hinduism much more than that of Islam, but according to another claim by her the presence of animal bones in the vicinity refutes claims of a religious place being present on the site. To quote yet another point from the final Judgement; *“But the ASI report has left unanswered a critical part of the remit which was made to it, namely, a determination of whether a Hindu temple had been demolished to pave way for the construction of the mosque. ASI’s inability to render a specific finding on this facet is certainly a significant evidentiary circumstance which must be borne in mind when the cumulative impact of the entire evidence is considered in the final analysis.”*²⁷

ETHICAL QUESTIONS INVOLVED – A TIME TO PONDER

1. Historical accuracy²⁸ has been defeated by concocted faith based retellings – and the corpus of facts as laid out by Archaeology has been limited in its purview. It has been reconstructed that a 10th/ 11th century Vaishnava temple of the late Pratihara style, that has been traced to King Vikramaditya, dated within 2nd Century BC to 5th Century AD. This same temple has been upheld, though without concrete proof, to be the “Ram Janmabhoomi” – the birthplace of Lord Ram. Consequently, Babur’s act of demolition of the same traces to 16th century AD, leaving a vacuum in reconstruction of the historical timeline. Even the act of demolition is not proved and established, rather an idea presupposed and reinforced in the garb of Islamophobia, mal-narrated versions of history, a tendency to believe easily in the Islamic iconoclasm, while Mughal empires stretched across the geography of the country. The probable anomalies need to be appreciated, and deciphered with the help of historical storytelling and archaeological support, but on the contrary, the effort seem to be missing and tainted with limitations.

2. From a strictly archaeological perspective²⁹, sans all the communal and political overtones, a fundamental principle of archaeology is its conservation of the ancient past- in whatever structure it has been discovered. With findings such as remains of Hindu temples beneath a mosque, other such relics of Buddhist nature and origin beneath the Hindu temples, would render all of them illegitimate if contested upon, that are now so protected by the ASI. Such a vehement view is instrumental in questioning not simply archaeology as an evidence, but the entire crux of the dispute and the significant consideration by a court of law in determining whether or not “Hindu remains are there beneath an Islam structure”. It is indeed

²⁷ Point 511, Part N9, page-598.

²⁸ Pandey, Gyanendra, "Modes of History Writing", pp. 1523-1524

²⁹ Thakurata, Guha, Tapati Archaeology as Evidence; Looking back from the Ayodhya Debate, Pg-16, CENTRE FOR STUDIES IN SOCIAL SCIENCES, CALCUTTA 10 Lake Terrace, Calcutta 700 029, April-1997.

a collapse of the ideological foundation that is sacrosanct to the discipline.

3. In a prolific view by a researcher ³⁰ -

“Their domination in the area of archaeological knowledge production in India has legal legitimacy and objective sanctity because they are part of the statist bureaucratic machinery”

Such a comment was made out about the ASI by him, obviously taints the reputation of the agency, especially when he elucidates on how ASI suffers from lack of expertise and gets influenced by right wing ideologies as well. The comment holds no admissible proof, as it is a mere opinion by a person, well justified by him in his report, but the repercussions of such cynical attribution as awarded to a Court deemed expert, draws some attention; it not only raises the quotient of ambiguity in the reliance of a report made and furnished by the same organisation. Claims as such are to some extent relevant with facts, as ultimately ASI is an agency of the state, and it is not improbable that the working executives will not harbour reserved partiality and bias towards the view which is rampant, and with which the Government silently sides.

4. Intellectuals stand their grounds and defend their opinions on the cornerstone of their particular expertise in a particular said field, in which they profess their competency and also deliver the so called “expert opinion”. It has been observed that in many cases the firm concrete basis of such an advocated opinion fails to withstand the test of corroboration when pitted against other opinions on the very same matter. Such an obvious dissonance would not only render the question of relying on the opinion to be weak, but raises concerns as to the admissibility of such an opinion as within the purview of section 45 of Indian Evidence Act,1872. Further, judicial wisdom of determination and discretion actively conceals any question of personal ideology from making influences on a pragmatic opinion, but can that be reasonably expected from an “Expert”? While new findings have emerged that have led to excavations being inclined on Hindu archaic shrines and findings, the suggestions made erstwhile by eminent archaeologists start to lose the ground of confidence. While on one hand archaeologist Dhaneshwar Mandal had criticised the Ram Janmabhoomi theory and refuted the Hinduism link, he admitted in the court that he had never been to Ayodhya site in person. It was rather his own communist ideology that harboured such an opinion. The narratives that these experts confidently present before the courts get influenced by their own personal bias

³⁰ Chadha,A (2007): “Performing Science, Producing Nation: Archaeology and the State in Postcolonial India”, PhD Thesis, Stanford University, Stanford

and the purpose is lost.³¹

5. The concerned person who has been given the responsibility to testify as an expert owes a serious duty as pronounced by law to give an impartial opinion – but can that standard and degree of fairness be computed as scientifically as the evidence itself? The quality that demands the evidence must be true and proved as also relevant in the said matter as has been designed by law. This duty is important in the sense that it often works to determine aspects of the case, settle the merits of the case as well.

6. According to some suggestions put forward by way of research³² it is a glaring issue that the experts whose evidence is to be furnished are often found to be lacking proper protection, and often coming under negative influence of parties who want to influence the ends of justice with wrong intentions. Steps must be taken in enforcing their protection before and after recording their statements and submission of their reports.

III. CONCLUSION

THE ROAD AHEAD – IS A REFORM NECESARY?

The paper has been kept quite wide in its scope and ambit, and being essentially doctrinal in nature, it attempts to provide a wholesome, authentic and integrative perspective on the subject matter chosen. With reference to the hypothesis- it stands justified in the light of the observations made and subsequent reports and analytical explanations attached to them. While on one hand the comprehensive study explains the subject, on the other hand, raises important questions that need further attention and an initiative to be addressed as well, if possible by the Courts and obviously by way of amendments.

One such is the need to provide a guideline for *Expert Testimony*; defining the ‘what, how and when’ and demarcating its application in simple objective terms that would be inclusive, but not with a want of proper definition.

Secondly, ASI – the state based agency that aided in furnishing a report and that has been deemed ‘*Expert*’; whether and how would the impartiality, authenticity and responsibility of the same be ascertained.

³¹ Mehta, Harshil “New Findings at Ram Janmabhoomi Site Expose Once Again The Intellectual Dishonesty of Eminent Experts”, Swarajya, 23/05/2020, available at <https://swarajyamag.com/blogs/new-findings-at-ram-janmabhoomi-site-expose-once-again-the-intellectual-dishonesty-of-eminent-experts> (last modified on 12/09/2020)

³² Sadhana,S.Roja,K,A Study on the Admissibility of expert evidence in Indian Evidence Act, International Journal of Pure and Applied Mathematics Volume 120 No. 5 2018, 1123-1136.

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