

# The Ayodhya Verdict: An Imaginary Dialogue Between Baxi and Noorani

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Legal scholars, Professor Upendra Baxi and A.G Noorani both wrote impassioned comments on the historic Supreme Court judgement in the Ram Janmabhoomi case. It is indeed fascinating as to how two people with ample knowledge of the law, acting in good faith can view and analyze the same judgement in a diametrically opposite manner, one calling the judgment, complete justice, while the other seeing it as a denial of justice altogether.

If Baxi and Noorani converse with each other, the conversation would be one which results in more questions than answers. On the question of the overall impression of the judgement while Baxi is fascinated by the Supreme Court's interpretive capabilities to the extent of calling the judgement a 'miracle'<sup>1</sup>, Noorani would be flabbergasted by such a reading by Baxi. Noorani fails to consider the piece of writing a judgement in any sense of the word. He would reiterate the point that the judgement is a disgraceful piece of writing, using notorious reasoning to reach a convenient conclusion<sup>2</sup>. Noorani would question Baxi on his celebration of the 'unanimous'<sup>3</sup> judgement and would call this judgement worse than the disgraced ADM Jabalpur case<sup>4</sup> as that case at least had a semblance of dignity due to the dissent of Justice Khanna. To Noorani, the unanimity would be one of the most problematic parts which stands as proof of the cowardice of the entire bench and the lack of transparency in the judgement.<sup>5</sup>

The anonymous addendum of the verdict on philosophy Hinduism, faith of the Hindu community regarding the disputed site, etc., is Noorani's evidence to support his claim that the judgement is one based in faith and not law.<sup>6</sup> Baxi would disregard this reading of the addendum, though, and would obviously discredit any influence of the addendum on the judgement on account of it being anonymous and thus, constitutionally impermissible.<sup>7</sup>

Baxi's entire argument in support of the judgement revolves around the fact that by using Article 142 of the constitution, the judges brought about complete justice and that the allotment of 5 acres of land for the construction of the temple was an exercise that prevented the constitutional 'othering' of the Muslim

<sup>1</sup> Upendra Baxi, 'Award of Five Acres for Masjid in Ayodhya is an Effort to do Complete Justice' (*The Indian Express*, 2021), para 1 <<https://indianexpress.com/article/opinion/columns/ayodhya-verdict-babri-masjid-ram-janmabhoomi-supreme-court-6115052/>> accessed 7 November 2021.

<sup>2</sup> A.G Noorani, 'Supreme Court Denies Justice' (*The Hindu Frontline*, 2021) 3, para 7 <<https://frontline.thehindu.com/cover-story/supreme-court-denies-justice/article30014667.ece>> accessed 7 November 2021.

<sup>3</sup> *ibid* 2, para 4

<sup>4</sup> *ibid* 1, para 1

<sup>5</sup> *ibid* 4, para 16

<sup>6</sup> *ibid* 3, para 10

<sup>7</sup> Baxi, para 4

community in India.<sup>8</sup> The judgement thus, symbolized and concretized the Muslim community's belongingness to India. The construction and co-existence of both a mandir and masjid together would stand true to the constitutional values of the country and the pluralism it enshrines. Baxi makes these points while praising the court for acknowledging that Hindu idols were placed under the central dome on the night of 22nd December, 1949 and that the demolition of the Babri Masjid was unlawful.<sup>9</sup> Noorani would take offence to this argument as it is a well historically established fact that prior to the placement of the idols, it was the Ram Chabutra which was widely regarded as the birthplace of Ram Lalla.<sup>10</sup> There was absolutely no contest for the mosque land between the communities and matters were well settled. Thus, the rationale behind indirect acknowledgement that the idol placement is the origin of a new, baseless controversy and acceptance of a judgement giving that uncontested land to the Hindu community would be bizarre in Noorani's understanding.

Noorani would express concerns regarding the judgement as such a judgement could open a nasty Pandora's box of more such issues coming up and communities demanding their religious houses of worship to be built at disputed sites. He would cite the Shahidgunj case of Pakistan<sup>11</sup> as reference. This case in Lahore had all the elements of Ayodhya but in reverse as here, Muslims raised a dispute regarding a Sikh gurudwara. In this case Muslim claims were defeated in court and attempts at take over through legislation failed too and rightly so. The logic used by the Prime Minister of Punjab at the time was that such a legislation would be passed in this case, demands of such nature could emerge in other parts of the country where Muslims were in a minority and a mosque was being disputed by another community for the restoration of their house of worship. Thus, in Pakistan, the discourse around this issue was rational to say the least which tended to resolve and put an end to issues of such nature. Baxi would contradict this by saying that this argument is an ignorant one as it does not take into account the Places of Religious Worship Act, 1991 which was enacted in order to prevent the alteration of the character of places of worship and to retain them as they existed at the time of independence of India.<sup>12</sup> Ayodhya Ram Janmabhoomi was an exception. Thus, in Baxi's mind the existence of this legislation is enough assurance to dismantle all other demands of such nature. A counter question to this over optimism towards this legislation can be raised by reading the dissent in the Ismail Faruqui case. The dissent correctly emphasizes that the IPC, even prior to coming in of the legislation had provisions about offences relating to religion (namely Section 295) but such provisions hardly proved a deterrence to the miscreants who demolished the Babri Masjid, thus, the assuredness regarding this legislation as being a be all end all solution for such tensions in the future and a justification for the Ayodhya judgement is highly questionable.

Baxi's reasoning for accepting the judgement also rests heavily on the fact that the Muslim side in this case could not prove uninterrupted, continuous, adverse possession of the inner courtyard and thus, the judgement did not tilt in their favor.<sup>13</sup> Noorani would counter this by criticizing the court for unfairly dismissing all evidence that went in favor of the Muslim party. During the British era, the assistance provided by the Brits for the maintenance of the mosque was not considered enough evidence to prove

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<sup>8</sup> *ibid*, para 5

<sup>9</sup> *ibid*

<sup>10</sup> Noorani 9, para 32

<sup>11</sup> *ibid* 7, para 25

<sup>12</sup> Baxi, para 6

<sup>13</sup> *ibid*, para 9

that namaz was being offered in the mosque at that time.<sup>14</sup> The court emphasized that there was no proof of namaz being offered at the mosque from 1528-1856. To the rational mind, it seems highly unlikely that the British would be paying for a mosque which was not being used.<sup>15</sup> The court also reasoned that in 1857, the British had put up a railing not to separate the Hindu outer courtyard and the Muslim inner courtyard, but instead because there was always a constant assertion by the Hindus with regard to their right to pray in the inner courtyard.<sup>16</sup> The judgement asserts that the Muslim history of offering prayer at the site is silent while there is evidence of Hindus offering prayer. This reasoning doesn't stand because the Hindu prayers were being offered at the outer courtyard and not the inner courtyard.<sup>17</sup> If the Muslim party could not prove adverse possession of the inner courtyard, the Hindu party too could not prove so. The Supreme Court's double standards were thus, at display where Hindus' possession of the outer courtyard automatically somehow manifested into their possession of the inner courtyard due to certain instances of 'contestation' between the communities, all this while completely ignoring the fact that there was no litigation or contestation initiated by Hindus from 1885 to 1934.<sup>18</sup> If the site would have been such a hotbed of contestation, what could explain the complete silence for such a long period. Thus, the standard of proof for Muslims was not adverse possession but rather uncontested possession which would make the party stand at a substantial disadvantage and lead to the injustice that was the judgement in Noorani's opinion.

What is common between Baxi and Noorani is that both of them take an extreme stance, one of extreme optimism with regard to the judgement and the other of extreme scorn towards it. While I may have personal disagreements with Baxi's reading of the judgement, the analysis is no doubt not one that is merely farcical in nature, and his critique and scorn towards the protestors of the judgement is not political in nature either. Noorani on the other hand is articulate, persuasive and comprehensive in his understanding of the case and hence, his responses to Baxi would lead to room for a greater discussion and be food for thought as we navigate this rather complicated matter.

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<sup>14</sup> Noorani 14, para 53

<sup>15</sup> *ibid*

<sup>16</sup> *ibid* 15, para 54

<sup>17</sup> *ibid* 15, para 57

<sup>18</sup> *ibid* 15, para 55