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REPORT OF THE
LIBERHAN
AYODHYA
COMMISSION
OF INQUIRY

CHAPTER 16
AFTERWORD

178. AFTERWORD

Man, being the servant and interpreter of Nature, can do and understand so much and so much only as he has observed in fact or in thought of the course of nature. Beyond this he neither knows anything nor can do anything.

Sir Francis Bacon,

Novum Organum (The New Organon) (1620), *Aphorism 1*

178.1. The completion of this report has taken up a great deal more time than anyone anticipated. It has certainly exceeded the time that I thought I would have to spend on it. When I started working on this assignment, I was still a Judge of a High Court. As the holder of a constitutional office, I was constrained by the dignity and the demands of that office, and there were quite a few things that I had to learn and adapt to, as I went along.

178.2. The first was to deal with the intransigent bureaucratic mindset and style of functioning. In order to obtain even the very basic facilities that any commission would require took a huge amount of effort. I had to reluctantly fall back upon using the resources and staff of the Punjab and Haryana High Court in the beginning. Finding space for an office for the commission, the staff and the accommodation for them was in itself a herculean task.

178.3. An Indian Administrative Services officer from Delhi was appointed the Commission's secretary, along with one director also from Delhi. These two

visited Lucknow a number of times for locating and establishing suitable infrastructure, which was provided after an inordinately long period and only after holding a number of personal meetings with the officers. Initially there was no accommodation provided for the staff, no secretarial assistance and not even a registrar.

178.4. An investigating team consisting of officers who at one point of time or the other, were part of CBI investigation team in cases registered after demolition of disputed structure was given by the Union Ministry of Home.

178.5. Assistance was also taken from staff from the High Court of Punjab and Haryana for general service administration. Initially they were sent on deputation co-terminus with the commission, but for the reasons best known to the High Court of Punjab and Haryana, they were withdrawn midway, giving the commission's work yet another jolt. Even the officers, stenographers and the other members of the Commission's staff were never made up to the sanctioned strength. The extensions of time given to the Commission were usually short two-month extensions, hampering the commission's gargantuan task of collating and collecting evidence and information. These short extensions also served to disillusion and dishearten the members of the staff who were therefore not able to contribute their best. The Commission also had to make do with a part-time secretary for quite some time. By the time a secretary became acquainted and conversant with the Commission's work, he would be transferred out.

- 178.6. Even after the basic infrastructure had been put in place, I was unable to immediately embark on this fact finding mission because of the various legal hurdles that the key figures in the enquiry hurled in my path.
- 178.7. On acquiring the office at Lucknow, the Commission held its first meeting for framing of the rules of procedure in order to streamline the functioning. Rules were proposed and objections were invited from the lawyers representing various persons and parties participated. The proposed rules were approved and adopted without any substantive changes or suggestions. The rules which were adopted were in conformity with the principles spelt out by Sir Richard Scott, that the *“Golden rule is that there should be procedure flexibility, the procedure to achieve fairness, tailored to suit the circumstances of each inquiry.”*
- 178.8. The rules of the procedure adopted by the commission were notified on 11th of June 1993. The commission then issued notices for eliciting information and invited affidavits from the general public. Sadly, there were virtually none who came forth to provide any meaning or useful information. Despite repeated advertisements, no relevant information was forthcoming, not even any hearsay evidence or theories. Even the state and the union governments were not forthcoming with relevant records. The commission therefore had to turn to the public figures and request their appearance as witnesses, for the purpose of ascertaining the facts.
- 178.9. Notices were also served on political and non-political parties who had participated in the movement as well as to the Central Government and the

State Government. Subpoenas were issued requiring the presence and testimony of the witnesses and production of evidence relating to the issues under enquiry, through the media and public notices. The Commission also visited the site at Ayodhya.

178.10. The notices issued by the commission were challenged in the High court of Allahabad. The Lucknow bench of that Court found sufficient cause to issue a stay order and thereby halt the process. The stay order read as follows

“In the mean time it is provided that in case petitioner does not opt to file an affidavit or to furnish information in response to notice, under rule 5 of Commission of Enquiry (central) Rules 1972 – shall not be required to do so, nor any inference adverse to him shall be drawn by commission of enquiry. We would like to clarify that proceedings before the commission are not stayed, they may go. This order would also not a bar to the commission in issuing notice under section 8B of commission of enquiry act 1952 if necessary in the mean time.”

178.11. The commission was left grasping for facts and the supporting evidence and faced a blind wall situation. The procedural wrangling and the practical difficulties consumed a major part of the commission’s time.

178.12. The comprehensive issues for enquiry were known to the parties represented. There was no possibility of doubt in the mind of any person that his or her action would be critically examined. All the participant including individuals, organizations, and governments were given an opportunity to file all relevant documents and were allowed to see all the documents filed by others, if they

felt to do so. The commission had nothing to start with, except the White Paper of the Government of India.

178.13. Every person served with notice was initially represented by counsel or other professional support, joined or left the proceedings as and when they liked, with the exception of BB Saxena, KC Tandon, and IB Singh etc.

178.14. Informal requests and even formal orders directing the parties, especially to the Union of India, to petition the Allahabad High Court to vacate the stay order were made. The decade-old stay order has neither been vacated nor modified nor clarified till date and remain operative.

178.15. In the meanwhile various other interim orders of the Commission directing some of the persons who did not have even a stay orders from Allahabad High court, to appear as a witness were stayed by the Delhi High Court, which were vacated only after passage of some years.

178.16. All these stay orders and the various other orders made on challenges to the Commission in High Courts resulted in a long spell of time for the Commission to complete the preliminary task of collecting the evidence.

178.16.1. After much persuasion, the Central Government had started examining its witnesses sporadically and with delays and according to their own convenience and expediency. The Central Government took a number of years to examine a handful of witnesses, whose role was limited just to the security aspects. No attempt was made by the Central Government to examine anybody with respect to their role, facts,

circumstances, environment or ambience generated, conspiracy or a joint common enterprise resulting in demolition.

178.17. The Commission entertained applications from the participants for further information or for time to consider any allegation made throughout the enquiry proceedings. Because of the adjournments on the requests of counsel for the parties, the stay orders passed by the High Courts and the Hon'ble Supreme Court of India from time to time, an opportunity had to be granted to everyone, howsoever late he might have joined the proceedings. A number of governments of the states and the centre changed during the enquiry. The non availability of the prominent leaders and the state and central ministers could not be ensured, despite attempts to persuade them to appear on their own as witnesses or to choose their own convenience and time to appear. Bailable and nonbailable warrants to secure the witnesses' presence had also to be issued. The process took up a substantial part of the time of the commission. A number of elections etc. during the enquiry also consumed a major part of the time; the Commission was under constant pressure to ensure that none used it as a spring board for the elections. All parties had a fair chance to prepare their submissions and even written submissions for which they requested, but none filed with an exception of some who filed slipshod arguments.

178.18. Influential members of the political parties made counter demands and used the issue for political purposes for acquiring power and for self-aggrandisement but also did not make any efforts to help unveil the conspiracy

or assist the commission in its task. They only made tall claims during elections and in the halls of the legislatures.

178.19. In spite of arduous job undertaken by the Commission and despite the many sittings and the stay orders issued by various High Courts, the Central Government and the UP Government could not be persuaded to produce evidence in accordance with the Commission of Enquiry Act 1952. The State did not produce even a single witness nor examined any witness produced in spite of the fact that the highest law officer of the state, i.e. the Advocate General appeared before the Commission from time to time. Not a single theory was either propounded or put forth by the State during the course of Commission's sittings either in the form of affidavit or in the form of examination, cross examination or even a suggestion.

178.20. During the whole course of the proceedings, the Commission had yet to see the State's Counsel ever opening his mouth, except for asking one or two questions from VIPs appearing as witness and that too, only the ones who were from a particular political shade or the Government in power whose Advocate General were representing the state.

178.21. The Commission and its investigation staff examined the witnesses and the affidavits which were filed. Lawyers were permitted to cross examine, in spite of having been changed from time to time by some parties. Witnesses were given full opportunity to clarify any part of their testimony. All the sittings of the Commission were held in public hearing except a few which affected the security of the nation and essential working of the forces. The Commission

has taken care not to interfere in a fair and impartial enquiry against persons served with notices under section 8B of the act. The Commission was fully conscious that testimony recorded would be inadmissible in other subsequent judicial proceedings. The Commission has taken note of various publication published from time to time by various authors. The testimony given before the Commission could not be taken to a logical end. It was impracticable to hold day to day proceedings, the Commissioner being a sitting Judge and later a Chief Justice discharging his judicial functions as such, apart from the non-availability of lawyers for parties for day to day hearing in a lengthy enquiry.

178.22. The commission faced problems with the unavailability of counsel. Whether it was because of the counsels' professional obligations and preoccupations or otherwise, long adjournments had to be granted to accommodate the requests of the advocates representing the various persons. The sittings and the timings of the commission had to be arranged keeping in view the suitability of all.

178.23. HS Riar and Ajai Lamba advocates were initially associated with the commission but left the proceedings in between on the grounds of ill-health. Another counsel JS Rathi except for getting his presence recorded as and when he felt like coming to the commission, rendered no help. Despite the requests and advice given to him, he failed to grasp the objective, method or substance of the commission and the questions referred to it. With the change in the government, he withdrew from the commission, without seeking permission and without even the courtesy of informing me.

- 178.24. At this stage, faced with the lack of legal assistance at the crucial inquisitorial stage and for collecting evidence, I appointed Anupam Gupta as Commission's Counsel with his express assurances of confidentiality and of wholehearted involvement with the commission's mandate.
- 178.25. Initially he came up to the demands of this role and organised the evidence gathering process by examining and cross examining the witnesses who were called. He enthusiastically started discharging the various functions of a Commission's Counsel and conducted himself satisfactorily.
- 178.26. At this time, the Commission was facing various stay orders granted by various High Courts against the summoning of potential witnesses whose presence was felt necessary for collecting the evidence.
- 178.27. In these circumstances, Anupam Gupta started drifting from his role of a Counsel for the Commission. At times, witnesses complained that they felt humiliated at his hands. It became increasingly embarrassing for me to control the proceedings – I was in the unhappy situation of having to ask my own counsel to restrain the wilder flights of his imagination and to refrain from brash and rude conduct. He started examining or cross-examining the witnesses on behalf of the Commission tangentially to the questions referred. He was unable to retain an unbiased and impartial appearance as the Commission's Counsel. His political views and opinions started to overshadow his professional role. He then took to using confidential information and the records produced before the Commission for unauthorised statements to the media; his manners and his comments were full of innuendo.

178.28. After the commission concluded recording the evidence, he was duty bound to analyse and collate the evidence and the records etc. and render advise to the Commission for its conclusions. He reneged from this duty and refused to address the Commission for reasons best known to him. In an application which he filed, he took what he presumed was the moral high ground to state that he did not wish to pre-judge or prejudice the inquiry by assisting the Commission. This application was rejected vide a detailed reasoned order in his presence. Still he assured the Commission that he would submit the written submissions for which purpose he retained the photocopies of the statements of the witnesses, books of the Commission and other original and photocopies of the records and the video and audio cassettes of the Commission; which led me to believe that he would make good on his promise to provide written submissions – which he never did.

178.29. At the end of the day however I am of the opinion that for his own unstated reasons, he committed breach of professional duties and betrayed the trust reposed in him as Commission's Counsel, with the intended or unintended result of forestalling the submission of the Commission's report. Faced with an unhelpful, recalcitrant and unrepentant Counsel, I had to perforce seek the services of another counsel.

178.30. Keeping in view all judicial restraint, decorum and traditions of the legal profession at my command, I can say he proved himself to be unworthy of my confidence and the trust reposed by me in him.

178.31. The gathering of the evidence and the recording of testimony was only one part – albeit an important part – of this Commission's work. The most time

consuming and critical aspect was sifting through the collated statements and the voluminous documentary evidence and to arrive at a concise statement of facts, circumstances and to address the questions which had been referred to the commission.

178.32. It was not felt necessary to give notice of the possible conclusions which the commission might reach in the course of the enquiry. Keeping in mind the procedure set out in the Rules and followed in letter and spirit, showing of critical passages of the report to the persons involved before publication was not possible.

178.33. It was one of the most challenging assignments; determining whether the demolition was directed or encouraged or was a result of conspiracy or a joint common enterprise or a plot of persons at home or abroad. In the process the questions referred required the identification of the persons responsible for the demolition through examination of evidence. The task demanded painstaking appraisal of evidence by the Commission in order to discover the truth.

178.34. Neither the police investigation nor the investigation team of the commission, despite the prolonged process, were able to identify any witness, nor produced any witness who could identify any of the demolishers, or lead any other evidence against suspects. Suspects were not even identified. Even after the unprecedented publicity throughout the long spell of inquiry nobody has come forward to advance the case or identify persons who physically carried out the demolition or the ones who plotted its demolition.

178.35. The task of assessing the evidence by the Commission inherently differs from that of a court conducting criminal trial of the defendant, which is in the nature of an adversarial trial. Commission's job demands not a trial, but an inquisitorial investigation and tests the various theories floating on the touchstone of the reasonable person or probabilities. All the witnesses examined were subject to searching examination, both by the Counsel representing the organizers, political parties and persons participating and the commission, and the commission's counsel. The Commission never functioned as Court presiding over the adversarial trial nor as a prosecutor determined to prove a case, but as a fact finding agency. Inherently, on the principle of rule of necessity, a Commission has to hear other sources of information not admissible in judicial proceedings. It has to obtain information from person or who saw or heard or observed in a process what occurred up to the demolition process was completed. After appraising the evidence, the Commission came to a conclusion that certain persons were likely to come under adverse comments and therefore issued statutory notices as envisaged by Section 8B of the act.

178.36. It is after long delay and persuasion even the records seized by the C.B.I., incomplete cassettes and radio cassettes were produced that too in a slipshod fashion. Number of Governments came and went representing different shades of political thought from BJP to Congress and vice-a-versa, but irrespective of the political executive of the Government at any point of time, went on drifting.

178.37. Important leaders of the political parties, icons of the movement, organizers of the movement continuously issued statements from time to time in the media suiting their needs of time, or expediency, either directly or indirectly relating to the movement, conspiracy for demolition, or relating to the issues referred to the commission, and other matters relating to the commission of enquiry. Even the officers connected or in the know of information have been writing books referring to facts and other information connected with the issues referred to the commission. No affidavit or information was filed before the commission by them. They have been writing even after the decades of the incident.

178.38. An instance is the book written by one Maloy Krishana Dhar, “Open Secrets”. Facts were disclosed in it like bugging of meetings etc. of the leaders or protagonists of the movement. Facts stated in the book were neither affirmed nor denied before the Commission by any agency of Union of India nor any reference has been made by anybody else despite the fact that it was brought to the knowledge of the counsel of the Union of India; apart from the fact that published book was in the knowledge of one and all. No attempt has ever been made to produce the tapes which would have unveiled the conspiracy and the conspirators. The successive change of guard at the centre and in the states failed to elicit any intent or desire to bring these recordings to light.

178.39. The Commission issued notices and summons to the key witnesses as Commission’s Witness, especially the ones whose statement in media came to the notice of the commission. Some of them have appeared voluntarily

before the Commission on receipt of notice, while others challenged the order in the High Court and secured a stay order against their appearance. Persons like LK Advani, Murli Manohar Joshi, and KS Sudarshan appeared voluntarily and gave their statements despite their busy schedule and also cooperated in replying to the relevant and sometimes irrelevant or even the philosophical questions asked by the lawyers, some of them not even relevant to the subject matter of enquiry. It is also because of the time constraints of the witnesses that it took quite some time in their examination.

178.40. Kalyan Singh, a key figure, did not appear initially for a number of years and at every step got stay orders from courts. It is only after a decade he issued a press statement about his knowledge about conspiracy for demolition. On the commission's request he appeared as commission's witness though summoned as a defence witness by some of the persons served with 8B notices, who later used to give him up or he would secure stay orders from courts against his summoning as defence witness.

178.41. Imaginative theories with no sustainable evidence were floated in media and on various other forums. General publicity and comment were published which assumed their guilt in the absence of any believable evidence much less the legal evidence.

178.42. It was expected that all organizations would participate to assist the commission with their knowledge, but none came forward except raising questions in Parliament, or in other forums or issuing press statements. Even when the witnesses were examined on the premises of their press statements

issued by them, they backtracked from the statement issued to the press. They thought it expedient not to take the commission into confidence and tell the truth. The leading instances are Mulayam Singh, Kalyan Singh and many others who stated in press about their knowledge of the conspiracy for the demolition but on oath before the commission denied any such knowledge. Witness even without having any facts to disclose, asserted their conclusions according to the suitability, expediency and convenience or the self-serving interest in politics or otherwise use of the thought.

178.43. Another vexatious issue was that immediately after giving evidence before the commission, some witnesses would do a volte face and give completely contradictory statements to the media.

178.44. The underlying causes of failure to protect the disputed structure or its demolition are more troublesome and potentially more sinister. The impact of incompetence, communalism and the era of collusion or self-serving interest, and dishonest approach to the subject has been the subject of much of the evidence and debate.

178.45. This narrative is not in order to gain sympathy for the task which confronted the Commission, but to indicate that this report is an attempt to distil all that raw material rather than tediously rehear or repeat all that is contained in the transcript and the volumes of documents. They are available, should anybody wish to study and analyse them, and he would be able to do it. Anything other than distillation would result in an unreadable report of inordinate length.

178.46. Except officers who were being prosecuted, with the exception of a few who were in position of power or were wielding power, or those who were involved, some cooperated in the enquiry while some of them made all possible attempt to delay it by securing orders from courts, or evading service of notice, or not appearing on excuses.

178.47. It may been unpleasant experience for those who were subjected to rigorous examination by the commission's Counsel or cross examined by the counsels appearing for the persons. It was unavoidable and was necessary in order that the matter should be thoroughly and sometime brutally laid bare.

178.48. It was claimed that all relevant documents were produced and proper assistance in the conduct of inquiry rendered. Yet at the end of the day I have reason to believe that some things have still been withheld and the records were kept back from the commission. It may be on account of bottlenecks somewhere in the hierarchy of government functioning or because of lack of knowledge of the government or others, as to where those documents were lying, or because of coolness of the officer towards the issue, or sometime intentionally to protect either themselves or their colleagues of their role from scrutiny by the commission.

178.49. I am thankful to all the members of my staff for their cooperation and patience exhibited by them during the course of the recording of the evidence particularly to Dr. Pachauri and A.L. Verma who assisted the Commission in collecting the evidence, providing information from time to time, having

been acquainted with the locals of Ayodhya and the leadership of the Sangh Parivar.

178.50. I must also place on the record my gratitude to Narasimha Rao, LK Advani, Murli Manohar Joshi, VP Singh, Jyoti Basu, KS Sudarshan, Kalyan Singh, DGP Parkash Singh, Kumaramangalam and Home Minister of India SB Chavan, who finally deposed before the Commission voluntarily although they had stay orders from High Courts in their favour.

178.51. I am also thankful to my former secretary, Sudhir Mittal who in addition to his onerous assignment with the Union of India took care of the commission's administration and dealt with the fractured staff. While helping me in winding up the commission's report he was abruptly withdrawn by the Punjab Government on the eve of the completion of this report.

178.52. I cannot restrain myself from observing that attempts were made to scuttle the commission. It is notable that Sudhir Mittal was not allowed to discharge his additional duties as the Secretary to the Commission even though he was stationed at Delhi as the Resident Commissioner of the Punjab Government.

178.53. I am also thankful to my personal staff especially my PS Naresh Sud, Sushil Sachdeva and Rajeev Grover.

178.54. I must also place on my record my gratitude to K. Skandan, part time secretary to the commission who finally became the latest and last addition to the Commission's staff.

178.55. Lastly, I am thankful to Harpreet Singh Giani, who has whole-heartedly spent days and nights over the last one year in helping me analyse the evidence, coming to conclusions and finally not only editing the report but also helping me in adding and modifying language and ideas wherever needed. I believe this herculean task would not have been possible without his devotion and the time he spent to clear the mess created by his predecessors.