“Honorable Judges of the Supreme Court, past and present, honorable Judges of the High Court, Mr. Attorney General, members of the Ahmadi family, to whom I am extremely close, ladies and gentlemen, this is not the first lecture and the first release of a book relating to Justice Ahmadi that I have delivered. I must tell you that, in 2016, there was a book entitled *The Chief Justice Speaks*. It was a great misnomer because this was a Chief Justice who did not speak. He listened. But anyway, the book essentially consisted of articles and speeches of Justice Ahmadi when he was alive, and that smiling face evokes such pleasant memories. And, unfortunately, I today have to deliver this lecture after his demise. But he lives on in our hearts and our minds.

Secularism was a subject particularly close to Justice Ahmadi’s heart. As a matter of fact, our Indian tradition of Secularism goes back at least 2200 years. Because our two greatest emperors—Emperor Ashoka, was around 2000 in fact, 250 BC and Emperor Akbar was much, much later, embodied secularism in every way. And they actually embodied the positive aspect of secularism, which is, equal respect to be given to every single religion. And this is a very diverse country with very diverse people and very diverse religions. Now, so far as constitutional democracies are concerned and written constitutions are concerned, of course, it is the US Constitution that one goes back to first, and surprisingly in its cryptic six articles, it only had Article 6, which spoke of no religious test having to be taken if you were to hold an office under the United States of America. The First Amendment, of course, came two years later, and equally cryptically in about sixteen words, said, Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Now, on these words, built a huge jurisprudence by the US Supreme Court. And, they invariably referred to a letter written by President Jefferson in 1802 which spoke of the wall which separated church and state. Now this wall, through the last 225 years, began in the United States by being the Great Wall of China—impenetrable, large and a wall which genuinely

separated church and state. Slowly that wall was whittled down to being Hadrian's Wall, which then became a wall much, much lower and much less in extent, and has finally landed up in 2022 by being the wall referred to in *A Midsummer Night's Dream* as Act 5, being the wall which separated Pyramus and Thisbe, the two lovers who could whisper sweet nothings to each other through cracks and crevices in the wall.

You begin with an early judgment of Reynolds vs the United States, where a federal anti-bigamy statute was challenged by the Mormons. Now the Mormons, you'll remember, are a Christian group who believes strongly that they should marry, that the man should marry many wives, and they said this is part of our basic belief. And in a judgment, Chief Justice Waite said, that may be a part of your belief, but that doesn't mean you have the license to do something that's criminal. Because the statute proscribed this as being criminal activity, and the first test therefore laid down was that so long as you are within the bounds of liberty and not license, and you are within the bounds of the law, you can practice your religion freely. But, if criminal law intervenes, then so be it, that necessarily interdicts your right.

Now, after that, a series of judgments followed, and the 14th Amendment was then applied to the states, so that state laws also had to conform to the First Amendment. And in the Everson judgment, which was a 5-2-4 judgment, the wall was strong and very, very tall because it very clearly said that the state has to have its hands completely off religion in every possible manner. This then gave way to what was called the lemon test. Lemon versus Kurtzman was a 1971 judgment in which Chief Justice Burger laid down three tests. He said, If you are impugning a statute on the ground of the First Amendment, first thing that you have to ask is, was the objective of the statute secular? Second, if it was secular, then what effect did it have on religion? If the effect was neutral, again, it passed muster. But then, third test was a little intriguing

because it said that, having passed these two tests, if there is any intertwining with religion which is beyond a certain point, which was unstated, then, of course, the statute would have to be struck down. Now, this left the law a little uncertain. And finally, now in a judgment in 2022, which was Kennedy vs The Bremerton District, Kavanaugh ultimately held that a football coach who knelt down in prayer before a football game and was joined with some of the students, who are all part of a state club did not breach the First Amendment in so doing, and he held, therefore, that the lemon test has now gone and it will be replaced now with no hands-off test but with a hands-on test, the only thing being that one must see that that the line where religion and the state mix doesn't go beyond a certain point. This is the uncertain state of the law in the US. When it comes to us, even though we had a Government of India Act of 1935, by the British Parliament, and even though the British Parliament in 1900 had enacted a Section 116 of the Commonwealth of Australia Act actually incorporating Article 6 at the First Amendment, our Government of India Acts are nothing whatsoever about religious freedom. So our constitution therefore started on a completely clean slate. As you know, the word “secular” was only added by the 42nd amendment. It was not there in the original Constitution. But what was in the original Constitution was the word secular in Article 25 (2) (a), as meaning something not connected with religion. That's about as far as we go. And in the debates, a K.T. Shah tried to add the word secular, but was turned down, saying there's no necessity, because the fundamental rights chapter contains various positions on the word secular. And as a matter of fact, the 45th amendment bill that was sought to be passed by the Janata Party in 1978 tried to define a Secular Republic as being a republic in which there was equal respect for all religions. But even that didn't pass muster, largely for the reason that they didn't control the Rajya Sabha at that point of time. So when we come to our Constitution, where do we find Secularism and what exactly does it mean. You have in the Fundamental Rights chapter itself, various rights which

are spoken of which ultimately delineate four different aspects of secularism as we know it. The first aspect is that the state shall not discriminate, and on grounds only of religion, the word used is *only*. This came up in state of Bombay versus Bombay Education Society, 1955 judgment in the context of a language, and it was said that whatever the object of the act, and this was following what the Privy Council said, whatever may be the object of the act, if the effect was to discriminate on the ground of language, in that case, then the statute will be bad and only it doesn't necessarily mean that there should be some other ground supporting it. Now, this, unfortunately, was not the law laid down in Air India vs Nargesh Meerza, many, many years later, then this judgment was not adverted, and it's a five judgment. So, the first thing that we are told is that the state shall not discriminate. The second is that the citizens equally, cannot discriminate against each other on grounds only of religion when it comes to certain public spaces and public parks, restaurants, hotels, etc. The third is the single most important aspect, which is the right, or the individual right, of each person or each citizen in this country to practice, profess, propagate religion. And the fourth is the so-called wall in the United States, which is not impregnable here, but the wall which says that when the state actually runs an educational institution, for example, by itself, it cannot teach religion. Equally, it cannot collect taxes and defray them only for a particular religion. Now, going to number one, we have Article 15 (1), which, as I told you, states generally that the state shall not discriminate in all spheres of activity on grounds only of religion. We are not concerned with the others here. This is the widest and 16/2 then is a species which says that, so far as you take an office under the state you, equally the state can't discriminate on grounds only of religion, when you apply for that office under the state. When you come to individuals having to discriminate against other individuals, you are covered by a separate article, which is 15 (2), which is very, very important, and this has to be read along with 29 and what do they say? They say that the moment there is a restaurant, a hotel, a place where the public go to for

entertainment, etc, even a private owner cannot discriminate against on grounds of religion only. And when it comes to tanks, bathing ghats, wells, etc, either maintained by the state only or otherwise, or which are dedicated to the public generally, there also citizens cannot discriminate on grounds only of religion. This pans over then under article 29 to admission to private educational institutions, because the moment the state gives aid to private educational institutions, which they cannot survive without, the private educational institution, once it receives aid equally, cannot discriminate on grounds of religion, language, etc. So we have facet one, which is the state shall not (And of course, facet one is the widest, because panoply is very vast); facet two is limited to areas of public entertainment, etc, bathing ghats, wells, etc, and admission to private medical institutions. Facet three, perhaps, is the single most important and that is governed by articles 25 and 26. Now, 25 is one of our most elaborate articles in the Constitution, in complete contrast to what is given by the First Amendment. Because, in great detail, our founding fathers did a brilliant balancing act between a person who wishes to practice religion and the limits to which he can go. Because, after all, we are a very diverse people, and there are diverse persons, therefore practicing, each practicing his own religion. So the first thing Article 25 tells you is that *all persons* (this is important) are equally entitled. Now, what does the word equal mean? Equal means whether you are a woman or a man, first, you are put on a pedestal of equality. The second is, in any case, you will have an equal go at your religion with along with everybody else. So what is important is all persons are equally entitled, to do what ? There are three very, very important words used: to profess, practice and propagate. Propagate was not there in the original draft. It came a little later, but profess and practice were and profess essentially means that, unlike in France, for example, you can actually wear your religious badge on yourself. Now I am a Zoroastrian, so I can actually wear a Sadra and a Custi inside me, which you cannot see at all times, 24 hours. And this is explicitly recognized by our Constitution, an

explanation, one goes to the keeping of Kirpan. Now, Kirpan is an actual dagger which six believe that they should keep as one of the five K's that was laid down by Guru Gobind Singh, the 10th and greatest guru. So it goes to the extent, therefore of professing religion, which is, you may hold the religious badge on you, open to everybody. The second is extremely important. You may practice. Now, what is practice? Practice is the ritual form of religion, which is, if you are a Hindu who worships idols, the worship of idols. If you are not, then you are a person who can pray in a church or a mosque or pray in an Agyari, as we do and practice equally is in every facet of the word. So you have two very wide rights, and then you come to propagate, which is the problem area? Now, why do you say problem area? Because propagate, if one reads the Constituent Assembly debates was meant to assuage the Indian Christian community, because they said that it is a fundamental and central part of our faith to be able to convert others to our way of thinking. So finally, they said, all right, if we use the proper the word propagate, propagate would mean essentially appeal to somebody else's conscience. Now, freedom of conscience is specifically mentioned as a fundamental right of everybody in Article 25. So the appeal to another's conscience to change his faith is something that was hinted at, at least in the Constituent Assembly debates. When we come to our case law on this, it is very little, and there is a direct judgment of five judges in Reverend Stanislaus which upset an Orissa High Court judgment which had held that the centrality of this tenet in the Christian religion is very important, and that therefore propagate must include to bring over to your point of View. This was upset by Chief Justice Ray on the specious ground that you are trying really to interfere with somebody's right of conscience. It's quite the reverse actually. You are appealing to somebody's right of conscience. And as a result, we have taken a back seat on the word propagate. Of course, if religious conversions are on fraudulent grounds: there is undue influence, there is coercion, there is force, there is intimidation, that can easily be interdicted under the first three expressions, which is

subject to public order, morality and health. But so far as the word propagate itself is concerned, the word propagate, according to me, and according to our great author H.M. Seervai would clearly mean the right to spread one's faith by legitimate means. That is the right to appeal to somebody's conscience and no further. Now all this is made subject to, as I told you, public order, morality and health. Each of these expressions is also, in one sense, neutral, because public order doesn't depend on which religion or which religious badge you are holding. Public order is something much more than a law and order problem. Two neighbors having a scuffle is not public order. But if there is a riot on a large scale, then it affects the public order of the state and everybody else around you, and at that stage, the state can walk in and interdict a particular religious activity if it leads directly to a breach of public order. Morality is a more flexible expression. It would obviously include, let's say, temple prostitution, Devdasis, Sati, Female Infanticide and things of that sort. Now, Sati, for example, all these were, by the way, prescribed by the British long before. And there was a British General here who was called Sir Charles Napier. At one stage he saw some girl being led forcibly to a particular funeral pyre. And he asked the people, the priests, particularly, who are leading that girl, what are you doing to her? So they tried to explain in great detail the fact that they have a custom, which is called Sati, where the widow goes and burns along with her dead husband, so that she accompanies him to heaven or wherever else he goes. So he said, Oh, very good. You carry out your custom, but then we have another custom. And our custom is that anybody who takes innocent girls and wishes to murder them will be hanged. So you carry out your custom, and we will carry ours. So morality, therefore, is an expression which takes in things like this, and health, again, is a neutral expression. For example, noise pollution today is the one thing that comes to mind immediately, and nobody has a right to pollute the atmosphere with loud bell ringing or with loud chanting or with loud calling to prayer or whatever. So that is another area where the state can step in rightly and control

religious voices. Now, when we come to 25/2, you have another very interesting exception. Laws may be made for social welfare and reform. And here there was a contest between the Dawoodi Bohras on the one hand, and the state, because the state passed the State of Bombay at that point a prevention of excommunication act. And that prevention of excommunication Act was a direct affront to their Seydna, who is their religious leader. The Seydna, in fact, is an institution which is 1000 years old. There was an Imam Tayab who went into seclusion. He was the 21st and as a result, there was a forceful and brilliant Queen called Queen Awa in Yemen, who appointed the first Dai, that is the first person who will look after the Imams pontificates, so to speak, till he comes back. And this has continued over the centuries, for 1000 years, and today, I think we have the 54th so this Dawoodi Bohra case laid down some very interesting propositions. There was only one dissent, and that dissent was the dissent of my good friend, Chief Kirti Singh's grandfather, BP Sinha. Otherwise Dasgupta spoke for the majority, and Rajgopal Iyengar wrote an extremely illuminating concurring judgment. And all of them had to grapple with social welfare and reform. Because what was argued was that, look, if you excommunicate somebody, it's like a civil death for that person. He's out on the street. His children cannot be given names which the Syedna alone would give. He would not get married under the auspices of the Syedna would not be buried in a burial ground assigned by the said. So since it's this kind of a death and it's almost an ostracism from the community also, there are very serious civic consequences, and that therefore this statute, the Bombay Prevention of Excommunication Act, is really an exercise in social welfare and reform. Justice Dasgupta answered it with a curious form of reasoning, if I may say so. The reasoning was that it was open to the Seydna to excommunicate on religious or grounds other than religion. And had they concentrated, that is, the legislature concentrated only on other than religion ground, then perhaps you could say that it pertains to social welfare and reform. But if it is solely on religious grounds that you

wish to interdict him, then no, because you are hitting at the kernel of the faith. And what is the kernel of the faith ? That the head of the faith must be able to keep his flock within bounds. Otherwise, if the flock gets out of bounds, the entire faith collapses. So that judgment seems to suggest, and of course, the concurring judgment explicitly states that you cannot, by using social welfare and reform, reform a religion out of existence. So therefore it is important that to see that that social welfare and reform doesn't attach to some essential part of the religion. The essential part to be determined by what the religion itself says is essential or innocent. Of course, the other part of the provision was the throwing open of Hindu temples to all Hindus. And Hindu here includes Jain, Sikh, Buddhist. The other interesting exception was where the word secular itself appeared in the original Constitution. And it was that if the legislature felt that there were economic, financial or political considerations which were secular in nature, that is, they are not religious, per se, but associated with religion, then that again, becomes an exception. Now, what do you mean by something associated with religion? You associate something with religion if, for example, you are paying a priest, or you are receiving a donation, it is open to the state to say that the donation cannot be used for immoral purposes. For example, or that the priest is being paid something which is way above his station or way below his station. You can regulate. So this exhausts the gamut of the individual right. You see how detailed and how specific and how brilliant it is. There are so many nuances, which I think another constitution bench will have to go into, because the Dawoodi Bohra case itself is up for grabs.

Article 26, of course, deals with religious denominations, that's as opposed to the individual's right. And here, religious denominations, like minority institutions, are given the right to establish, administer, maintain own property and administer the institution in accordance with law. We then go to the next interesting aspect of

secularism, and that aspect is the aspect which creates this wall between religion and the state. Article 27 tells us, and again, it is a little peculiarly verdict, because it says that you cannot, or nobody is bound, to pay taxes if the tax is collected only for a religious purpose. Now that obviously doesn't mean that you can collect a tax for religious purpose. So that article also requires deeper scrutiny. And Article 28 (1) and 28 (3) speak of educational institutions which are run wholly or maintained wholly out of state funds. There, again, you cannot teach any religion, so you have a clear bar between the teaching of religion in such places and otherwise. However, the bar is lifted when it comes to recognized institutions and aided institutions, which are private, because there under 29/2, as I told you, every aided institution has the right to aid irrespective of religion. So if the aided institution, under its constitution, not only is to teach its own faith, but is to conduct, let's say a prayer in the morning, then you can't interdict it from doing so. So what does 28/3 do? It gives an individual a right to say that, look, I am not of your religious denomination, so when I attend, it will not be compulsory for me to either attend the prayer or to attend religious instruction. Two important exceptions are also contained, which also led Seervai to say that there is no such wall in our country, and that is Article 28 (2) and article 16 (5). Now 28 (2), specifically, again, speaks of a state administering an institution which is otherwise endowed by some religious trust. Now there again, if religious instruction has to be taught, so be it, even though the state is administering and the other is that you have, let us say, a religious organization, in which the charter of that organization says that only persons of that religious faith can be on the board of directors or can hold office under that particular religious organization that again passes must and cannot be touched. Now, having given you the four limbs of secularism as they emerge from our fundamental rights, there is one other interesting thing which occurs in our fundamental duties, which was again added by the 42nd Amendment. You have in Article 51A, clauses (e) and (f), which are very important, because here the fundamental

duties of one citizen to the other, the state is not directly involved. And the fundamental duty under article 51 A (e), is that essentially, harmony will prevail, and harmony will prevail by fraternity, that is common brotherhood, which transcends religious barriers, very important. And then clause (f) says, don't ever forget that we are all the children of a composite culture, very, very important. Not a monoculture. It's a composite culture because we have had a history, long history in this country, of foreigners who have come and settled and then ruled us, and foreigners who have come and ruled us but not settled and gone away. So we have a composite culture as a result, which we must all respect. Now, all this is very good. This beautifully written, beautifully done in our Constitution. How does it work on the ground? Not very well, unfortunately.

If I may just take one case and all its ramifications, just take the Babri Masjid Ram Janambhoomi case. Now, incidentally, there isn't just one judgment, the famous judgment that everybody talks about. There are four Supreme Court judgments dealing with this, and the Supreme Court, unfortunately, does not speak in the same voice. It speaks in different voices. The entire thing begins with the clarion call first given by the VHP (Viswa Hindu Parishad) in 1984. This leads to the district judge in 1986, opening up locks where only Pujaris were allowed to pray in the inner precincts. And a shilanyas being done in 1989 which is like a sort of foundation ceremony. This then gets followed and gains impetus by Shri L.K. Advani's great Rath Yatra, if you remember. That yatra was supposed to be from the temple at Somnath all the way to Ayodhya. Seeing the fissiparous tendencies that this would have the Places of Worship Act was then enacted, to which I'll come a little later in the next year. But despite that, unfortunately, on 6 December 1992, we all know what happened. And immediately after that, the Government of India did three or four things. First, it appointed a Liberhan Commission, which of course, slept over it for 17 years and then delivered some report

in 2009. Second thing that it did was, it had this Ayodhya Acquisition of Areas Act and concominantly, a presidential reference to the Supreme Court to determine, I would submit rather mischievously as to whether there was a Hindu temple underneath the mosque. Now, both these came up for adjudication, but before they came for adjudication, in March 1994 a nine-judge-bench unequivocally held, through various judgments that secularism is part of the basic structure of the Constitution. And said that the dismissal of three BJP governments in Himachal Pradesh, Madhya Pradesh and Rajasthan by the president under Article 356 were valid, because of the riots that broke post the breaking of the Masjid. So we had one, nine-judge-bench judgment speak in ringing tones about secularism and the importance of secularism to our Constitution. Following up on that judgment, in October of the same year, you had a sharply divided court of three to two in Ismail Faruqui's case. Now, Justice Ahmadi happened to be part of the minority in that case, and also happened to speak in the first judgment, which is the nine-judge-bench judgment. And what he said was interesting. In the nine-judge-bench judgment, he said that even if secularism was added in our preamble much later, it only stated an obvious position, it did nothing to change the position, which is quite right, because, as I told you all the articles I have told you about, tell us what secularism in our constitution mean. But in Ismail Faruqui, the majority, on a strained construction of this acquisition act held that the central government, who acquired 67 acres, which was a much, much larger area, then let us say, the two acres of the mosque at its precincts, was really an exercise in a statutory receivership. Now, how did they come to this conclusion? You must hear, the Act contained a section 3, which said that the right title and interest, that is everything in the 67 acres, will be taken over and will vest in the central government. Second, the usual thing of an acquisition act, which follows, it is freed from every obligation, mortgage debt, etc. Now, after all this is done, and after the vesting takes place, compensation at market value is to be given to these people, which shows that it's a

vesting in law where ownership is actually taken away, can be no doubt. However, section 7, which spoke of management in the meanwhile by the central government, spoke of in 7/2 in particular, a much smaller area that was occupied only by the mosque and its physics, which, let us say, is about two acres out of 60s. So what the court did was to split up the sections, even though they couldn't do so in my humble submission into a section three, where resting took place of everything, 65 acres, but did not take place so far as the two acres is concerned, and what took place, so far as the two acres was concerned, was only management, because at that point, the central government then would see that it would manage this particular disputed area, what they call the disputed area. Section 8 also had to be a bifurcate, because section eight said, you will pay compensation immediately. So they said no, so far as the disputed area is concerned, pay compensation ultimately when the entire dispute is over. So what they did was to actually bifurcate and legislate themselves and come to this very peculiar conclusion that there is a statutory recession of the central government, which the central government can then vest in a trust. Now that's one other problem, because the vesting that takes place in the trust is exactly what is vested in you. So when you vest something in the trust, you're not just vesting the statutory receivers, you're vesting ownership, and ultimately you have to pay compensation to these owners. Anyway, another aspect of 7-2 also was that having broken down the mosque on 6th December, you said that the status quo as of the Act will be maintained, which is 7 January, 1993, after the break. And that status quo meant that Hindu pujaris would pay inside, and that again, was pooped by the majority by saying: No, that doesn't mean anything, because the vast members of the public can't pray that. It's only a few pujaris, the minority consisting of Justice Bharucha and Justice Ahmadi, took great exception to 7/2 and said that it is in the teeth of secularism to have this kind of provision. to give, in fact, a premium on something which was a dustedly and rascally act, even, as per the majority the breaking of the mosque. And of course, they said that

acquisition of an area for a religious purpose, we directly in the teeth of secularism. So the whole act must go ultimately, of course, what went was only section 4/3, which abated the suits in relation to the Ram Janambhoomi thing, because the suits then came back and the presidential reference was left unanswered. The majority saying it's become superfluous. The minority saying that no, it was, in fact, one sided, because we are not told as to what would happen if you found that there was a Hindu temple, as a matter of fact, under the mosque. Suppose you found there was a Hindu temple, what followed in law, and suppose you found the opposite, equally, would the mosque be rebuilt. These were all questions left completely unanswered. So you had, on the one hand, Bommai's case extolling secularism, and then you had this three to two split where secularism came under a great cloud. Now to come to the other aspects. As soon as the mosque was, in fact, broken down, there were two FIRs launched. One was 197 and one was 198. 197 concerned the lacks of so-called kar sevaks who came and actually chiseled the mosque down. And 198 was the senior leader, leaders of the BJP party. L.K. Advani & Company, exhorting these people to do so. Now on the criminal side, therefore you had these two FIRs. And until it came to me in 2016 quite by chance, in fact, in 2017, when I was sitting with Justice Pinaki Chandra Ghosh, nothing had taken place with these two FIRs for 25 years. It's also astounding. So what happened was you had FIR 197, and you had, of course, to constitute a special court to try these offenses. Now, you constitute that special court by consulting the high court. You have to do it under Section 11 of the Criminal Procedure Court. So you did so qua FIR 197, you omit it to do so, qua FIR 198. So the result was what was to be a joint charge chief joint trial got bifurcated, and ultimately in 2001, the High Court of Allahabad held: look, this is a rectifiable defect rectified. Go back to the state government and tell them to consult the High Court. So. The CBI filed some half hearted application the state government said, flat No, they're not going to rectify it. The result was another charge sheet had to be filed at Raibareli against these eight, as opposed to the lacks of car

saved. So now you had two trials going on simultaneously, one in Lucknow, one in Raibareli and the criminal conspiracy, which was common to both, therefore out out of the window. When all this ultimately came up to us, what we did was we put back everything, using our powers under Article 142. I wrote the judgment, and what I said was that, you transfer the Raibaleri proceeding to Lucknow, reinstate the 120 (b) charge, the criminal conspiracy charge. You have one special judge trying this matter day to day, no adjuncts will be taken by either side. Liberty to apply to us if there is any problem, and that the judge will not be transferred come what may. And all this must be completed within two years. Don't forget, these are FIRs of 1992, which are now being tried in the year of grace, 2017, so anyway, two years were given. The special judge applied to us again after two years. We said, all right, we'll give you a little more time. What is the progress you have made? So we saw what was not known to us was that he was due to retire. So once again, 142 came to the rescue, and I think we made an unprecedented order, which is that he will not retire until he goes to judgment. So we caught him by the scarf of his neck and said, No, you will go to judgment. And it took him three and a half years to go to judgment. And you know what he did, acquitted everybody. And after acquitting everybody, what happened, he retired, and he was made up-lokayukta in the state of UP. This is the state of office in this country. Now this is so far as the criminal side is concerned. Now we come to the civil side. The first interesting comment on the civil side is that you had the only per curiam judgment ever written. It's a very, very curious judgment, because it was delivered by five learned judges of our court. Nobody knows who the author was, because it was per curiam. The only other case in which there was a per curiam judgment was the Little Rock case in the US. Because if you remember, Brown vs Board of Education said (and that was again a very contentious issue in the US, as contentious as this) that Whites and Blacks as students will not have separate schools, but will integrate now. They gave a certain period within which to do this, you will do it with all deliberate speed is

what the original judgment held by Chief Justice Warren. That was done as a result of a compromise, because had that not been put in, four southern judges would have stuck out and dissented. Ultimately, anyway, it came to Little Rock in Arkansas, and there was a governor called Governor Faubus. Governor Faubus said, whoever it is, I will not take what the Supreme Court says, the Constitution says. It is because I equally can interpret the Constitution for myself. If I interpret it for myself, I say nothing doing! I'm not going to do any such thing. And ultimately, because of this face off, the district judge there said that, look, we will now desegregate, but we will do this after two and a half years, because just now things are too hot. And then that came up and appealed to the Supreme Court. Finally, the Supreme Court then, in a per curiam opinion, said that no, whatever we say, the Constitution says, is what it says. You are bound to follow what we say. Don't forget the US Constitution doesn't have an article 144 like us, which says all authorities shall act in aid of the Supreme Court. So, in order to say this, they required to band together and to say, it is one Supreme Court who is telling you this, and you jolly well follow what the Supreme Court said. There also Justice Frankfurter, of course, had to add his own bit. So he undid the whole thing by saying "**Frankfurter adjutatory**", very similar to what happened here, because here again, by way of an addendum, you had one other judge who is unknown, speak about his views. So anyway, obviously this case was so earth-shaking that the bench felt that the country desired or should have a per curiam opinion. Finally, reams and reams of the oral evidence, documentary evidence, etc, were gone through by the main judgment, which is a rambling, 1000 page judgment. I have gone through it very carefully. And ultimately it divided itself into various periods. The mosque itself was built in 1528, you remember the first battle of Panipat was in 1526, so two years after, and then the mosque continues as a mosque until there is trouble in 1853 (this is the first time there is trouble). And after there is trouble, just as the crown is due to takeover in 1858 from the East India Company, there is a huge fracker. And as a result of the fracker, a wall is

built. Sorry, if I've been going to go back one more wall. A wall is built by the British between what is called the inner courtyard and the outer courtyard. Now, inner courtyard means the precincts of the mosque proper. Outer courtyard is what is just outside those precincts. So a wall was built, and after that British wall, prayer was conducted by both sides, on both sides. So the outer courtyard: prayer was conducted by the Hindus, inner courtyard: by the Muslims. So it's a recorded fact that prayer was conducted by both sides right from 1857 up till 1949 (very, very important fact). Of course, in between, there were two other very interesting incidents that took place. In 1885 there was a Mahant Raghubar Das, who was the Mahant (priest) of the Ram Janambhoomi area in the outside portion. He filed two suits, and he said, I want to construct a temple over only the outside portion. Because not only is there a Sita Rasoi (kitchen) there, which was already there, but we have now built a Ram Chabutra (site of worship) as well. And I want to build a temple on this being owner. Both suits were dismissed. The first appeal was dismissed. The second appeal was also dismissed. What is important to notice is that the claim was only qua the outer courtyard, not the inner court. In 1934 again, you have a riot, in which the three domes of the mosque are badly damaged. Reparations are made under some British Commissioner, and the mosque is repaired. And then finally, in 1949, after independence, in December, there are 50 to 60 people who storm the mosque and who put idols in there, as a result of which, all Muslim prayers ceased. And an important finding is given by the court, saying that this doesn't mean that they abandoned the mosque. At no state did they abandon. So it is important, therefore, to note that each one was praying on either side of the wall for this long period, from 1857 at least, up till 1949. Ofcourse, an ASI report is gone into in great detail. The ASI in 2003 did a huge amount of digging in the area, and they found a number of artifacts belonging to nine periods in history (very interesting) beginning with Ashoka and pre-Ashoka. So, 250 BC and before. And then you got into the Shunga period (187 BCE - 75 BCE), by Pushyamitra. After the Shunga period, then

you came to the famous Kushan period (30 CE - 375 CE). And from the Kushan period, you went on to the Golden Age of the Guptas. Now all this time, you have got only little artifacts. Post Guptas, you come to the Rajput period, which is a period from the sixth century to the ninth century AD. And here you find something very interesting, because you find a circular shrine. And the circular shrine is said to be probably Shaivite. This is again very interesting, because ultimately, in the judgment, nothing is spoken about it being Shaivite. There was a finding earlier. It is called a Hindu shrine later, and after another three of our centuries in the Sultanate and post-sultanate period, between the 12th century and the time the mosque was built, you finally had this huge structure under the mosque, and the huge structure was *probably* a temple, said the court, and *probably* a Hindu temple. Now this was despite the fact that Buddhist and Jain artifacts were also found. But one important finding that the court came out with was that there was no Ram temple under the structure. That's a finding of fact (extremely important). So with this finding of fact, they now proceeded to decide the suits. There were four of them: One on the Muslim side, three on the Hindu side, and one in the name of the deity, to decide the suits on possessory title, because you have to peg it somewhere in law. Now, the finding that the outer courtyard was used by the Hindus, and therefore they had exclusive possession (No problem. All right!), when we come to the inner courtyard, that's a mosque itself, there's a big problem. Because here, despite your finding that the Muslims were praying for this huge period from 1857 to 1949, you say, no, we can't say they were in exclusive possession, and this site was disputed. Now it was disputed in the sense that there were egregious attempts to dislodge them, contrary to the rule of law, which is what the finding of the court is. And three times this happens. This hasn't happened once. So this happened in 1857. This happened in 1934. This happened again in 1940 and then you want to say, therefore we can't say that this site is undisputed, whatever that means. And since this site is now disputed, we can't say, therefore, that they have

exclusive possession of this site (they, the Muslims). And therefore, since this is one composite whole, we now jump to the conclusion that the composite whole now belongs to the Hindus.

This is the actual reasoning of the bench. And one other very, very important fact is that throughout this whole exercise, we are also told that every single time it is the Hindu side that has done something contrary to the rule of law. And for that, of course, reparations have to be made. What was the reparation one would have thought to rebuild the mosque? No, the reparation was, will give them some land on which they have to build the mosque. So ultimately, we find that a great, at least in my humble opinion, great travesty of justice was that secularism was not given its due at all by these judgments. And as I told you, spoken in different voices: First two voices, then the second two voices, my voice and the voice of the five-judge bench judgment, but there is one very important silver lining in all this, and that is the Places of Worship Act. This act was specifically brought, as I told you, in the year 1990, in order that we do not have the Greek God of Janus, governing us. What do I mean? Janus is two headed as you know. He's a Greek god. One face looks to the past, one face looks to the future. And because one face looks to the past, the past will determine the future. The Places of Worship Act is the exact opposite. It is the Janus-face looking behind is effaced. You will not look to the past. You will not try to counter historical wrongs by breaching the rule of law or by asking courts to do the same. And this very constitution bench spends five pages on it and says that it sounds in secularism, which is part of the basic structure, that you cannot look backwards, you have to look forwards. And what does the Act say? Very important: every religious place of worship is frozen to 15th August, 1947. Now, anybody who tries to change this, and if there are suits pending at the stage of the Act, which is in 1991, those suits will stand dismissed, a bit. If any suit says that the character has been changed, the suit will be disposed of in conformity

with this Act, which is the same thing ultimately. Importantly, therefore, we have this frozen position as of 15th August, 1947, so that short of Ayodhya, which was kept apart as a special case in the Places of Worship Act, all other places will at least be safe. And we find today, like hydra heads popping up all over the country, there is suit after suit filed all over the place, now, not only concerning mosques, but also dargahs. And according to me, the only way of countering this, because all this can lead to, is communal tension and disharmony, contrary to what is envisaged in both our Constitution and in the Places of Worship Act. The only way to scotch all this and to cauterize all these hydraeans is by applying these five pages in this very judgment and having it read out before each district court and high court, because these five pages is a declaration of law by the Supreme Court, which binds each of them. And once this is done, it is clear that the Places of Worship Act will take its due course. One other important thing, the minority judge in the High Court, Justice Sharma, had opined that this Places of Worship Act, as a matter of fact, does not operate pre-1991 so that if there's a conversion pre-1991 that won't be hit by this Act. The judgment goes on to say this view is completely wrong, and in the teeth of section 4/2 of that. So if this Act were to be applied, as stated in this judgment itself, it will easily cauterize all these hydraeans which are now popping up one after the other, every day, today. And I may only end by saying that in Justice Chinnappa Reddy's words, unless this is done, what he said will not come through. He said, In the great Bijoe Emmanuel case, "Our tradition teaches tolerance, our philosophy preaches tolerance. Our Constitution practices tolerance. Let us not dilute that."