

# Ayodhya Issue and Freedom of Expression

*It is dismaying that there has hardly been any reaction in the media to the order of the Lucknow Bench of the Allahabad High Court against the publication of news reports and comments on the Ayodhya issue by the print and electronic media.*

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It is just over a month ago – on August 22 to be exact – that sections of the press reported that taking strong exception to the reporting on the Ayodhya issue by the print and electronic media, the Lucknow Bench of the Allahabad High Court had ordered on August 20 that publishing opinions of parties, their counsel and other persons in the dispute pending before the court and articles in regard to the merits of the cases and televising of interviews in respect of the Ayodhya matter by TV channels shall be treated as contempt of court.

It is dismaying that there has hardly been any reaction to the court order in the media in the month or more following the court order. This ostrich-like attitude of the media is ominous and an affront to all secular-minded citizens who have a big stake in the settlement of the Ayodhya dispute and who have to rely on the credibility of press reports in regard to any information and opinion concerning the case. More so, when the Sangh Parivar's political outfit, the Bharatiya Janata Party, is in power; more so, after the recent Gujarat pogrom; more so, after Vishwa Hindu Parishad chief Ashok Singhal's recent reported statement that the "Gujarat experiment" was a success and his threat that it would be replicated in other states. All concerned citizens have a stake in ensuring that the Ayodhya dispute is given a deep burial for all times to come and in ensuring that such disputes do not recur. That alone will enable India to grow economically, socially, culturally, intellectually, politically and in whatever other ways one can think of.

No doubt, sections of the media do fish in troubled waters. But is that reason enough for the sweeping generalisation that so long as the dispute is pending before the court all reporting and comment on it in the print and electronic media

undermine judicial authority and amount to interference in the administration of justice?

This article is not on the Ayodhya dispute but on larger concerns which must be nagging every democratic-minded citizen. In this context, the following observations in an editorial on the Indian judiciary in *The Hindu* on June 5, 2002 merit reproduction:

It is a well known dictum that justice is not a cloistered virtue and should suffer the outspoken but respectful comment of ordinary men. The extent of outspokenness that is common elsewhere is illustrated by a headline in an article by a law professor in the United States describing the Supreme Court judges who ruled against Al Gore as "five robed bandits". The judges there with their supreme confidence in their learning, fairness and integrity would never think of hauling up even such critics for contempt of court or for scandalising the judiciary which smaller minds in their insecurity are often wont to do in India. Judicial credibility, dignity and respect are qualities that accrue naturally through learning, fairness and a certain reserve and distance from the society around and cannot be acquired by tilting at the windmills of public and press scrutiny as if they were to blame for the ills afflicting the judiciary. A certain measure of intolerance manifests itself at times in gag orders seeking to cut out reporting of investigation and even judicial proceedings in open court merely to avoid embarrassment to the judges rather than out of any higher consideration of the welfare or the rights of the litigants. Worse still is the increasing resort by some courts to contempt proceedings to deter public scrutiny of their actions, both judicial and administrative, and to draw a cloak of secrecy over the functioning of the institution that has to be seen by the public as transparently just.

These observations should help in understanding in perspective the larger concerns referred to earlier. They are at least six.

One, in a democracy what is expected of the media, as sections of the media are wont to say, is to hold a mirror to the nation. A democracy, especially a nascent one like India, can neither survive nor emerge full-blooded without concerted constructive democratic action. For this, understanding perceptions of the reality is as important as understanding the elusive reality itself. This is best done by identifying the fault lines in governance, the perfdies of the governors and the pitfalls of the governed. The centrality of the media's role in this is obvious. By remaining doggedly committed to its cause and thus keeping the heat on, the media forces even an unwilling government and its political leadership to act, albeit haphazardly and perfunctorily, for the greater good. Barring small sections, the Indian media has proved its functional imperative amply. Viewed from the above perspective, a ban on the media as a whole even if it is on a single issue amounts to depriving the nation of the media's vital contribution to unravelling this issue in all its ramifications, and to depriving the judiciary of the benefit of the inputs it requires and which the media has been able to provide for wrapping up the issue as speedily and judiciously as possible. If sections of the media have transgressed the limits, the treatment should be confined to such transgression.

Two, the Ayodhya dispute is no more an issue confined to a particular court or to Ayodhya. The proliferation of literature on it from various shades of contending opinion disseminated through every conceivable means is so mind-boggling that even if the print and electronic media are restrained from August 20 onwards, what has already been churned out cannot be charred by a prospective gag order. To cite one instance, a quick search of the entry 'Ayodhya dispute' on one of the websites showed as many as 7,910 results, many of them from abroad. To cite another instance, along with the publication of the contempt order another website listed reports on matters relating to the Ayodhya dispute. Though the period covered is only January to August 2002, the listing filled as many as eight pages and contained 248 reports.

Three, as the ban is supposedly on the media as a whole, what happens to the journalism of hate perpetrated by the Sangh parivar through its various print organs, publications, websites and so on, from India and abroad? The court cannot stop the flow of this propaganda. In such a

situation silencing the rest of the media may not go very far in ensuring the administration of justice on the Ayodhya dispute. If anything, the court order can only render the media of the Sangh parivar more active and communally virulent.

Four, having been in the eye of the storm for a very long time now, it is only to be expected that public minds are already not only affected but more importantly *afflicted* by the Ayodhya syndrome. As the material and social manifestations of this syndrome have already spread far and wide, if the objective is to undo the influence of these manifestations on the public mind it would be necessary to wipe out all visible manifestations of this syndrome which have a bearing on the sensibilities of society – manifestations such as the stockpiling of the material for the proposed temple at Ayodhya and the 'gaurav yatra' initiated by Narendra Modi. Assuming that the public mind is credulous, far from silencing the media a proactive judiciary would exhort and encourage it to play a more positive role for

conflict resolution and for instilling faith among the public in the functioning of the judiciary and other democratic institutions which are now in disarray.

Five, as courts necessarily depend on evidence for the administration of justice, in the absence of the vital role of the media the court would find it increasingly difficult to trace the needle in the haystack.

Six, and most important, the court order is an unnecessary and unwarranted curb on the freedom of expression not only of the media but of the people as a whole. As freedom of expression is a fundamental right and a very important right in a democracy, it must not be taken away merely to suit the expediencies of the administration of justice.

To conclude, the repeated use of contempt of court and assertion by courts of the authority and the majesty of the court seem to resonate what may be termed 'judicial paranoia'. Considering that the judiciary is part of a larger system, this is probably inevitable, but it is all the more ominous. [27]