

# **THE FLAG WITHOUT TEARS**

***A REPORT ON THE HUBLI IDGAH MAIDAN  
ISSUE***

**PEOPLE'S DEMOCRATIC FORUM  
BANGALORE**

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## The flag without tears

A report on the Hubli Idgah Maidan issue.

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### **HISTORY OF HINDU MUSLIM RELATIONS IN KARNATAKA**

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## AS IF WE ARE STEP-CHILDREN

*"Indian's are all one, none high or low,  
a heard of sheep of every hue",  
You proclaim this to all the world.  
You make some beard the president to please the west.*

*But here-  
We go hunting for rented houses;  
The land lords find out our caste,  
Think up an excuse and push us out;  
You beat us with the stick of a prudish senile mother,  
You make us wander and hunt like nomads,  
As if we are step-children.*

(By K S Nissar Ahmed. Trans. by H S Shiva Prakash).

## INTRODUCTION

The cool, active monsoon season of August in Karnataka was slowly heated up with the politicking on the part of communal forces with the undue coverage on the part of the press regarding the issue of hoisting the national flag at Idgah Maidan in Hubli. August 15th, was stated to be the dooms day and through out the two weeks earlier to that, the press was replete with statements and counter statements by the BJP, and its allies on the one hand and the congress government and the police on the other hand.

In the apparent war like situation as portrayed in the press, the reality of a trivial non-issue was made out to be a passionate one: a

Since all the litigations attempted to prove that the site of the Idagah Maidan is almost a public property because of the customary right of the people to use it, it becomes necessary for us to go into the nature of the land and its history.

Idgah Maidan although used by many sections of people, belongs to Anjuman-e-Islam who have acquired rights of a lessee way back in 1921. Of the three Idga's that exist in Hubli, this Idga near the main Bus stand is considered the most sacred of the three. Out of a population of 2 lakh muslims only in Hubli, this Idgah draws maximum devotees on two occasions of Ramzan and Bakrid. Though relatively smaller, coming second in terms of the total area, the Idgah is used by muslims of Hubli town. On all these occasions muslims have been coming to this Maidan for prayers. The Maidan, apart from being used for offering prayers, is being used for various other purposes ranging from holding fairs during jatras to public meetings by all political parties. The Idgah has never been used to hoist the national flag after Independence. An elderly gentleman informed us that the tricolour flag was hoisted during the Quit India Movement at the place.

The first ever available information on the Idga Maidan is of 1849 when Mr. Moopana Basappa Narool owned it. Subsequently one Esar Vanch Padri acquired it. Prior to 1900, the said land was in possession of Basel Mission - a Christian institution. However documents pertaining to how they acquired this from the former owner are not available. Between 1901-1905 Hubli Municipality acquired the said land from Bassel Mission for purposes of

extending the city. The site is located in the III ward bearing CTS No.174, measuring 4991 sq. yards (app. 60 guntas). Today the Maidan, being in a prime location on one end of a square from which 7 roads part, is valued at Rs. 2 lakh per gunta. This works out to one and a half crores of rupees. The Idgah is covered by three roads on each side and a building on to the other side.

The then President of Anjuman-e-Islam of Hubli, in a representation to the Commissioner on August 1st 1921, urged the later to permit the muslims to hold prayers in the Maidan as they have been customarily doing for the last 200 years. On 5th August 1921, the Hubli Municipality held a special general meeting and accepted the representation and resolved to lease the site to Anjuman on a rent of Re 1/- per year for 999 years. Incidentally the resolution in the said meeting was proposed by one Mr. Kambli and seconded by Mr. Bileangadi, both names suggest they are Hindus. (See Appendix I for a detailed legal history). On the approval of the Divisional Commissioner, Government of Bombay Presidency approved the same by Resolution No.1499 dt. 11-1-1922. Thereafter a lease deed was executed on the 17th May 1930. Surprisingly, the lease deed speaks only about the rent but not the conditions stipulated by the special meeting. The correspondence between the commissioner, Hubli and Revenue Department, Government of Bombay in 1921-22 never mentioned any condition. But in the litigation, a particular condition in the resolution of Hubli Municipality on August 5th 1921, namely restricting the lease site for religious purposes, was exaggerated to deny the right of Anjuman over site. But the lessee was permitted to construct a compound wall around the Maidan. In 1960 the Anjuman approached the Municipality for permission to construct shops. The Government permitted such construction on

the condition that the income generated from such an endeavour would be used for educational purposes irrespective of religious criterion. On 18-6-1971, Anjuman, secured permission to put up construction from Hubli Dharwad Municipal Corporation (HDMC).

Anjuman began construction of the commercial complex on the western end of the maidan. Five residents of Hubli filed a suit in the Munsiff Court through OS 359/72 against (1) HDMC, (2) State Government and (3) Anjuman-e-Islam. Popularly this suit is often referred to as conflict between Anjuman Vs. B S Settar & Others. The category of 'others' include 88 persons who joined the litigation as plaintiffs. The Munsiff Court delivered its judgement against the interests of Anjuman.

Anjuman went in appeal to the Additional Civil Judge Court, Hubli, against the verdict of the Munsiff Court order. However, the Additional Civil Judge in his judgement through RA No.40/1974 upheld the verdict of the Munsiff. Convinced of its legitimate claims, Anjuman appealed to the Karnataka High Court, which again through RSA No.754/82 upheld the judgements of the lower courts. Anjuman-e-Islam appealed to the Supreme Court through a Special Leave Petition (SLP), challenging the High Court Order. Meanwhile, Basavaraj Shankarappa Settar & others also appealed to the Supreme Court through a SLP for their customary rights on the use of the maidan.

The Supreme Court in turn passed interim order saying demolition thus "The Demolition of the buildings in the area which near the subject matter of dispute on the file of Karnataka High Court, Bangalore in RS No.754/1982 is hereby stayed".



## FLAG HOISTING CASES

1	OS 73/93	26/1/1993.
2	OS 646/93	15/8/1993.
3	OS 663/94	26/1/1994.
4	CR 351/94	15/8/1994.

In all these cases, the court dismissed the petition and refused to grant permission to hoist the flag at the Idgah Maidan.

While the property of Idgah was dragged into litigation, the growing communal forces have tried to snatch away the right of muslims to pray on the site. On the one hand they

approached the courts to protect the customary right of 'people' on the other they wanted to make it a 'public place' like any other ground by hoisting national flag. There is a specific background to this also. Mr. M M Joshi, the then President of BJP tried to lead a march to Srinagar to hoist the national flag in Lal Chowk. It was claimed to be a victory over muslims. To hoist a flag on the latter's land instead of their own to exploit popular sentiments of nationalism, patriotism. The same thing was attempted in Idgah Maidan. There were four other important cases that link up the property dispute of Idgah with the flag hoisting raked up by the Sangh Parivar. (See box ). On 26-1-1993 in the Court of the Munsiff, Hubli, through OS No.73/1993 Devendra Naik filed a suit for hoisting the national flag on 26-1-1993. Under Order 39 rule 1 & 2 of CPC, the Court ordered the defendants and its community a permanent injunction restraining hoisting the national flag. Subsequently on 15-8-1993, a Public Interest Litigation suit was filed for the same purpose which again was rejected. A similar thing was attempted again on 26-1-1994 and on 15-8-1994, which

again was rejected. The judgement further stated that the national flag cannot be hoisted in the 'disputed' property. The HDMC being the owner of the suit property, the will and wish to hoist the national flag in the 'disputed' property or not, under the circumstances, rests with the Corporation. It further stated that the same cannot be challenged by way of suit. The Corporation is the owner of the suit property like the property of other owners without consent or permission of the Corporation the plaintiff cannot hoist the national flag in the suit property. The Corporation although a trustee holding property on behalf of the public is a body corporate under Karnataka Municipal Corporation Act and therefore cannot act according to its own whims and fancies. "The public under the guise that the maidan is public property, cannot trespass or interfere in the property of the Corporation. The suit property being still in dispute and pending before the Supreme Court of India, Devendra Naik has no right to hoist a flag in the Idga Maidan".

As the foregoing explanation suggests a very simple issue had been made out into a very complex and provocative one. Apparently, it is one of a rare civil case concerning the ownership and possession of a piece of land. Real estate interests also had played a significant role.

Either historical records or legal and administrative documents 1921, 1922 and 1930 prove that the Anjuman is the sole possessor of the land. Though the Maidan is used for two days in a year by Muslims, to leave the land for others to be used in the rest of the days, it does not mean that they have no right over the land. The Anjuman had got necessary permission to build a compound wall on genuine grounds way back in 1930 itself. However they did not construct it. As they were running some educational institutions and incurring costs on them the Anjuman wanted to construct a

shopping complex to get rents. In fact, they obtained permission from the municipality to construct the complex. The construction was in such a way that it would not obstruct prayers. The actual litigation started over this construction. In contrast there were a number of public places where other religious bodies, particularly Hindus have occupied public places and constructed huge mansions with impunity. All the land ceiling legislations and urban land ceiling legislations never questioned this practice of the hindu establishments. But in Idgah Maidan case, courts from the lowest to the apex used the word 'disputed' and curtailed the rights of muslims. Regarding the argument on educational institutions, whether it is right to allow religious institutions to run educational institutions is debatable. However, a contrast can be seen again between the Anjuman being legally harassed for asking permission for funds, for running a high school while the other Hindu bodies running professional colleges and lobbying in judiciary, legislatures and the executive were treated well.

This is also a very interesting case of civil litigation where public right on a property was prayed for. But here lies the real problem of the case. The 'public' was used against a community of the people with a distinct culture and tradition of their own and hence the case implies an attack not only on the property but on that specific community.

The hegemonic designs of the self proclaimed leaders of the 'majority' community want the minority community to submerge their interests and lead a submissive life. The minority community is increasingly threatened to live as second rate citizens. Invoking 'national' respect for the tricolour flag, is only a facade to the real

design of Sangh Parivar to crush the democratic aspirations of different sections of population. In fact, they do not relish the richness of plurality. They want a homogenised hindu-brahmin-male-marwadi culture which is subservient to foreign domination. To understand this phenomena in Idgah Maidan, in the overall perspective one has to see the politics of Hindutva.

### **POLITICS OF HINDUTVA**

Politics of Hindutva or for that matter even the politics of Nazism and fascism base themselves on arousing the false image particularly among the middle classes. Treating themselves as inheritors of great tradition or protectors of a worthy symbol make the practitioners feel superior to others.

There is another feature widely recognised in the politics of Hindutva is that it tries to appropriate various fields of activity with various appearances. Though the names of the organisations and the expression of the leaders differ, the line of the argument remains the same.

We found these two features in Hubli blatantly. The parents of Manjunath, the boy who was killed in the firing claimed that their son has become a martyr for the cause of the flag. Representatives of BJP, RSS and RDGSS whom we met, have the same arguments and explained the situation with the same understanding. The Sangh Parivar which does not observe either Independence Day or the Republic Day suddenly became the sole protector of the national flag after "its respect was violated" on the 26th Jan 1992. Thus Rashtra Dwaja Gowrava Samrakshana Samiti was formed.

In order to understand the politics of Hindutva in dissent we must make a clear distinction between the terms 'Hindutva' and 'Hinduism'. Hinduism is a broad term that accommodates a wide variety of cultures and schools of thought. As a result it has always remained amorphous, and assimilative, making its precise definition impossible. However, almost all forms of Hinduism are not opposed to the essence of the caste system and the secondary role of women in society. In a more popular sense, Hinduism refers to a religious and spiritual belief system of the Hindus (interestingly, this term is invented by Arabs to refer to the inhabitants living in the land beyond the Indus).

Hindutva, on the other hand, is a term of rather recent origin and it represents the central thrust for a homogenized 'Hindu Rashtra' - that only Hindus could constitute a nation in Bharat. The evolution of the Hindu Rashtra (or Ram Rajya, as it is popularly known in recent times) is more complex than what it may appear at first sight. We briefly outline its history and politics.

### **A brief History :**

The Hindutva frenzy could be analysed in three broad phases. The first phase spans from late nineteenth century to the early twenties of the twentieth century. In this phase, the ideas espoused by the leaders of the Hindutva gradually became a distinct strand of thinking within the rising nationalist movement. Its main method of mobilization consisted of spreading stereotypes and myths. Most important among them were the portrayal of Hindus and Muslims as two conflicting homogenous blocks - the 'tyrannical foreign' Muslim rulers and the heroic Hindu resistance; and, Hindutva as the true 'indigenous' nationalism. Some of the prominent ideologues of

Hindutva during that period were Bankimchandra, Tilak, Madan Mohan Malaviya and Lala Lajpat Rai. The latter two were active in the congress as well as the Hindu Mahasabha, one of the earliest communal organizations in India, as were several rank and file members who belonged to both organizations.

This subtle propaganda within the nationalist umbrella had been clearly articulated in Savarkar's book, Hindutva, published in 1923. Savarkar defined Hindu as a 'person who regards the land of Bharatvarsha from Indus to the Seas as his Fatherland, as well as his Holy land -- that is the cradle land of his religion.' This definition of Hindu has deeper implications, for it links patriotism with religious sanctity of the birth land. The patriotism of Muslims and Christians is always inferior and suspect, notwithstanding their birth in this land, for their 'holy lands' are different. Another important feature of Savarkar's book in the present day context is depiction of Ram as the most 'illustrious representative' of the Hindus. Two years after the publication of Savarkar's book, the Hindutva politics entered its second phase, with the formation of the Rastriya Swayamsevak Sangh (RSS) at Nagpur.

### **The RSS:**

The Rastriya Swayamsevak Sangh (RSS) was founded on the Vijaya Dashami day of 1925 by Mr. Hedgewar and five of his followers at Nagpur. It was formed against the background of growing communal tensions, which manifested in the form of riots, the withdrawal of the Non-cooperation Movement and the resultant political desperation. Between 1923, and 1927 nearly 91 communal outbreaks were reported in the United Province (present day Uttar Pradesh) alone. The polarisation between the Hindu and Muslim

groups had sharpened with the emergence of such movements as Tabligh and shuddhi. Maharashtra witnessed a powerful anti-Brahmin (caste) movement from the 1870's, challenging the upper caste hegemony in Hindu society. The existing Hindu organizations such as Hindu Mahasabha and Arya Samaj were too inadequately equipped to face these multiple challenges to 'Hindu culture and Society'. What was needed is an organized and disciplined cadre to take the mantle of Hindu culture. The central objective of RSS is thus clearly spelt by Hadgewar - "only Hindus would free Hindusthan and they alone could save Hindu culture. Only Hindu strength could save the country. There was no escape from the logic of facts. Hindu youth had to be organized on the basis of personal character and absolute love of the motherland."

The goal of the RSS from the very beginning is therefore not the realization of an independent and democratic India but a 'Hindu Rashtra'. The emphasis of the RSS on Rashtra -- nation rather than State is important, for it has always held 'culture' as the basis of identity. The main project of the RSS is thus the restoration of 'Hindu culture', which in essence is a intolerant, patriarchal, brahminical culture. Dr. Hedgewar and his associates had carefully chosen the means for achieving their goal. They had employed a variety of stereotypes and symbols to highlight the past pride and to define Hindu culture. They concentrated on teenage 'tender' minds, for the grown-up men were often 'corrupted', for their objective. The RSS has a centralized model of a decentralized activity to realize its mission. It is a low profile, part-time activity, which involves regular meetings at specified times wherever the RSS is active. The activity, the Shakha program, involves sports, physical exercises such as training in the traditional martial arts, recounting of stories

ritual of hoisting a flag at a place belonging to a community by another community which has nothing to do either with a flag or the place.

All these happenings in themselves were a cause of concern for an organisation like the Peoples Democratic Forum (PDF). Added to this, on August 15th and four days later firings took place in Hubli killing five persons. The atmosphere seemed slipping into communal fervour.

BJP and its allies were taking credit for protecting the pride of the national flag and flaying the Government for "appeasing the minorities". In this charged atmosphere the PDF thought that it was its responsibility to bring out the facts.

The PDF constituted a three member committee to visit Hubli and present a fact-finding report before the people. The committee constituting Ms. Sushma Varma, Ms. Sudha Sitaraman and Mr. Sudarshan visited Hubli on 28th and 29th of August 1994 and met a cross section of people, representatives of all political parties and concerned groups, officials and the press. The team has also visited the Idgah Maidan and Deshpande Nagar, where the firing took place. The report of the committee is given here under:

### **EVENTS AROUND THE 15TH AUGUST 1994**

We reached Hubli on the morning of August 28th. By then two weeks had already passed since the terror stricken days of curfew and firing. The town was limping back to a dubious normalcy, where the fear of events was almost visible. For the last three years the town was in a state of siege on every August 15th and January



of past pride and heroes and conclude with a prayer of Matrubhumi-Hindubhumi. This seemingly simple shakha program has been the central and the most effective medium through which the organization has carried out its propaganda.

The RSS has a long history of fomenting communal riots. Its role in the anti-Muslim and anti-Christian riots from the mid 1920s to the mid 1950s was so glaring that even Gandhi described it as a 'communal body with a totalitarian outlook' and even compared it with the Nazis. Golwalkar succeeded Hedgewar as the leader of the RSS in 1940. He was instrumental in consolidating the organizational structures and taking the views of Savarkar and his predecessor to their logical conclusion. In his book, 'We Or Our Nationhood Defined' Golwalkar wrote : " from this stand point sanctioned by the experience of shrewd old nations, the non-Hindu people in Hindusthan must either adopt the Hindu culture and language, must learn to respect and revere Hindu religion, must entertain no ideas but the glorification of the Hindu nation i.e., they must not only give up their attitude of intolerance and ingratitude towards this land and its age long traditions, but, must also cultivate the positive attitude of love and devotion instead; in one word, they must cease to be foreigners or may stay in the country wholly subordinated to the Hindu nation claiming nothing, deserving no privileges, far less any preferential treatment, not even citizen's rights".

Savarkar's concept of 'Pitru Bhumi' and 'Punya Bhumi' combined with the views expressed in the above citation represents the core of Hindutva's ideology. These views have been repeated in different forms by the ideologues of Hindutva. For instance, Organiser, a

magazine of the RSS, in its issue of 20th June 1971 wrote: "Let muslims look upon Ram as their hero and the communal problems will be all over". The Sangh Parivar campaign against the 'appeasement' of the minorities (muslims) is therefore not surprising for it believes that even providing citizenship rights to the Muslims can amount to their appeasement.

The RSS went through a major expansion during Golwalkars leadership. For instance, the Akhil Bharatiya Vidyarthi Parishad (ABVP) was formed in 1948. The RSS made its entry into educational institutions, also established shishu mandirs in the 1950's. The Bharatiya Mazdoor Sangh (BMS) was founded in 1955. Most important of all, Golwalker extended his support to Shyamaprasad Mukherjee to set up the Bharatiya Jana Sangh (BJS) in 1952.

Notwithstanding this 'family' expansion, the 1950's was not a Productive decade for the RSS, owing mainly to the fact of the triumph of anti-colonial struggles and the strong winds of socialism. In order to realize the long term goal of establishing a Hindu Rashtra, Golwalkar played a key role in the formation of the Vishwa Hindu Parishad (VHP) in 1964 as a vehicle for mobilizing sants and sadhus and thereby effectively propagating the homogenized Hindu way of life. In the first two decades, the VHP was largely active only in the North-Eastern States, trying to counter the propaganda of the Christian Missionaries.

### **Mass Communalism and RDGSS:**

The present phase of Hindutva can be characterised as mass communalism. One of its hallmarks is the close interaction between the different constituents of the Sangh Parivar.

The Jan Sangh after temporarily being part of the Janata Party in the late 1970s, emerged as an independent political party known as the Bharatiya Janata Party (BJP) in 1980. The VHP came into prominence after the Meenakshipuram incident in 1981, when several dalits converted to Islam. That, indeed, was the beginning of a new phase in the politics of Hindutva. The dharma sansads of the VHP held in 1984 and 1985 focussed on the 'liberation' of Janmabhumi's, while the RSS continued to be the 'mother organisation' of the family, playing the key role behind the scene the VHP became an aggressive actor in Hindutva campaigns. It has exploited and employed every single method - both traditional as well as sophisticated. It has used symbols, icons, calendars, stickers, slogans, bhagava dhvaj to bring the political domain of Hindutva into every day social life. It has used variety of popular rituals such as yatras and sacrifices and organized a number of yatras, pujas, shilanyas, etc., for mass mobilization which resulted in an irresistible Hindutva tide.

In addition to the high-tech campaigning, including the extensive use of audio and video cassettes, the success of mass communalism is helped by the aggressive expansion of the VHP into several walks of everyday life. It has created a variety of 'departments' to coordinate different activities. For instance, it has 'departments', on maths and mandirs, to propagate Sanskrit, to do social service mainly among the dispossessed and marginalized, to do educational

work, set up libraries yogashramas, balwadis, student hostels, child samskar centers for developing the knowledge of Hindu texts, to provide vocational training for small-scale employment projects etc.

The underlying thrusts of these programs to 'convert' these sections, particularly the tribals and dalits, to 'respectable' Hindu forms of worship and culture. There are two qualitative differences between the present phase of mass communalisation and the earlier phases. First of all, the work of the RSS was overtly cultural and implicitly political. Although it has built various fronts representing workers, students, women etc., the Hindu religious institutions were left untouched. The VHP has mobilized these institutions to legitimize the cause of the Hindu Rashtra. Secondly, 'communal riots' have become an integral part of the Sangh Parivar's strategy for electoral gains. The BJP owes its political success to the "ground work" done by several of its various outfits, particularly the VHP.

The Sangh Parivar at the present time is clearly looking for newer Ayodhyas. It is in this context that the flag hoisting issue at the Idgah Maidan in Hubli is significant.

The Sangh Parivar could not make inroads into the south. It is only after the Meenakshipuram conversions, the Sangh Parivar focussed upon Tamil Nadu and Karnataka. In Kerala it has been trying to grow as a force against Muslims joining hands with the Christians. It could organise a few communal riots in and around Trichur. In Andhra Pradesh the growing communalisation of Hyderabad is a handy work of the Sangh Parivar. In this over all situation, the electoral prominence the BJP got in Karnataka gave rise to Sangh Parivar to make the stage one of their spring boards to enter south.

Karnataka has had its share of bloodshed in trail of blood that followed Mr. L K Advani's Rath Yatra. The hitherto harmonious places have become communally sensitive. In the assembly elections of 1994, BJP was seen as a major contender to form the Government. In this scenario, it was inevitable for Sangh Privar to inject the communal virus into the minds of the people of Karnataka.

With this perspective, we cannot but conclude that the Idgah Maidan issue seemed to be a 'God sent opportunity' for the Sangh Privar in their over all design for the south. It appears that it has paid sufficient dividends in the 1994 Assembly elections in Karnataka.

## **CONCLUSIONS**

Based on the foregoing report submitted by the fact finding committee, the People's Democratic Forum arrived at the following conclusions:

### **Flag hoisting:**

Though much is made about flag hoisting, it seems no concerned party was serious about hoisting the flag or preventing it.

Legally hoisting the flag at the Idgah Maidan is untenable. This fact was not recognised by the concerned parties and the case of Devendra Naik and the consequent judgement were never publicised in the press.

Hoisting a flag at a place in possession of somebody else cannot be a right of other people. Idgah Maidan, under the lease conditions, is in possession of Anjuman-e-Islam and nobody will have a right to encroach in the land. Further, the lease case is also under litigation and till that is settled one cannot take the law into his or her own hands.

Besides, the apex court has also accepted that honouring the national insignia cannot be mandatory. So, Anjuman cannot be questioned for not hoisting the flag as Sangh Parivar cannot be questioned for not hoisting the national flag on its offices and ordinary people for not hoisting flag on their houses.

Apart from this legal dimension PDF understand that the flag hoisting has two other political dimensions.

I) homogenisation with so called national symbols is one of the major tactics adopted by fascism. It is undemocratic in crushing the plurality on one hand and imposing a monolithic image on the people without any respect to their privacy and respective practice.

II) RDGSS in the name of Nationalism and patriotism really wants to teach Muslims a lesson that the latter are second rate citizens. As press rightly observed the Sangh Parivar's search for an Ayodhya in South has found a place in Idgah Maidan.

### The firing:

The firings that took place on August 15th and August 19th are unwarranted and it was innocent people who died. The appointment of a judicial commission by the state government has become a convenient escape point for the district officials to maintain silence. But the evidences given by the people of Deshpandenagar clearly indicates that firing was in gross violation of the guidelines. There was no warning/lathi charge/tear gas/firing in the air/ firing rubber bullets before the actual firing. People were aimed at and were caught unaware. The firing hit people above the waist and generally above three feet level. This clearly shows mala fide intention of the police.

Even the much publicised relief did not in fact reach the victims. Two weeks after the firing, when the team visited the families of the victims, they were yet to receive compensation.

### **Property:**

Regarding property the otherwise simple issue was made complex for political gains through legal sophistry. The litigants insistence on customary rights is not out of the love for people but only to snatch away the right of Anjuman over the land, and by that deprive the Muslims of their prayer land. Real estate has also played a role.

### **Role of Colonialism:**

The documents of the colonial period regarding the Idgah Maidan give sufficient scope for suspecting the intentions of the rulers. The expressions used in the letter written by the then President of Anjuman, the urgency with which it was taken up by Municipality, the correspondence between the Commissioner and the Government of Bombay and finally the lease deed of 1930 by both the commission and omission errors give rise to suspicion. Though a substantive research is needed into this, PDF feels that the British might have played mischief and have sown seeds of discontent like in the case of Ayodhya. As in Mr. Beveridge's translation of Babri Nama tried to foment animosity between Hindus and Muslims, the same might have been done in this case, in the context of Khilafat Movement, Non-Cooperation and Civil Disobedience.



## **RECOMMENDATIONS**

Basing on all these, we recommend:

### **Flag Hoisting:**

1. Because it is a private land used by Muslims for prayers and in possession of Anjuman-e-Islam and since the hoisting may lead to more disturbance flag hoisting should not be allowed on the ground. Whoever tries to do that should be treated as criminal trespassers.
2. Political and legal pressure should be built up against Sangh Privar to prevent it from continuing threat as the BJP wants to hoist the flag on 26th January 1995.
3. As this is a provocative political and communal act motivated by narrow political considerations, gullible people should be made aware of these designs. All progressive political groups should take up this responsibility.

### **Firing:**

1. Proper compensation should be immediately given to the victims.
2. The guilty for the unwarranted firing should be prosecuted.
3. The institution of judicial inquiry appears to be only for public consumption and not with a genuine motive. The delay in constitution, the vagueness of terms of reference, non-publicity of its proceedings make the commission doubtful. Immediate steps should be taken to make the commission effective.

4. Along with demanding the state to take action against communal elements, PDF thinks that it should not end in making state more repressive and as an alternative for political solution. PDF strongly feels that it is only conscious political action on the part of the people which can usher in a really secular society. Thus PDF appeals to people and concerned groups to disseminate a strong anti-communal secular and democratic culture.

**Property:**

By all evidence Anjuman has a clear right over the Idgah Maidan land. All possible efforts should be taken to protect that.

P. 6

26th. The people may not be knowing why they are being subjected to this. But the main actors of the happenings the police and the officials on the one hand and the Bharatiya Janatha Party (BJP), Rashtra Dwaja Gowrava Samrakshana Samiti (RDGSS) and their allies on the other have their own logic to explain the events. The former speak in the form of law and order while the later in terms of the honour of the national flag.

The Commissioner had very little to say with regard to the Idgah Maidan property and the flag hoisting issue, since he had taken charge on 28-6-1993 and therefore was a witness to only three events of flag hoisting. He refused to comment on the incident taking shelter under judicial inquiry which was to be constituted. He thereby remained more or less silent on the incident of August 15th. Describing the events on the 15th, he said that there was heavy bandobust to prevent flag hoisting.

The Commissioner of Police Mr. K S Mandegar, said that he had requested the Government for additional forces of Para Military to control the situation. Consequently a police force of 2500 was deployed. Barricades were constructed around the Idgah Maidan to prevent people from approaching the land. Although the Commissioner requested 5 battalions of RAF, only 2 were sent. In spite of this, the Commissioner claimed that the police were able to prevent the hoisting. Giving details about the sequence of events before 15th, he told us that nearly 650 people were arrested under Prevention of Goonda Act and released subsequently only after the 17th. He further said that the police had even arrested 2 monkeys on the 14th as it was rumoured that the BJP might try to hoist the flag by using monkeys.

## APPENDIX I

### **IDGAH MAIDAN : MYSTIFICATION IN THE LABYRYNTH OF THE LAW.**

The prolonged legal battle over the Idgah Maidan centers around the site of about 1 acre and five guntas. The history of the case begins in 1920 when the Idgah Maidan property was acquired by the Hubli municipality from the Basel mission (how the Basel Mission acquired the land from former owners is not known) for extending the city. There was a Survey of the land in Hubli city in 1920 and during this survey the Idgah Maidan site was entered in the name of Hubli Municipality. Even according to the Government records the land was in possession of Muslims for prayers since 200 years. Surprisingly, the same records also say that the land has been registered in the name of Basel mission for "unknown reasons".

After knowing about this survey, the President of Anjuman-e-Islam, has approached the Hubli Municipality in 1921 for grant of this land. The Municipality passed a resolution on 5/8/1921 and it was sent to the commissioner for recommendation to the Government. The commissioner recommended to the then Government of Bombay on 22/10/1921 for orders. The Government of Bombay passed an order on 11/1/1922 approving the recommendations of the Deputy commissioner. In pursuance of this order of the Government, Anjuman executed a lease deed in favour of Municipality in 1930. A rent note has been executed between Anjuman and Municipality on 17/5/1930 and later registered on 22/5/1930.

The special general meeting of Hubli Municipality, held on 5 August 1921, granted the Idgah site to Anjuman for a period of 999 years on a nominal rent of one rupee per year under the follow conditions: 1) No building of any sort be erected on the open site. 2) Anjuman is allowed to enclose the site with a compound wall according to municipality directions. 3) Site should only be used for religious purposes and not allowed to sub-let it and 4) Commissioners sanction be obtained.

While recommending to the Government of Bombay, the commissioner agreed that the muslims have undoubtedly used the land for long period for purposes of prayer and he felt that it may be allowed on the stipulated conditions of Municipality. This clearly proves that the commissioner who is required to grant sanction had approved the decision of the Municipality on the basis of the recommendation of the Commissioner, the then Government of Bombay passed the orders.

Subsequently, Anjuman approached the Hubli Municipality again on 6/11/1960 with a request to grant permanent occupancy rights over the Idgah site which is already in possession of Anjuman. It also requested permission to develop the site by erecting suitable construction on it. When the site was originally granted on lease in 1921, the city was not developed and now Idgah site had become the central place of the city. Anjuman's desire was to make better use of the site for educational purposes and also the Municipality could benefit from it if the authorities permit to grant permanent occupancy rights. The Hubli Municipality passed an order on 12/11/1960 and granted permanent occupancy rights to Anjuman on the condition that the income derived from the use of land should be used for

educational purposes. The Commissioner of Belgaum also approved the Municipality's order and recommended to the final approval of Government of Mysore on 16/11/1960. The Government of Mysore finally accorded the permission to Anjuman to construct shops on the Idgah site on 9th February 1961. The rent is to be determined by the Divisional Commissioner and Municipality. The Divisional Commissioner, Belgaum further reported about the conditions specified in the Government orders and requested for further orders of govt. The Government of Mysore in its further orders on 8th January 1962, granted permission to Anjuman to construct any kind of building on the land for educational purposes. Another fresh lease deed was executed on 30/3/1962 between Anjuman and Municipality incorporating the altered conditions.

The actual problem started when Anjuman started the construction of the buildings on the suit site on 18/6/1971. B S Shettar and 92 others filed the case OS no:359 of 1972 in the court of Second Additional Munsiff Court at Hubli on 31st August 1972 and the final judgement was pronounced on 7th Dec 1973. The basic contention of the court was that the transaction of 1921 was only a license and not a lease and that the order passed by the Government of Mysore on 19/2/1961 and 8/1/1962 was illegal and the public acquired the customary rights and are not bound by the transactions. It also declared that the resolution is still in force. The Court finally granted an injunction to remove the buildings constructed by it and to keep the site open for public use.

Anjuman filed the review appeal in the court of Additional civil judge, Hubli in OS no:40 of 1974 on 26/2/1974 and the judgement

has been pronounced on 12/10/1982 upholding the order passed by the lower court and declaring that the orders passed by DC is illegal and transactions between Municipal commissioner and Anjuman under deed 30/3/1962 does not bind the public and ordered Anjuman to remove the building. Anjuman filed a second appeal before the High Court of Karnataka in 1983 and judgement was pronounced on 18/6/1992. The High Court dismissed the appeal confirming the Additional Civil Judge order. Anjuman as a last resort filed the Special leave Petition before Supreme Court and in its interim order on 8th Sept 1992 the Supreme Court stayed the demolition of the buildings.

### **Lease Vs License:**

The basic argument in the case is that the 1922 resolution is not a lease but only license where by Anjuman was permitted only to use the land to offer prayers twice a year. Mere user of the land is a licensee but not a lessee Section 105 of The Property Act defines "Lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. A lease is, therefore, transfer of an interest in the land". To create lease, 1) There must be an exclusive possession to be handed over, 2) There must be a transfer of interest in immovable property and also, 3) There must be payment of rent paid or promised.

In this case, the Hubli Municipality, in its resolution passed in 1922 and later the Divisional Commissioner, in his recommendations in 1922, held that the Muslims had been undoubtedly using the land for longer period for purposes of prayer. Muslims had been offering prayers at Idga Maidan even earlier then 1922 which clinchingly

proves that this land is in the exclusive possession of Muslims for more than a decade. Anjuman is already in the possession of land since 1922. Under the 1922 resolution, the Hubli Municipality had agreed to lease the site for Muslims on a nominal rent of rupee one per year for a period of 999 years which is almost a permanent lease which had been approved by Divisional Commissioner and permitting Anjuman to construct a compound wall clearly shows that there was a transfer of interest in the property. All this leads us to the point that the land was leased to Anjuman in 1922.

### **Customary rights:**

If the law courts in India base their decisions on customary rights then it is the Anjuman which is the first party to benefit from this. It is the Anjuman which is in the exclusive and uninterrupted possession of the property for more than a decade and not others.

### **1962 Order of Government of Mysore:**

Consequent to the super session of Hubli Municipal Borrough by the state Government in 1954-55, all the properties of Municipality vested in state Government. The state Government is only a trustee holding the properties of the Municipality. Neither the administrator nor the state Government had any authority under Bombay Municipal Borrough Act to pass any resolution affecting the property of the Municipality. Therefore, the altered deed of 30/3/1962 is illegal.

### **1962 Order:**

The Municipality was superseded in the year 1954-55 and consequently the property of Municipality became vested in the state Government. During supersession an administrator was appointed



to look after the affairs of the Municipality, who has no power whatsoever to pass a resolution or order affecting the immovable property vesting in Municipality and similarly state Government also has no power to pass any orders affecting the property during and supersession - Bombay Municipal Boroughs Act, 1925 (Bombay Municipal Act, 1901) Bombay provincial Municipal Corporation Act, 1949 (Sec. 79). The Administrator appointed by Commissioner subject however to the sanction of the competent authority is empowered to pass any orders.

### **Flag Hoisting:**

The question of hoisting national flag on Idgah Maidan had not arisen until the problem was manifest. The hoisting of the national flag on the contested property is a mischievous act in contempt of court and which has been expressly forbidden. There were two separate facets to Idgah maidan controversy. The first relates to the question of the ownership of the Maidan and second to the issue of hoisting the national flag on the Maidan.

The trouble started when Dr. Murali Manohar Joshi declared that he would hoist the national flag in the Lal Chowk of Srinagar on 26th Jan 1992 as part of the 'save Kashmir campaign'. So, the RDGSS, the committee for protecting the honour of the national flag decided to hold a similar hoisting in Hubli. Since then on every 15th August and 26th January, the RDGSS, in association with RSS and BJP, had been attempting to hoist the flag on the Idgah Maidan.

### **Distortion of Facts, Commissioners resolution:**

1. "It will be seen that the Hubli Municipality agreed to lease the site asked for by the Mohamadans to the Hubli

Anjuman on a nominal rent of Rupee one per year for a period of 999 years. In this case however the Mohammedans have undoubtedly used the land for long period for purposes of prayer and I think it is a case in which its use may be allowed to the community on the condition stipulated by the Municipality".

2. "It is true that it is not unusual to enclose with a compound wall as it is proposed in this case, a site used for prayers in front of the Idgah".
3. "If the Mohamaddans desire to enclose it, I think it is right that they should pay a nominal rent for the right".

#### **Court's interpretation:**

Commissioner has not recommended that it should be leased as stated by the Municipality.

The Commissioner observed:

- I) that the site where Idga is situated should not be enclosed with a compound wall because it is usually open to the public to use it at other times.
- II) that the land where Idga is situated is always kept open for public use.

Hence it is clear that the word 'RENT' used and the rent of Re1/- levied is not for the use of the property but for the construction of the compound wall.

On the history of flag hoisting one Mr. Devendra Naik is approaching the Munisff Court Hubli before every 15th Aug and 26th Jan for permission to hoist the flag and has been refused for the last four times. It is very apt to point that the observation of court in this case filed before 15/8/1993 " Its pertinent to note that its not the

case of plaintiff that every year on 26th Jan and 15th Aug, he used to hoist the National flag in the said area as such he has every right to hoist the National flag in that site, for which, the defendants are obstructing".

## **APPENDIX II**

### **HISTORY OF HINDU MUSLIM RELATIONS IN KARNATAKA**

If we trace the origin of the Hindu Muslim relation in Karnataka after the fall of Moghuls and the establishment of Bahamini and Vijayanagar empires, it is very well seen that the armies were multi-religious despite the fact the kingdoms were ruled by hindus or muslims although they were rivalry in character. One should not forget the fact that the Muslim rulers in India accepted this land as theirs unlike the Europeans who considered this land for transfer of wealth to their respective lands.

In the meantime, cultures exchanged freely and unabated between the communities for mutual benefits which is evident from the impact of Persian culture hitherto wide spread in the Indo-Gangetic plain, wherefore any consideration of Hindu Muslim relation should be based on the cultural exchange and not by drawing lessons from the rivalry of the rulers.

With the fall of Vijayanagar, there was total chaos in South Indian political arena. Several lesser rulers and pategars rose to prominence. There was constant feuds amongst themselves for economic and political gain. The most important of these pategars were the Wodeyars of Mysore. True to the character of the rulers, Wodeyar in order to consolidate their power and the Maratas in order to annex the kingdoms, Wodeyars sought help of the Moghuls

to ward off such attacks. It is seen that the enemies amongst the ruling class were combination of hindus and muslims.

In the 18th century, Hyder and his son Tippu came to prominence who are remembered to have tried hard to forestall the expansion of the British in India. Here again, the Wodeyars against Hyder/Tippu colluded with the Maratas and the British. A reminder of the political rivalries is necessary to remember that religious or other considerations were unimportant before political expediency. One such notable impact is that of Sufism in India, especially in Karnataka. Kings and the people were influenced alike by the Sufi saints. Their teachings basically had a thrust on the oneness of all cutting across religious beliefs. It is evident from the fact even today there exists many dargas and places of worships in Hyderabad/Karnataka region which are frequented by Hindus. It was during the above period, there was a mutual exchange of words of Persian and Arabic origin used till date in Kannada, are a consequence of this linguistic process of the 17th century. Also the Deccani Urdu which had its birth in Bijapur too was influenced by local languages and today it is in every sense an Indian language. A proper understanding of this process can cleanse us of the several prejudices we have developed regarding languages.

When a confederation was formed in the south against the British, Hyderali joined it as an active participant, other members being Maratas, Nizams, Scindias, Bhonsles. But, Hyder Ali alone kept his words and surrounded the British Army in the south, whereas the other members of the group turned against their partners. This makes it very clear that it was Hyder and Tippu who could foresee the dangers of British imperialism. It is a fact that Wodeyar during

On the 15th, the police arrested a large number of people who rushed towards the maidan shouting slogans and carrying the tricolour flag in their pockets, tying it up on a javelin or wearing them on their bodies. One Ananth Kumar (not the BJP leader by the same name) was found running towards the maidan with a toy gun in hand and was later arrested.

By about 11-11.45am, as the residents of Deshpande Nagar reported, the police entered their ward without any prior notice or warning and fired on innocent civilians, women and children without any provocation. Three people died in Deshpande Nagar on the spot. One of them was a boy of fourteen. Although the Commissioner refused to dwell at length on the firing issue, called it "very unfortunate". (See box).

While the main focus of both the administration and Rashtra Dwaja Gowrava Samrakshana Samiti (RDGSS) was on the Idgah Maidan and Savai Gandharva Hall, a place where RDGSS held a meeting on that day, the RAF resorted to firing in 3rd cross, Deshpande Nagar. Deshpande Nagar is predominantly a Hindu locality. Though there are a few Muslim houses they are referred to as 'Muslim Brahmins', even by the RSS. The place where the firing took place is a narrow lane with houses on both the sides. The time being a pre-lunch working time, women were sitting outside their houses doing usual chores. Since it was declared as a holiday, children were playing in the street. As a number of people told us, the locality was devoid of any disturbance that took place at the Idgah Maidan site. But suddenly, RAF men appeared on the one end of the street and started firing without any warning.

the period of Hyder and Tippu, and later continued to show their allegiance to the British. But often there were charges of fundamentalism and communalism leveled against Hyder and Tippu and the imperialist connection of the Wodeyars were ignored.

Tippu's contribution to the development of national identity is a noteworthy feature of his rule. At a time when many rulers were only interested in gaining political advantages over others, Tippu was one of the few rulers in India who perceived the future of Indian politics with a broad perspective rather than from the point of personal aggrandisement. Though the attempt did not bear fruit, however the name of Tippu stands out as one of the few anti-imperialist fighters in Indian history. Tippu treated the religions as equal and his offerings to various gods and temples are on record. He had many loyal hindu followers. Every one followed their religion and did not grudge other faith.

The only reason that we could gather was that the locality was in between Idgah Maidan and Savai Gandharva Hall, where a meeting to celebrate the hoisting of the flag was held. The people might have passed through Deshpande Nagar while going to the meeting Hall from Idgah Maidan. Police said that they came to know about the meeting belatedly and rushed to stop it. The press reported that the RAF, a force from outside fired at random having not known the localities and their specific nature in Hubli. The Commissioner of police did not have any justification to offer for shooting down the people except terming it as "unfortunate".

### **KILLING SPREE ON 'INDEPENDENCE DAY'**

Regarding the sequence of firing the Commissioner of police said he was unable to comment anything since it becomes sub-judice in the context of Judicial Enquiry. However the said Judicial Enquiry had not yet taken place. He claimed that the operation was one of the biggest in the history of Karnataka. But then the concentration on the Idgah Maidan and consideration of preventing the hoisting of the flag as a prestige issue led to gross violation of civil rights by the police.

On the one hand the police was lenient towards the RDGSS and BJP and on the other stringent measures on the mobility of common people in addition to the curfew and firing. Though the BJP declared that it would bring Ms. Uma Bharati and Mr. Sikander Bhakt, much earlier to the incident no action was taken to prevent them. Nothing had been done to apprehend them even when holding press conferences and issuing inflammatory statements. While the barricades, the curfew and the other prohibitory arrangements were applied strictly in the case of the people. They



were applied more in breach with regard to the BJP. It is ironic that this happened in the face of open proclamation of violating the law on the part of the BJP. While the press was screaming that the city was sealed, the BJP leaders could enter the city and hold a clandestine press conference on 14th August. On the morning of 15th August the so-called severe bandobast arrangements around the Maidan could not stop a hoard of BJP activists reaching the place, so as to claim that they have hoisted the flag.

We could not come to a clear conclusion whether the hoisting of the flag had indeed taken place. While the police officials categorically denied that it had happened, the BJP leaders had shown us a photograph printed in a Kannada Daily (Udayavani) to claim that they have hoisted the flag. But that photo is so hazy that one cannot make out anything. When we insisted, further the leaders of RDGSS said that they had a video recording of the hoisting. While the photograph was released to the press 5 days after the incident, the video record is not made public till date.

Even the explanation that the RAF being new to the city and that it had fired in Deshpande Nagar sounds illogical. It is a norm that any outside force should be kept under the control of the local officials. Thus the officials should have very well been aware of the locality and the firing procedures. Firing at people in normal conditions is an ultimate measure, which should precede by other soft measures like warning through public address system, lathi charge, tear-gas, firing in the air. Even when the firing is resorted to by the police code stipulates that it should be below the knees.

All these procedures were observed more in violation. As the residents of Deshpande Nagar told us the firing took place all of a sudden. They were caught unawares. The firing took place so randomly that the houses in Deshpande Nagar had marks of bullets even after 2 weeks when we visited the area. As the residents told us the bullets entered their house holds through the ventilator on the first floor. There were also shots found on the name board of a pan shop, compound walls. gate etc., All these suggest that the firing was indiscriminate.

### **VICTIMS OF FIRING**

#### **15 August 1994**

Manju Bhorade (14)

Mahadev (25)

Dongadi (26)

Srinivas Katti (40)

#### **19th August 1994**

Sumitravva (36)

This also becomes evident from the records of the Karnataka Medical College (KMC).

There were five deaths, all of which were by bullet injuries and all of them were shot either on the

stomach or the chest. The doctors told us that there were 30 injured out of which 26 were admitted as inpatients with severe injuries. There were only two police men reported to have undergone treatment on the 15th of August.

### **FIRING AGAIN**

Five unwarranted killings did not prevent police from resorting to firing again. Four days later, on August 19th, the driver of a police

van fired at a group of people killing an innocent woman who was taking her child back home from school. The officials covered up the incident by saying that the driver fired in panic.

The residents of Deshpandenagar had gruesome stories to narrate about the first firing. A bullet went through abdomen of a woman who came out to take her children back. The same bullet hit another boy some ten yards away and went through his chest.

After talking to the police commissioner the representatives of BJP and RDGSS and the residents of Deshpande Nagar and after examining the circumstantial evidence and press reports, we came to the conclusion that the firing was not only unwarranted but also deliberately aimed at innocents. The Governments might have wanted to terrorise the people of Hubli, irrespective of their support or otherwise to the flag hoisting issue - in fact there was no effort on both the sides, the Government and BJP to understand or elicit the views of the local people.

### **IS IDGAH MAIDAN A PUBLIC PROPERTY?**

The real facts regarding the issue were never put before the public. In this context we have attempted, as comprehensively as possible, to enquire into the issue. In this endeavour, we met the municipal officials the president of Anjuman-e Islam, Mr. Suresh Kini - the lawyers who has been fighting the case of

RDGSS and the people concerned with Idgah Maidan. We have also consulted some 500 pages of legal documents related to more than half a dozen cases at various courts about the Idgah Maidan site. (See box ). We have also visited the Maidan to get a first hand

understanding of the significance of the site. We have also met real estate business men in Hubli to comprehend the value of Idgah Maidan.

#### LEGAL PROCEEDINGS ON THE IDGAH

- 1 OS359/72, II Additional Munisiff Court, Hubli;  
Basavaraj Shankarappa Settar and 92 others Vs  
Hubli Municipal Corporation, State of Mysore and Anjuman  
Case filed on 31/7/1972  
Judgement pronounced on 7/12/1973.
- 2 Review appeal 40/1974, Additional Civil Judge, Hubli  
  
Anjuman and Karnataka Wakf Board Vs B S Settar  
Appeal filed on 26/12/1974  
Judgement pronounced on 12/10/1982
- 3 Second appeal 754/82, CW1 of 1983 Karnataka High Court  
  
Anjuman and Karnataka Wakf Board Vs  
B S Settar  
Appeal dismissed.  
Judgement pronounced on 18/6/1992  
upholding the decree passed by Additional Civil Judge, Hubli.
- 4 Special Leave Petition 10584/1992 Supreme Court of India

An interim order has been passed by the then Chief Justice of India Mr. Justice S C Daya and Mr. Justice Yogeshwar Dayal granting the stay order on 8/9/1992.