

The Indian Supreme Court's Ayodhya Verdict: Aiming to Strike a Balance

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Summary

On 9 November 2019, the Indian Supreme Court delivered its verdict on a seven-decade long legal battle over a disputed site in the north Indian city of Ayodhya. The 2.77-acre site is believed by Hindus to be the birthplace of Lord Ram and was also where a mosque once stood which was demolished in 1992. The five-judge bench, in a unanimous ruling, handed the disputed land to a trust to build a temple. The Muslim litigants were awarded a separate piece of land for a mosque. This paper examines the judgment and some of the questions that it raises.

The Indian Supreme Court's ruling on 9 November 2019 on the disputed site in Ayodhya has been hailed as balanced and nuanced. The Supreme Court overruled the Allahabad High Court's partition in 2010 of the disputed property among the three major litigants as legally untenable. Instead, the Supreme Court handed the disputed property – where the Babri Masjid stood before its destruction – to a trust for the construction of a temple. The Muslim litigants were compensated by a five-acre piece of land elsewhere in Ayodhya for the construction of a mosque.

A closer reading of the 1,000-plus page judgment though brings out some of the failings of the ruling, those that have plagued the Supreme Court's jurisprudence on religion. One of the characteristics of the Supreme Court's rulings, going back to past landmark judgments such as the *Yagnapurushdasji* or the *Satsangi* judgment in the 1960s, is the assumption that Hinduism or Hindus are undifferentiated and homogeneous. In the very first paragraph of its ruling, the Supreme Court says that the "Hindu community" claims the disputed site as the "birth-place of Lord Ram". Arguably, all Hindus do not believe that the disputed site itself was Lord Ram's birthplace. However, more importantly, the Supreme Court, in its judgment, elided the intensely political context of the Ayodhya dispute and the claims around it, although the judges wanted to convey a message of reconciliation.

Unsurprisingly, much of the voluminous judgment revolves around evaluating the faith and belief of the Hindus in and reverence for a disputed site, which is a difficult task at the best of times. Much of the evidence examined by the Supreme Court was similar to those before the Allahabad High Court though the judicial outcome turned out to very different. Indeed, one of the judges also felt it necessary, in an anonymous addendum to the judgment, to provide further evidence of the belief of the Hindus in the disputed site as the birthplace of Ram.

The Supreme Court's verdict essentially revolves around one observation made in the final analysis of the claim on title, "The evidence in respect of the possessory claim of the Hindus to the composite whole of the disputed property stands on a better footing than the evidence adduced by the Muslims." The Supreme Court came to this conclusion despite, by its own

admission, that there was evidence of the mosque on the disputed site having been a functioning one since the mid-19th century until it was “desecrated” in 1949.

The Supreme Court reached its conclusions on the claims of the Hindus based on what it felt was a greater weight of evidence. Unlike some earlier cases involving religious sites, beliefs and practices, the Supreme Court in the Ayodhya judgment was not willing to only go by the Hindu “faith and belief” in the birthplace of Lord Ram. The Supreme Court said, “Title cannot be established on the basis of faith and belief...Faith and belief are indicators towards patterns of worship at the site on the basis of which claims of possession are asserted.” In deciding the claims of possession by the Hindu and Muslim litigants, the Supreme Court evaluated a variety of evidence, including religious texts, travelogues, oral evidence and the findings of the Archaeological Survey of India. While the Supreme Court agreed that an older structure existed below the mosque, it did not accept evidence of the earlier structure having been destroyed to build a mosque.

However, the Supreme Court did find evidence for the desecration of the existing mosque on the disputed site in 1949, when Hindu idols were illegally placed inside the structure. It also said that the destruction of the mosque in 1992 was a “calculated act of destroying a place of worship”. To remedy the wrongs, the Supreme Court exercised its authority under Article 142 to award another plot of land to the Muslims to build a mosque. It justified this in the name of secularism, rule of law, equality of all faiths and tolerance. The current phase of litigation over the disputed property in Ayodhya represents a repudiation of these very principles. The Supreme Court’s verdict struggles to strike a balance between these secular principles and the wrongs committed in the name of religion in 1949 and 1992.

There has been plenty of talk of closure on the Ayodhya issue. While the land’s highest court has settled the property dispute, justice for the events of 1992 is yet to be served. There is a separate criminal case where the perpetrators of the demolition of the mosque are being tried. However, the excruciatingly slow pace of the trial has sowed doubts on whether the main protagonists in the 1992 events, which constituted one of the worst blots on Indian secularism, will ever be punished.

By and large, though, most political parties and groups have publicly accepted the Supreme Court’s verdict. India’s Prime Minister Narendra Modi has described the judgment as a “golden chapter in India’s judicial history”. The Congress, as well as many regional parties, have said they are in favour of a Ram temple at the disputed site in Ayodhya. However, it is too early to say if the construction of a new temple in Ayodhya, and the possible triumphalism associated with it, will be absent from political discourse and future election campaigns.

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