

Ayodhya Verdict: Bad Theology, Without Justice

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One of the most damaging consequences of the recent judgment by the Allahabad High Court on the dispute over the Babri Masjid is that it has provided a legal cover for a subtle shift from *devasthan* (holy place) to *janmasthana* (birthplace). It also lays the legal ground for converting the imagined birthplace of a deity into property claims which trump other claims to the same property. It thus opens a dangerous door to majoritarianism in India.

The much awaited judgment of the Allahabad High Court on the Ram-Janmabhoomi-Babri Masjid dispute was delivered on 30 September 2010, by a three-judge bench. Despite differences amongst each of them, and the compromise solution of the division of the 2.77 acres of land surrounding the so-called “disputed structure(s)”, what is phenomenal, and to my mind with profound precedent-forming implications, is the verdict regarding the precise location of the “Ram Janmasthan”.

Here it may help to look at the manner in which the court has framed its verdict. In response to the question whether the disputed site is the birthplace of Bhagwan Ram, the answer is as follows:

The disputed site is the birth place of Lord Ram. Place of birth is a juristic person and is a deity. It is personified as the spirit of divine worshipped as birthplace of Lord Rama as a child. Spirit of divine ever remains present everywhere at all times for anyone to invoke at any shape or form in accordance with his own aspirations and it can be shapeless and formless also.¹

Before proceeding any further, it may help to recap some of the elements in this statement. First, the disputed site is found by the court to be the birthplace of Lord Ram. Second, the more confusing, yet intriguing, formulation – “place of birth is a juristic person and is a deity”. Third, the assertion that the spirit of the divine can take or shed form, at will, as indeed occupy or relinquish spatialising, presumably in the same manner.

The Judicial and the Divine

Since it was under the aegis of a modern legal system that the birthplace of a Hindu god and deity was being deliberated upon, one must pause to think about the idea of the juridical in relation to divinity in modern law. What could be the reasonable grounds on which the rights of a deity,

variously formless or bearing different kinds of persona, be adjudicated? Therefore, what kinds of evidence could be permissible, or indeed would be legal, in such a case? Similarly, regarding the specificities of one particular point – that of determining whether a particular physical space was the actual birthplace of this deity – it would again be relevant to establish the juridical grounds on which this could be achieved. Next, and to my mind the most serious question, would be about the implications of both the methods used, as indeed the potentiality that this may hold (both the process, and the judgment itself) for creating precedents. After all, given the huge numbers of Hindu deities, there is a reasonable possibility that large parts of the country could now be claimed as places where gods and deities may have been born, lived, ruled, or may even have passed through as part of divine peregrinations.

Let us then begin with the problem of “proving” a birthplace for Lord Ram, as *Ram Lalla*, within modern law. The argument about the juridical character of Hindu deities is not unknown. Nor is the idea that as juridical entities they may possess property rights (through gifts, sales, mortgages or leases).² However, what is worth considering is that in most instances where the deity has been treated as a legal person (with a trustee, a juridical person, representing the deity) the issue at stake appears to have dealt with “devasthan” property, of “gifts” to the deity, or to the temple. The significant issue here is that in the Babri Masjid-Ram Janmabhoomi dispute, the decision was meant to be made on “janmasthana” and not “devasthan”. Moreover, the decision was to be made on determining a “birthplace” and not simply proprietary rights, both of which are clearly distinct in a legal sense.

So this is where the evidentiary process, and the form of argumentation become relevant. According to the judgment,

it is declared that the area covered by the central dome of the three-domed structure, i.e., the disputed structure being the deity of Bhagwan Ram Janamsthan and place of birth of Lord Rama as per faith and belief of the Hindus, belong to plaintiffs (Suit-5)

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and shall not be obstructed or interfered in any manner by the defendants. This area is shown by letters AA BB CC DD in Appendix 7 to this judgment.³

Significantly, in Justice Agarwal's statement, the ground for declaring this is "as per faith and belief of the Hindus". This "faith and belief" system, we are given to understand, is bolstered by the fact that the remains of a temple were found beneath the central dome of the Babri Masjid. This archaeological evidence is then meant to provide a material, or historical, ground on which the "faith and belief" of Hindus is founded.

Devasthana Elides into Janmasthana

This elision, then, to my mind is the heart of the matter. The juridical character of the deity, enabled within Hindu law in order to deal with temple property, is now neatly displaced onto an argument about legally determining "birthplace". The next move is to "prove" the material basis of "belief and faith" by providing material evidence for its existence. Here what is of concern to me is not whether or not, the "proof" of a prior temple on the same site is authentic, but how different discourses are utilised to legitimise a Hindu claim – both as "faith and belief", and also as material, historical fact. This double claim is then utilised to prove incontrovertibly the claim of "birthplace".

Interestingly enough, the only practice of real legal significance appears to be the history of shared worship, both within the precincts of the mosque, as also in the land around it. Modern Indian law has very often used customary practice as argument to settle a wide variety of claims – from property, to kinship, to authority. Clearly from the only instance of customary practice what appears evident is that both Hindus and Muslims, and the ascetics associated with the Nirmohi Akhara, have used the mosque and its precincts as a place of shared worship. While this by no means nullifies an additional belief that Hindus of the region may have held that this was also Lord Ram's birthplace, there is nothing particular about the history of customary practice relating to the worship of Ram here that seems to establish that this was indeed his "birthplace".

What are the implications then of eliding a legal history that appears to be coming from devasthana disputes onto a janmasthana claim? At the outset it appears to mark a proprietary claim for Lord Ram, and by extension, his trustees and believers. What is more fearsome about this is that by making birthplace and landownership coterminous, it appears to have created the possibility of treating birth as the grounds for legitimising ownership. In a Hindu majority country, a legal precedent of this kind can have devastating possibilities.

However, as has been apparent in the steady inroads into tribal lands in the recent times, similar claims of divinity and prior claim on land (including hills and rivers) by these groups have certainly not protected them against transnational, and corporate, encroachments. Janmasthana as proprietary claim, then, is a high Hindu preserve that could now potentially be used to legitimise any number of claims – from disputes over shared lands with mosques, to questions over property and even citizenship. The legal vindication of the "beliefs and faith" of Hindus by the Allahabad High Court has not simply legitimised retroactively the destruction of the Babri Masjid (or the equally fearful possibility of similar decisions in the case of other "disputed sites"); it has paved the way for legally equalising birthright with other substantive rights, on religious grounds, all of which hold the frightening possibility of diminishing, even nullifying, the rights of minority groups in India.

NOTES

- 1 The substantive parts of the three judgements can be found at Times of India, (2010). "Text of Allahabad High Court Order on Ayodhya Dispute", 30 September, <http://timesofindia.indiatimes.com/india/Text-of-Allahabad-high-court-order-on-Ayodhya-dispute/articleshow/6659163.cms#ixzz115RNwLFY>, accessed on 2 October 2010.
- 2 *Champa Bibi vs Panchiram Nahata Siva Bigraba And Ors.* on 8/1/1963
- 3 Gist of Judgment: Justice Sudhir Agarwal, <http://ibnlive.in.com/news/gist-of-judgment-justice-sudhir-agarwal/132064-3.html>

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