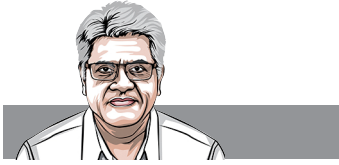


A reward for 'egregious' violations

A balance sheet would show that more has been lost than retrieved in the Ayodhya judgment



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The Supreme Court of India has to be given wide latitude in its effort to address an unwelcome task: to resolve a dispute that has stirred up ancient resentments beyond the powers of a modern republican order to placate. It was a matter involving criminal trespass, that should have been reversed by local administrative action. Once criminality was deterred, the underlying dispute should have been settled at the local civil court.

That the matter finally reached a Constitution Bench is a sign of democratic dysfunction. That five Supreme Court judges achieved unanimity on an issue that has convulsed Indian politics through seven decades, points to a quite heroic effort at salving deep wounds.

Several pages into its long, reflective and often digressive judgment on the Ayodhya title dispute, and after many an excursion into the discipline of archaeology, the top court admits that it has been embarked on an exercise in irrelevance. "A finding of title", it pronounces, "cannot be based... on... archaeological findings". Rather, the matter "must be decided on settled legal principles... applying evidentiary standards which govern a civil trial".

Likewise, after long expeditions to uncover textual records from history, the Bench pleads its inability to "entertain claims that stem from the actions of the Mughal rulers against Hindu places of

worship". The genesis of the dispute spanned "four distinct legal regimes – that of Vikramaditya, the Mughals, the British and now, Independent India".

Constitution as watershed

India's history, the court writes, is "replete with actions that have been judged to be morally incorrect and even today are liable to trigger vociferous ideological debate". A moment of liberation from the torments of the past occurred at that "watershed moment" when India adopted its republican Constitution. That was when "we, the people of India" – as the resonant phrase in the preamble put it – "departed from the determination of rights and liabilities on the basis of our ideology, our religion, the colour of our skin, or the century when our ancestors arrived at these lands". It was when all Indian citizens "submitted to the rule of law".

Certain continuities between republican India and the British Raj were retained. Article 372 of the Constitution allowed the adjudication of title bequeathed from before. And yet, with no clear pathway towards resolving a dispute that originated with the British conquest of Awadh in 1856, the top court invokes an extraordinary power uniquely granted under Article 142 of the Constitution, to ensure that justice is delivered to all.

Heroic so far in squaring impossible circles, the court wanders then into a deep moral quandary. It seeks to bridge "significant gaps in the positive law" by applying principles of "justice, equity and good conscience". Yet it arrives at findings that negate these values.

December 22, 1949, roughly halfway between the adoption of the Indian Constitution and its formal entry into force, with a delin-



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quent district magistrate looking the other way, a number of idols were smuggled into a place of worship at Ayodhya. Cutting through the mythology that has since surrounded that act, the court has declared that this was a "desecration of the mosque and the ouster of the Muslims otherwise than by the due process of law". And then came the final act of destruction on December 6, 1992, when a monument with hoary references to India's history was effaced, in what the court recognises as "an egregious violation of the rule of law".

Offender and victim

The abiding mystery with the Supreme Court ruling on Ayodhya, as the Indian republic marches ahead, would be to negotiate the complicated routine through which it seeks to reward the worst violations of the rule of law. After acknowledging all these historical wrongs, the court recognises a body that has been the most serious offender against rule of law, and awards it virtually undiluted title to the land. It seeks to placate the victims of this cycle of physical and rhetorical violence, through the award of five acres in the near vicinity of Ayodhya, for the 2.77 acres lost. Evidently, the court has decreed that the injuries to an entire religious community's sense of identity and belonging, can be easily redressed through seeming generosity in the quantitative sense.

It is an easy metric, but does it do sufficient remedy to all the principles trampled upon? An alternative metric could be used to assess how far the Supreme Court judgment bears true faith to the foundational principles of India's republican identity. Anybody with the tools to do the search, would find the word "Hindu" occurring 1,062 times through the court's judgment, while "Muslim" appears 549 times. The word "citizen" occurs a mere 14 times.

Equal citizenship was a promise that India made to itself at the time of its transition to a modern republic. B.R. Ambedkar and other preceptors of the democratic order knew that it was a difficult transition, because of the deep chasm between the assurance of political equality and the reality of social and economic inequality.

Ambedkar of course, had in mind a different dimension of inequality. But as the Constituent Assembly (CA) debated the issue of fundamental rights, and heard representations from the diminishing and disempowered spokespersons of communities who argued for a charter of minority rights, Govind Ballabh Pant came up with a lofty response, rendered perhaps from his privileged posture as an upper caste person. G.B. Pant's attitude and the CA's in general has been likened by scholars such as Christophe Jaffrelot, to a "Jacobin" position, after the French revolutionary faction that insisted on the extinction of all intermediary loyalties between the citizen and the State, since in a republican order, none of these distinctions would have any reason to exist.

Equal citizenship

Speaking in the Constituent Assembly, G.B. Pant had deprecated

the "morbid tendency", to disregard the "individual citizen who is really the backbone of the State, the pivot, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism". The citizen, he regretted, had been lost in the "body known as the community", because of the "degrading habit of thinking always in terms of communities and never in terms of citizens".

When the intrusion into the Ayodhya mosque took place under his watch as Chief Minister of Uttar Pradesh, G.B. Pant proved a little less mindful of the principle of equal citizenship. He responded vaguely to urgent demands from Prime Minister Jawaharlal Nehru, that the idols smuggled into the mosque be removed. To Nehru's worries that the commandeering of a Muslim place of worship might seriously impair India's claim to sovereignty over Kashmir, Pant with Sardar Vallabhbhai Patel as his ally responded with references to law and order compulsions.

This entire saga may have vanished into the rabbit-hole of history had not the course of Indian democracy exposed its assurances of republican equality as a thin cover for upper caste privilege. From being an unstated premise, sectarianism was officially reintroduced into India's electoral politics in the 1980s, as the foundations of upper caste hegemony began to falter. The Ayodhya dispute was one among many manifestations of this moment of crisis. The Supreme Court's heroic and yet logic-defying effort to set right the problem may well be too little and too late.

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