

# BOFAXE

## INDIA'S MOSQUE THAT WAS AND TEMPLE THAT WILL BE

### On the Issue of Minority Land Rights in International Law

— “*Mandir mein, masjid mein tu aur tu hi hai imaano mein*” [You're there in the temples, in the mosques, and in all belief]. These [lyrics](#), performed in a musical ode to the eternal sentiment of love as part of the famous 1960 Indian film “Mughal-E-Azam”, echoes the quest for inter-religious harmony. This theme was at issue in the Indian Supreme Court's landmark judgment of 9 November in the case [M. Siddiq \(D\) Thr Lrs v. Mahant Suresh Das & Ors](#), ending a decades-long legal dispute around the city of Ayodhya's [Babri Masjid](#). The film, [loosely based on historic events](#), is set in 16<sup>th</sup> Century Northern India and depicts the story of a forbidden love between Crown Prince Salim and Anarkali, a dancer at the imperial court of Salim's father Akbar, “the Great”, ruler of the Mughal Empire. Beyond the expansion and administrative organisation of an Empire that dominated large parts of the Indian subcontinent for centuries, Akbar remains known as a patron of the arts and inter-religious and inter-ethnic cooperation in creating a “[nonsectarian state](#)”. Today, India continues to be a heterogeneous society, with some of its pressing constitutional issues harking back to the legacy of the groups that have defined its history, including the Muslim Mughal dynasty.

The Babri Mosque had long been a source of controversy, supposedly constructed in 1529/30 on the orders of Babur, the first Mughal Emperor and Akbar's grandfather. Many Hindus claim the mosque had replaced an earlier temple or its ruins, marking the birthplace of Lord Ram, a major Hindu deity. In 1992, groups of Hindus overran the compound that had been closed off to both Hindus and Muslims since the mid-20<sup>th</sup> Century and demolished the Mosque. In 2010, a three-judge bench of the Allahabad High Court, at p. 284, [ordered](#) the land to be divided equally among three plaintiffs, one Muslim, two Hindu. A five-judge Supreme Court bench has now unanimously overturned the judgment, ordering the government, at para 805 (2) to set up a trust fund for the construction of a new Hindu temple on the disputed site. At the same time, having ruled the demolition of the Babri Masjid unlawful, it ordered, at para. 805 (3) to provide five acres of land to Muslims to build a new mosque at a prominent site in Ayodhya. From the [initial reactions](#), it appears that the decision has mostly been welcomed as finally resolving the dispute within the orderly avenues of the law. However, some opinion pieces [preceding](#) and [following](#) the judgment have warned of future developments, lest it embolden forces propagating majoritarian identity politics (see [here](#) for a non-Indian comment). The underlying question, looming behind the visible mosque-temple debate, is how the world's biggest democracy engages its minorities, in this case, adherents of the Muslim faith.

Without elaborating on the case's complexities, its undeniable repercussions have the potential to reverberate beyond India. This is because inter-group relations within heterogeneous populations, especially of a majority-minority character, are an issue in many states the world over. They will be increasingly discussed as further multicultural societies develop in the wake of contemporary globalisation, migration and related phenomena. International law addresses a several rights and obligations of population groups within states under the overarching framework of human rights. The issue of land rights, in particular, is currently seen as marking a new set of fault lines in these struggles (see. e.g. [here](#) and [here](#)). They involve diverse categories of actors under international law, including indigenous peoples and minorities. The formers' special attachment to their ancestral lands, which derives from a view of the land as both a spiritual home and a generator of an adequate standard of living, has been recognized in both “hard” and “soft” law instruments. Beyond the indigenous framework, land rights are, for the most part, still conspicuously absent from the human rights treaty landscape. In December 2018, the United Nations General Assembly adopted the [UN Declaration on the Rights of Peasants and Other People working in Rural Areas](#), whose Article 17 contains an explicit right to land. Although not formally legally binding, the norm can be seen as an attempt to close gaps in the international framework of human rights law that leaves a number of important groups devoid of legal protection (as argued [here](#) by Denise González Núñez).

Another such gap appears to be present with regard to minorities, be they of ethnic, religious or linguistic character, to reference the distinction made in Article 27 of the [International Covenant on Civil and Political Rights](#). Although several definitions for the terms indigenous peoples and minorities have been proposed over the last decades, there is a large degree of overlap (see [here](#) for a scholarly overview and [here](#) for a critical stance on “the Indigenous/Minority Dichotomy”). One of the major and apparently more uncontested aspects used to distinguish the two categories is attachment to land, generally deemed present in the case of indigenous peoples and absent as regards minorities. To be sure, the sacred connection that the former entertain with their lands is undeniable, its recognition as a matter of law long overdue and its legal protection must continue to be further explored. However, it appears somewhat shortsighted to view land rights exclusively through an “indigenous” lens. The *Babri Masjid* case shows that many groups beyond indigenous peoples may lay claim to particular pieces of land. They may not always hold a sacred connection to the land itself, but e.g. to the edifices erected on it. Land can thus, directly or indirectly, serve as a crucial marker of (majoritarian or minority) identity, the latter being the main object of protection of Article 27 ICCPR. The Human Rights Committee stated in its [General Comment No. 23](#) (at para. 6.2) that the protection of minority identities and the ensuing rights of their members entails positive state obligations. In this context, it is time to specify, in greater depth, potential obligations of states to accord their minorities land rights, for example by providing (state) land for places of worship, cultural centers or schools. This, in turn, necessitates establishing criteria to determine who could claim such rights. In this endeavor, the interpretative focus should rest on community needs, irrespective of the category of such community. Beyond its domestic significance, the *Babri Masjid* case may thus prompt renewed critical discussion on how to overcome the rigid indigenous-minority dichotomy that stifles international law's approach to land rights as human rights.

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