

A COMPROMISE IS STILL POSSIBLE: ON AYODHYA DISPUTE

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court's attempt to maintain Hindu-Muslim harmony [through a mediated settlement](#) of the long-standing Babri Masjid dispute deserves appreciation. But it has raised a couple of concerns too. One relates to the choice of a mediator, and the other to the efficacy of mediation at this stage.

By definition, a mediator is a neutral third party who facilitates a negotiated settlement between adversarial contenders. Unfortunately, the neutrality of one of the three court-appointed mediators, Sri Sri Ravi Shankar, has come into question as some of his public pronouncements in the recent past appear to negate his supposed disinterestedness.

A year ago, in an open letter to the All India Muslim Personal Law Board (AIMPLB), Sri Sri Ravi Shankar had said: "People from both communities who are adamant on following the court's verdict are also driving the issue to a situation of defeat." The "best solution", therefore, is "an out-of-court settlement in which the Muslim bodies come forward and gift one acre of land to the Hindus who in turn will gift five acres of land nearby to the Muslims, to build a better mosque."

Ayodhya title dispute: Who are the mediators appointed by the Supreme Court?

He even told Muslims that giving up their claim to the disputed property did not amount to "surrendering this land to the people who demolished the Babri Masjid or to a particular organisation. On the contrary, they are gifting it to the people of India".

Apart from the fact that this position betrays Sri Sri Ravi Shankar's bias in favour of disputants belonging to one religion, it is difficult to understand the justifiability of treating a gift to Hindus as a gift to the people of India. Does he regard only Hindus as "the people of India" to the exclusion of other communities?

Nonetheless, it stands to reason that Muslims would be in a position to gift the land only when their ownership of it is confirmed by the Supreme Court. If Muslims lose the case, the entire land would come under the control of Hindus and the question of Muslims giving up their claim would then be rendered redundant.

But the Art of Living founder thinks that even a Hindu victory would not be conducive to peace. It could foster Muslim resentment and may "lead to riots throughout the country", he told the AIMPLB, thereby insinuating that Muslims are violent. He seems to be unaware that Muslims have agreed to abide by the court verdict whichever way it goes. Now that he has been made a mediator, Sri Sri Ravi Shankar must clarify if he still stands by his statements.

Despite Hindu groups opposing a negotiated settlement, the Supreme Court made it clear that an attempt should be made to settle the dispute by mediation. It overruled their objections by invoking Section 89 of the Code of Civil Procedure (CPC) which allows the court to refer any dispute to one of the four modes of non-adjudicatory resolution processes: namely, arbitration, conciliation, judicial settlement (including settlement through Lok Adalat), or mediation. In this case, the court opted for mediation.

Strange turn: on SC's order regarding Ayodhya dispute

This was again opposed on the basis of a two-judge Supreme Court judgment in *Afcons infrastructure and Ors. v. Cherian Verkey Construction and Ors* (2010). It illustratively explained that mediation cannot be done in a representative suit which involves public interest or the interest of large number of persons who are not represented in the court.

But the five-Judge bench led by Chief Justice of India Ranjan Gogoi differed. Citing the provisions of Order 1 rule 8 CPC and Order XXIII rule 3-B, it stated that there was no legal impediment to making a reference to mediation. Whether the said CPC provisions would apply in the event parties arrive at a settlement in the mediation proceedings was left open to be decided later.

Also, what the Supreme Court had frowned upon in *Afcons* was a civil court exercising power under Section 89 of the Code to refer a suit for “arbitration” without the concurrence of all the parties to the suit. But the court is free, the Supreme Court had said, to consider and decide upon any non-adjudicatory resolution method other than arbitration such as judicial settlement or mediation.

Questions still remain. If the Hindu groups continue to reject mediation, how will this dispute be resolved? And if they agree to negotiate, will the compromise they reach with Muslims be binding on all Hindus in India?

Even Justice D.Y. Chandrachud, who conceded that a negotiated settlement is most ‘desirable’ in this case, was initially not sure if such a settlement could bind millions of Hindus and Muslims as the issue is not an ordinary dispute between two private parties.

If examined closely, it would be seen that the Babri Masjid dispute is not really an explosive issue affecting the religious sentiments of millions of Hindus and Muslims as has been portrayed. This may have been the case in the initial years after the illegal demolition of the Babri Masjid. But today, more than a quarter century later, such a portrayal should be construed as having entered the realm of political mythopoeia where myths of various kinds are created at the hustings for electoral advantage.

The fact is, there is no evidence to show that the handful of parties claiming to represent Hindus and Muslims in this case are fully backed by their respective communities. In other words, the Babri Masjid/Ram Janmabhoomi imbroglio is no longer a life-affirming issue for the Indian masses, who are more concerned about jobs, poverty alleviation and access to affordable housing, health care and education.

That said, both communities cannot afford to let the Ayodhya dispute simmer forever and stall the country’s socio-economic growth. The main reason for the unrelenting Muslim attitude is the fear that if they give up their claim on the Babri Masjid, Hindu groups would ask for other “disputed” mosques to be handed over. After all one of the post-demolition kar sevak slogans in 1992 was, “*Yeh toh sirf jhanki hai, ab Kashi, Mathura baaki hai* (This is only the trailer, now Kashi and Mathura remain),” in which Kashi and Mathura are metonyms for two more disputed places of worship.

If this Muslim fear is addressed by the Hindu parties to the dispute, and also by influential organisations such as the Rashtriya Swayamsevak Sangh and the Vishwa Hindu Parishad, the chances of amicably resolving this seemingly intractable conflict would exponentially increase. A collective assurance from the Hindu side that it would not stake claim to any other “disputed” mosque in India could be the face-saving compromise and win-win situation both sides are

looking for.

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