

# THE NEED FOR CONSTITUTIONAL COURAGE: 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 decision to appoint a panel of mediators](#) to resolve the long-standing Ram Janmabhoomi-Babri Masjid (Ayodhya) dispute is deeply problematic. By taking this route, the court has given the impression that the dispute is best solved outside the legal domain. In a very short span of time, the court has moved from its position of treating this as a title dispute to a matter involving religious sentiments. It has not explained what led it to change its stance, especially since mediations that have taken place in the past have failed.

The idea of mediation was mooted in 2017 by a Bench headed by the then Chief Justice of India, J.S. Khehar. The Bench had suggested that the issue was much larger than ownership of land, and that mediation might help in "healing relations". After Justice Khehar, Chief Justice Dipak Misra insisted on treating it as a land dispute only. Now, the court has again brought back sentiments into the legal discourse. This wavering and ambiguity in the court has accompanied the case all along.

A compromise is still possible: on Ayodhya dispute

Sentiment is a problematic word, especially when there are two political sentiments competing with each other. This is not a question of the majority community feeling deprived of a temple at the birth place of Lord Ram. On the other hand, it is a majoritarian political ploy masquerading as religious sentiment. This is a ploy to subjugate the minority Muslim community further, by playing a symbolic game. In this game, the numbers are stacked against Muslims. Lazy common sense holds that the minority must understand the 'historical injustice' done to Hindus by their ancestors and atone for it by leaving the site for them.

Moreover, even if we accept the notion of contending sensitivities, one must not ignore the sentiments of those Hindus who do not consider this issue as one that defines their identity. There are also many Hindus who would not like a temple to come up in Ayodhya by displacing a mosque. How will these myriad views be represented in the mediation process, [which began on March 13 in Faizabad](#)? By creating two neat sides, the court has validated the claim of the Rashtriya Swayamsevak Sangh and its political arm, the Bharatiya Janata Party, and weakened the position of the Hindus who contest this division.

The Ram Janmabhoomi-Babri Masjid issue was never religious. The BJP has always included the promise of constructing a Ram temple in its election manifestos over the years. L.K. Advani's 1990 rath yatra not only led to the eventual demolition of the Babri Masjid, but expanded the national footprint of the BJP. The campaign was aimed at denigrating Muslims and entrenching their 'foreignness' in the minds of Hindus by using the figure of Babar.

Since the court has itself digressed from the brief before it, one can ask why it did not think it necessary to first address the criminality of an act in 1949, when the idol of Lord Ram was placed in the Babri mosque on the night of December 22, which happened much before the demolition of the mosque itself. Also, the bloodletting accompanying the demolition of the mosque cannot be dissociated from the act. Why is it that the issue of sentiments is given primacy and not the criminality of the act, when the court is equipped to address the latter? Why is the court wading into the mediation route yet again after so many years of hearing, and when

the time is right for taking on majoritarian audacity?

Further, the eight-week time limit for the mediators coincides with the election campaign period and ends just before voting ends. It is not difficult to see which party will use this in its favour. If the mediation committee fails to come to a consensus, this could be used to fuel anger in Ayodhya once again, against both Muslims as well as the court.

It is not just the idea of mediation but the [selection of mediators](#) that casts a doubt on the process. While Justice F.M.I. Kalifulla is a retired Supreme Court judge and senior advocate Sriram Panchu has been instrumental in making mediation a part of India's legal system, what are Sri Sri Ravi Shankar's qualifications? He has not only flouted laws himself but has espoused the cause of a temple at the disputed site on multiple occasions. He is the one who said we will have a "Syria in India" if the Ram Mandir issue is not resolved soon. By no standard does Mr. Ravi Shankar qualify to be a mediator. A mediator is expected to be open-minded and fair, and if we go by his controversial statements, it looks doubtful whether he'll be independent.

At times like this, we expect the apex court to uphold constitutional morality. It does not help in a political dispute to replace the constitutional route with a "humanitarian" one. The sentiment of the court to "heal relationships" is laudable. But it is only constitutional courage that can steer us through these troubled times.

*Apoorvanand teaches Hindi at Delhi University*

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