



# A compromise is still possible

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## **But there is need for clarity on the status of one mediator and the efficacy of mediation on Ayodhya**

- 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.

### **Mediator neutrality**

- 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.
- 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.
- 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.

### **Advisability of mediation**

- 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 which 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.
- 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.

### **Win-win situation**

- 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.

### **A question of trust**

- 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.

The Hindu

