



A Compromise Is Still Possible

(This editorial is based on the article ["A Compromise Is Still Possible"](#) which appeared in "The Hindu" on 12th March 2019. The article talks about recent Supreme Court judgement referring the long pending Babri Masjid-Ram Janmabhoomi land dispute case for mediation)

The Ram Janmabhoomi- Babri Masjid dispute has long been accompanied by a sense of apprehension.

The dispute has been historically charged, politically divisive and communally violent, putting both the nation and the Constitution at risk.

For many years the SC had stuck to conventional methods and abdicated its role and its recent admission that traditional legal and constitutional tools are powerless in the face of faith is only an acceptance of true socio-religious ground realities of the nation.

The five judge constitutional bench therefore has referred the disputed case for mediation as in the eyes of CJI- the case is not about property, but about the mind, heart and healing-if possible.

The mediation path however has attracted a few concerns like all other attempts made at resolving the issue has.

Issue Through The Lens of Time

- A section of Hindus claims that the disputed land in the present-day Ayodhya, Uttar Pradesh is the site of Rama's birthplace where the Babri Masjid once stood.
- The mosque was constructed during 1528-29 by demolishing the Hindu shrine by Mir Baqi, a commander of the Mughal Emperor Babur.
- The political, historical and socio-religious debate over the history and location of the Babri Mosque, and whether a previous temple was demolished or modified to create it, is known as the Ayodhya dispute.
- In 1992, the demolition of Babri Masjid by Hindu nationalists triggered widespread Hindu-Muslim violence.
- **Since then, the archaeological excavations have indicated the presence of a temple beneath the mosque rubble, but whether the structure was a Rama shrine (or a temple at all) remains disputed.**

The Judicial Path to Mediation

Despite many groups opposing a negotiated settlement, the Supreme Court has made it clear that an attempt should be made to settle the dispute by mediation.

Supreme Court has power under **Section 89 of the Code of Civil Procedure (CPC)** which allows the court to refer any dispute to non-adjudicatory resolution processes.

The court under section 89 of CPC has four types of well established dispute resolution methods other than litigation, namely – **arbitration, conciliation, judicial settlement** (including settlement through Lok Adalat), or **mediation**.

The Supreme Court also overruled its previous two judge’s judgment in **Afcons infrastructure and Ors. v. Cherian Verkey Construction and Ors (2010)**, where it maintained 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.

Supreme Court has ruled that it is free to consider and decide upon any non-adjudicatory resolution method other than arbitration such as **judicial settlement or mediation**.

Significance of the SC’s Decision

The decision reflects that Babri Masjid dispute is not really an explosive issue affecting the religious sentiments of millions of Hindus and Muslims as has been portrayed.

Any such portrayal can only be called only an attempt at creating political myths of various kinds at the hustings for electoral advantage.

Handful of parties claiming to represent Hindus and Muslims are not the true representative of their communities as a lot of people in the nation feel that the issue is not a life-affirming issue for the masses, who are more concerned about jobs, poverty alleviation, affordable housing, health care and education.

The decision highlights the resolve of the judiciary to solve the Ayodhya dispute which for so long has stalled the country’s socio-economic growth.

Roadblocks in the Mediation Process

- One of the biggest challenges faced by mediation process is the **fear of minorities** is that if they give up their claim on the Babri Masjid, Hindu groups would ask for other “disputed” lands to be handed over.
- The question is also over **the neutrality of the mediators** which is of paramount importance in any type of mediation, as a mediator is a neutral third party who facilitates a negotiated settlement between adversarial contenders.
- Any bias in favour of disputants belonging to one religion is bound to create communal ripples which will only corrode litigant parties’ trust from this entire exercise.
- There is a chance that any **decision arrived through the mediation process might not be welcomed** by one or the other parties and could foster resentment.
- The **mandate of mediation is also unclear**; any effort at reconciling parties would mean defeat of truth, justice or due process.

An Amicable Solution

An attempt at allaying the fears of minorities by Hindu groups would not only increase the chances of solving the long standing dispute but would also serve as an example of confidence building amongst the minorities.

Supreme Court should appoint **mediators who are tested of their integrity** and those who are well accepted by all the parties.

The issue inherently has religious angle, and to appease these sentiments there is a larger **need to address the issue of communalism, concept of citizenship and nationhood**.

Any attempt at **mediation should be an expression of a common hope for the better future** and not a reminder of sectarian divisions.

The mediation should **overcome the limitation of its framing** and should arrive at a solution where no

one community emerges victorious but where **Indian constitutional values and democratic secular ethos reign supreme.**

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