

# Will a court-mandated mediation on Ayodhya solve the issue?

PARLEY

The Supreme Court's attempt at mediation has its share of supporters and critics

*The Supreme Court has opted for a time-bound mediation process in a bid to resolve the Ayodhya dispute. Sukumar Muralidharan and Sanjay Hegde debate whether mediation is necessary at this stage, and if the process is viable, in a discussion moderated by K. Venkataraman. Excerpts:*

**Is mediation viable at this stage of the litigation, when the Supreme Court is set to begin the final hearing in the Ayodhya dispute? Is it advisable and desirable?**

**Sukumar Muralidharan:** I think the Supreme Court has stepped in as a problem-solver at numerous stages of this dispute over the years. And sometimes it has declined to play that role – instances being as far back as in 1989, when it was asked to put a stop to the Shila Pujans that were going on all over the country and causing a lot of communal violence, and it declined to do so; and then again in 1992, when it was asked to ensure the safety of the structure when the Vishva Hindu Parishad was planning its kar seva on December 6, 1992. Of course, it did issue a writ and asked for guarantees to the safety of the structure. The rest is history. Then, the reference was made to determine whether there was a Hindu religious structure under the mosque prior to the mosque being built. The Supreme Court declined to hear it but held that the acquisition of the land was good in law. And that a mosque was not part of essential religious practice for the Islamic faith and, hence, there was no violation of religious freedom in the acquisition of that land. It then reverted the case to the Lucknow Bench for a determination of the title suit. So, that's what we had coming out in 2010. This mediation decision comes out of an appeal against the Lucknow Bench's decision. So, I think this fits in with the normal course of adjudication in the matter. The mediation decision is the court, in a manner of speaking, abdicating its responsibility.

**Sanjay Hegde:** Any court always

has the option of asking parties to mediate before it proceeds to adjudicate. That is laid down in the Civil Procedure Code. This is a kind of case where even if there is adjudication, the court is not particularly sure as to whether its verdict would be honoured if it is unpopular on one side or the other. However, the court decided to be proactive, not in the sense of abdicating its jurisdiction, but is aware now that mediation itself is a specialised process. It is not exactly in the sense of a negotiating or bargaining kind of situation. Mediation is something much deeper and the court wants to see whether that process with the trained mediator plus two others who are of repute within the community, both legally as well as in terms of a broader religious appeal... they've tried to get some kind of representational team together. And see where the process goes.

**There is a small window of eight weeks for mediation. Would it have been better if the mediation process was given more time, or if it was opened so that there could be a more viable process?**

**S.H.:** If you give too much time, nothing really happens. So, having a deadline also concentrates parties' minds wonderfully, inasmuch as there is time pressure to arrive at a solution.

**S.M.:** My worry is that the court has opted for a deadline that just puts it over the threshold of the electoral cycle, so that it does not get affected by the heat and dust of the election campaign. Now, it may be prudent to have done this, but I don't see that the court should really be allowing this political scenario to impinge upon its decision. Now, once the mediation begins, who will the mediators involve in the process? There are a number of litigants involved. The original litigants are the Nirmohi Akhara, the Wakf Board, and there is Ram Lalla, the deity. But the VHP is creating trouble on the streets, and they have become, by virtue of their coercive politics,



litigants in the problem. So, who are going to be part of the mediation? It's going to be a tricky process because whoever is left out of the mediation process can move out to the streets with their grievance, and whip up public fury.

**The suits are representative in nature with the two communities on either side of the dispute. It is said it will be difficult to enforce a decree of the court, if one party expresses misgivings and the other party is happy about it. Does this not apply to the mediation process also?**

**S.H.:** A negotiated settlement will also ultimately end up in a decree of the court. What will happen on the enforcement of the decree is another question. Right now, we are wondering whether the decree can be arrived at by consensus among the parties to the litigation, or whether the decree has to be arrived at only through the adjudicatory route.

Do you agree with the basic formulation – that this is a matter concerning faith and not merely the civil rights of the respective parties?

**S.M.:** There's so much of politics riding on this. They [the Muslim parties] say they are willing to cede the land if it is proven that it was taken by fraud or by force from the other side. And the other side is arguing, 'No, it is a matter of faith, and we cannot negotiate, or have a judicial determination on a matter of faith.' I don't see any reason why they will retreat from that really hard-line position now, without risk

**Q** We've allowed a number of political campaigns to ride on this issue, which should have been settled right at the moment it was born.

of loss of face, since it has become such a high-stakes issue politically. The judiciary could have just proceeded to take the bull by the horn, rather than bring in the question of faith and the emotion.

**Do you get the sense that the legal issues are secondary?**

**S.H.:** Politically, it has always been framed like that. How does the judiciary handle it? The judiciary could have well said, 'Look there are no manageable standards,' and declined to get into the dispute altogether. Or, it could have said, 'We have no space for faith and belief out here. Let us go simply by the law as laid down.' The mosque has stood there for nearly 500 years, and we all saw this go down in 1992. How does, in the face of all that evidence, one side prove title?

There are two basic emotions out here. One emotion on the Hindu side is, 'We have suffered religious hurt and we have lived with it through 500 years. This may not be a Hindu state, but it is a Hindu majority country. The wishes of the majority on this thing must prevail.' On the Muslim side, it is this emotion that, 'Look, we are not intruders. These are things that have happened so many years ago.' These underlying emotions, if the multi-faith mediation team could address somewhere, and get people to un-

derstand that irrespective of faith, irrespective of the past... this country needs to move on ahead.

**It is argued that for Hindus it is a matter of faith as far as the spot is concerned, whereas the right of worship of Muslims can be exercised anywhere. The idea behind the mediation seems to be to get the Muslim side to give up their claim over the site, and instead have a mosque elsewhere. Against this backdrop, it is interesting that the Sunni Wakf Board and the All India Muslim Personal Law Board were open to the idea of mediation, whereas the three Hindu parties were not in favour of it.**

**S.H.:** You are right that the Muslim side in a way perceives itself to be the weaker side, and it had always said whatever the court orders, it will abide by it. The thing on the Hindu side is that after all this is god's property. There is almost a sense of crusade out there and we cannot give up anything, having started the fight in god's name. At the end of the day, Hindus and Muslims are all part of India.

**S.M.:** We should avoid any impression that the institutions of our governance process are skewing the whole balance in favour of favour of majoritarian coercive politics. Because, I think the people of the minority faith have a sense of grievance that they have not been given a fair deal in this process. In fact, even the ruling that the acquisition of land was legitimate because the place of worship is not an essential part of the religious faith of Muslims – that also has caused some disquiet... but now they're even being restrained from even offering prayers in public places.

**Would you like to comment on the choice of the mediators?**

**S.H.:** Well, about two choices nobody has any doubts: Sriram Panchu and Justice Kalifulla. The question is about Sri Sri Ravi Shankar. The point is that you needed somebody on the Hindu side who could possibly sell a settlement to the larger Hindu community. Therefore it did make sense to bring in a holy man.

But why this particular godman? That is a choice left to individual judges who can constitute the Bench.

**S.M.:** Well, he's on record saying Muslims should give up their claim to the title of the land and also threatening dire consequences if that does not happen. So, that gives him not exactly the best claim to being a fair mediator to this process. So before the task of achieving a mediated outcome between the different litigants to this process, I think the mediators have to achieve consensus amongst themselves about how they're going to approach this. And given the composition of this team, I think that is not a trivial challenge.

**What do you think will be the larger implications for constitutional values like the rule of law and secularism, when this litigation reaches either an adjudicated or negotiated settlement?**

**S.H.:** Quite frankly, I think we, as a democracy, gave up our belief in the rule of law on December 6, 1992. What we are trying to do is to snatch back whatever remains; to rebuild it, because ultimately, let me put it this way and this is my question to even those who propound a Hindu Rashtra: Even a Hindu Rashtra can't work without the rule of law. And if you do something which is out of the law, and then you try to retrospectively make it right, it just doesn't work.

**S.M.:** That is the key question going forward. Because once you have destroyed the faith that people of different religious convictions might have in the neutrality of the governance process, it is very difficult to retrieve that. Over the last 30 years, the balance has shifted too far in favour of majoritarian assertion and we've allowed a number of political campaigns to ride on this issue, which should have been settled right at the moment it was born. That default over 30 years has allowed this issue to become a political matter on which very emotive campaigns were mounted by both sides. The damage has been very deep and it'll be very lasting unless we sort things out very quickly.



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## SINGLE FILE

### Can sharing be private?

Facebook's 'pivot to privacy' plan signals a shift in its centre of gravity

G. SAMPATH



For years now, Facebook has been facing flak for privacy violations. The most notorious of these was the Cambridge Analytica scandal. Under relentless pressure from regulators to tighten its privacy safeguards, Facebook CEO Mark Zuckerberg, in a post last week, appears to have made a 180-degree shift in what Facebook has stood for all along: from sharing and openness, to privacy and encryption.

In a 3,200-word post on Facebook, Mr. Zuckerberg unveiled what he calls "a privacy-focused vision for social networking". Facebook is a company whose very business model is built on encouraging, coaxing, and manipulating people to share more and more of their private lives. So understandably, its founder's latest posture on privacy has struck many as little more than posturing.

In his post, Mr. Zuckerberg outlined a four-fold strategy to position privacy at the heart of Facebook's business. First, all social media activity would be end-to-end encrypted, as WhatsApp currently is, across Facebook, WhatsApp, Messenger and Instagram. Second, users could post 'ephemeral' messages that would all get automatically get deleted unless they specified otherwise. Third, interoperability, which would enable users to seamlessly send and receive messages across WhatsApp, Facebook, Instagram or SMS, would be possible owing to a unification of the technological back-end of all these platforms. Many fear that this might open the gateway for massive data mining and be a way to duck anti-trust legislation. Finally, Facebook will not store data in countries that have a questionable record in protecting human rights such as privacy and free speech. This is to protect users' privacy by ensuring that data is not "improperly accessed."

Of these four, the most radical promise is encryption across platforms. If implemented, which many still doubt, it would mean that even Facebook cannot 'see' what its billions of users are sharing. As per Mr. Zuckerberg's analogy, it also signals a shift in Facebook Inc's centre of gravity – from the social network imagined as a town square (Facebook), where you are sharing something with all or most of your friends, to the social network imagined as your living room (such as a small WhatsApp or Messenger group), where a more intimate – and more private – sharing can take place. What happens to Facebook's ad-based business model in such a scenario?

Mr. Zuckerberg's answer suggests that the 'pivot to privacy' would itself be based on a pivot towards "payments, commerce, and ultimately a platform for many other kinds of private services." He hasn't offered a time frame for effecting this transition.

Not surprisingly, given Facebook's long history of sacrificing privacy at the altar of Mammon, many remain sceptical. A brilliant *New Yorker* cartoon captured the general sentiment that greeted Mr. Zuckerberg's proclamation. In the cartoon, Mr. Zuckerberg, speaking from a podium, announces to the world, "Facebook is changing. From now on, sharing is private. War is peace, freedom is slavery, and ignorance is strength."

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## NOTEBOOK

### Field notes from the election battleground

Biryani, liquor and money are non-negotiable

B. KOLAPPAN

The distribution of money to voters during election time is one of the challenges democracy in India faces. Though it has been an established practice, inflation applies here too, and the amounts seem to have increased.

Even the local office-bearers and cadres of political parties will not carry out election work unless the candidate and the high command meet their regular expenses: biryani and liquor. When it comes to the time of elections, biryani becomes a national food.

When I was a student and worked for political parties, a group of local leaders would often visit the areas we were in – in an Ambassador car – to distribute money and posters. Kariyalayams, or small sheds that were put up temporarily, would function as a party office. Cadres would use the money to buy gum, which was made by boiling tapioca powder in water, to stick

the party publicity posters, help in the wall writing and get the snacks. The amount came to a little over ₹100 per day.

In the evening we would visit the local hotel and have a sumptuous meal of dosa and rava vada, washed down with a cup of tea or coffee or sukku coffee. More often than not, Opposition party cadres would also be there seated on the benches facing us. They would never eat what we ate. Only the Communists would spend out of their own pockets.

When the money was spent on the gum, paint and lime for the white wash of the walls, the cadres would make upma and sukku coffee in the kariyalayams. At times they would boil tapioca and have it with freshly ground chilli and garlic paste as a side dish. As there was no time frame for the election campaign, our arguments and discussions would go on endlessly. There were times when a senior leader or even the candidate

would drop by to greet the cadres. On the day of election, buttermilk or panagam (lemon juice with jagery) would be distributed to voters. We sat before a transistor radio on the day of counting and listened to the bulletin of All India Radio, a process that would often take two to three days to complete.

In many constituencies, the cadres would be able to predict the candidates based not only their wealth but also their commitment and ability to do party work. So the candidate list always had a mix of wealthy and a committed party workers who depended on the high command for election expenses.

The trend was the same even in the late 1980s. While covering an election, I was engaged in a conversation with a senior Dravida Munnetra Kazhagam candidate, who was once the Mayor of Chennai. He told me that the high command had given him ₹4 lakh for the election expen-

diture and that he could save ₹1.75 lakh after meeting the expenses.

He said, "If the party offers me a seat today, I may not be in a position to enter the fray as contesting an election has become a rich man's business. If I win the elections, it is well and good. If I lose, I will be in debt permanently."

He was absolutely right. Once an aspirant for the Panamarathupatti constituency showed me a demand draft made out for ₹50 lakh when he came for the interview for candidates. He said, "I had to show it to the party leaders to prove how much I am worth."

His views were echoed by another former Minister. He said, "Today, contesting in an Assembly constituency will cost you at least ₹3 crore. Partymen who run businesses, educational institutions and existing MPs and MLAs alone can afford it." A Lok Sabha constituency covers six Assembly constituencies. So you can calculate the amount.

## FROM THE HINDU ARCHIVES

FIFTY YEARS AGO MARCH 15, 1969

### Mujibur Rahman warns of movement

The National Awami League leader Sheikh Mujibur Rahman, sore over the failure of the round table talks in Rawalpindi to secure acceptance of the demand for autonomy for East Pakistan, yesterday [March 13] called on Air Marshal Asghar Khan and, according to Radio Pakistan, discussed with him the political situation. This was the first notable development following the conclusion of the Round Table Conference yesterday [March 13] between President Ayub Khan and Opposition leaders. The Sheikh to-day [March 14] said at Lahore that he would present his own draft constitutional reforms soon. *The Times* (London) correspondent from Rawalpindi reported to-day [March 14] that Mr. Rahman hinted that the "revolt" in East Pakistan might turn into a serious separatist movement unless Mr. Ayub Khan granted the 70 million Bengalis full autonomy almost immediately. The correspondent said that after the third session of the Rawalpindi talks, the Sheikh said it would be natural if people began thinking in terms of "complete independence" if the present talks failed. "I do not know how much longer their patience will last, President Ayub can concede our demands, but much depends on the attitude of the rest of the administration."

A HUNDRED YEARS AGO MARCH 15, 1919.

### Kerosine Oil.

Since sometime past great difficulty is experienced from the general shortage of kerosine oil, and no vigorous steps have yet been taken to allay the distress of the public. Between the hours of 4 and 6 in the evening every day a kerosine oil bazaar is swarmed by people anxiously waiting for their day's supply of oil. A local depot keeper when asked by one of our representatives told him that since the stoppage of the American oil and the irregular and insufficient supply by the importing companies the situation had become more aggravated. Further enquiry showed him that in addition to this partial truth, the depot keepers do not put in market the entire quantity that they obtain from the agents. A great part of their supply is sold to retailers and who in turn raise the price as it suits them best. If these unscrupulous profiteers are pointed out their illegality and dishonest business the situation becomes worse and one has to go back disappointed. Another vagary of the bazaarman is that they do not sell before 4 o'clock or after seven o'clock in the evenings.

## POLL CALL

### Absentee ballot

This refers to a vote cast by someone who is unable to go to the polling station. The system is designed to increase voter turnout. In some countries, the voter is required to give a reason for not going to the polling station, before participating in an absentee ballot. In India, a postal ballot is available to only some citizens. The Representation of the People Act, 1950 allows heads of states and those serving in the armed forces to vote through postal means. The Lok Sabha recently passed a Bill to allow proxy voting for NRIs. However, domestic migrants and absentee voters in India cannot cast postal votes.

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