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BECAUSE THE TRUTH INVOLVES US ALL

OUTSIDE THE COURT

SC-mandated mediation in the Ayodhya dispute is a welcome innovation, but must not be seen as a substitute for due process

AFIVE-MEMBER SUPREME Court bench has proposed that a "permanent solution" be found to the Ayodhya dispute through mediation. The Court has sanctioned this innovative approach since, as one of the judges said, the intent is also to "heal relations" between two communities caught in a politically-fraught case. The principle and intent behind the proposal is laudable, since it may help lift the steam off the topic and, hopefully, facilitate a reasonable conversation around it.

Though the Court has named three mediators, the judges have given them the option to co-opt more members. It has said the mediation process will be held in-camera, its details kept confidential, and media barred from reporting the deliberations. Given that the conflict lies at the heart of the social and political faultlines of the nation, transparency about the process is paramount — the citizen has a right to know the give and the take. The Court's decision to set an eight-week time-frame for the mediators to arrive at a settlement also raises questions. The Court, surely, is aware of the sensitivities in the dispute and its complex legal history. The mediation panel now appears set to conclude its sittings in the midst of the general election campaign: The outcome of mediation is most likely to have a bearing on the campaign and voting behaviour. The Ram temple is high on the BJP's poll agenda and its leaders have demanded that the judicial process be skirted and permission given to build the temple at the disputed site through an ordinance. Clearly, the mediation process cannot be seen in isolation of the bitter and the polarised politics in the run-up to the election. Given this background, the panel ought not be asked to complete its work under such a tight deadline. It must be given time to engage with all the concerned parties and hear them out. In any case, the first step is for the panel to convince the litigants to join the mediation process. As of now, only the Nirmohi Akhara and some Muslim groups including the Sunni Waqf Board have expressed willingness to be a part of the negotiations; others insist that building the Ram Temple at the site where the 16th century Babri Masjid stood until its demolition on December 6, 1992 by a mob led by Hindutva groups, is a matter of faith, not a property dispute, and hence, non-negotiable.

The mediation process, of course, is not a substitute for due process. The Court is still to settle the plea regarding the title deeds concerning 2.77 acres of land at the Babri site. However, the Court can issue a decree if the contesting parties agree on a settlement during the mediation and make it binding on all sections involved in the dispute. It may be premature to predict how the mediation will unfold. But it will be a tall order and the process will be watched closely and tested for fairness.

THE DELTA 32 EFFECT

It offers pathways to eliminate HIV, though there is sometime before we have a complete cure at hand

IN 2016, A HIV patient from London, who also suffered from cancer, underwent a bone marrow stem-cell transplant to treat his malignant cells. Eighteen months later, he has not only been cured of the cancer but has also shown no signs of HIV. Doctors are hopeful that he has been cured of the dreaded virus, though they point out it's a little too early to say so conclusively. Their optimism has something to do with a genetic mutation that hampers HIV's entry into certain blood cells. A study published this week in *Nature* points out that the London Patient received the bone marrow donation from a person who was born with such a rare mutation, Delta 32. The transplant wiped out the immune cells vulnerable to HIV and replaced them with cells that are resistant to the virus.

The London Patient is the second HIV-infected to experience a long-term remission from the virus. About 12 years ago, an American living in Germany — the Berlin Patient — also received a Delta 32 transplant and has remained free of the virus, ever since. However, attempts to replicate the procedures undergone by the Berlin Patient in other HIV-infected people proved unsuccessful. The virus returned as soon as they stopped the standard medications. Moreover, there are other reasons that the hopes of a total victory against HIV that have arisen after this week's *Nature* study be tempered with realism. Bone-marrow stem transplants are risky — they make a patient vulnerable to life-threatening diseases like acute anaemia — and are expensive procedures. They are not likely to be the treatment option for a vast majority of the 37 million HIV-infected; it's hard enough to find tissue-matched donors for so many people, let alone locate one that also has the Delta 32 mutation.

There is good reason, however, to believe that the London Patient's recovery offers a viable pathway to combat HIV. The *Nature* study demonstrates the potency of gene-editing as therapy for those infected with the virus, similar to the treatment for sickle-cell disease, haemophilia and certain types of cancer. Researchers in different parts of the world are working on procedures to edit people's immune cells to make them HIV-resistant — they would mimic Delta 32. They are also trying to develop reverse vaccination — much like for small pox — where an immune response is engineered to target the virus. Currently, those affected by HIV can have near normal lifespans. However, the cocktail of drugs needed to keep the virus at bay are expensive, and have serious side effects. The London Patient's recovery portends that cure from HIV is not far away.

WELCOME TO MALGUDI

The proposal to name a Karnataka station after the fictional town is a tribute to R K Narayan and the idea of train travel

IN HIS INTRODUCTION to *Malgudi Days* (1942), R K Narayan shied away from pinpointing its location on a map of India. "If I explain that Malgudi is a small town in South India, I shall only be expressing half-truth, for the characteristics of Malgudi seem to be universal," he wrote. Shivamogga MP B Y Raghavendra, however, has pitched a proposal to localise that universality by renaming Arasalu station on the Shivamogga-Talaguppa railway line as Malgudi. Arasalu happens to be the place where the Kannada director Shankar Nag shot scenes for his delightful television adaptation of Narayan's classic.

This, of course, is not the first time that an attempt has been made to give stations and trains a literary makeover. As recently as 2017, the Railway Ministry had begun work on a proposal to showcase India's cultural diversity by naming trains after celebrated works of regional literature. In May 2017, the Dadar-Sawantwadi Road-Dadar Express was renamed as Tutari Express as a tribute to Marathi poet Krishnaji Keshav Damle's revolutionary poem, *Tutari*. Earlier still, in 2011, the Yeshwantpur-Mysuru Express between Bengaluru and Mysuru was christened Malgudi Express.

In a country like India, stratified as it is along economic, religious and cultural lines, the railways have played the role of a great leveller, taking the urban to the beating heart of the country and vice versa. With their glass-and-chrome buildings and sterile tribute to politicians of various shades through their names, airports, and, by extension, air travel, offer a rarefied view of the world. Train travel opens up the country for its passengers. Like literature, it offers them a chance to look at themselves and at each other in wonder, sometimes, with incomprehension, and, often, in recognition. In that context, Raghavendra's proposal, if passed, will not just be an apt tribute to the universality Narayan sought for his Malgudi but also to the spirit of the intrepid Indian traveller.



FAIZAN MUSTAFA

A FIVE-JUDGE BENCH of the Supreme Court (SC), led by the Chief Justice of India (CJI), has passed the first major order in the sensitive matter of the ownership of the disputed site of the Babri mosque. It has referred the matter to a three-member mediation panel led by former SC judge F M I Kalifulla. The other members are controversial Art of Living founder and spiritual guru, Sri Sri Ravi Shankar and Madras High Court senior lawyer, Sriram Panchu. All the three members are Tamil-speakers. Faizabad, which is in the Hindi heartland and can be easily polarised in election season, will be the venue of mediation but its proceedings will be kept secret. The CJI and other judges wanted to make yet another sincere effort in finding an amicable and inclusive solution to the historical dispute. Therefore, in their order, they have said that "notwithstanding lack of consensus between the parties, we are of the view that an attempt be made to settle the dispute by mediation".

A constitutional court in our legal system has to play a counter-majoritarian role. It is duty bound to protect the rights of even one individual. Public sentiments are thus irrelevant.

Unlike adjudication, mediation is not an adversarial process. While in judicial adjudication one party wins and another loses, at the end of mediation both the parties must feel fully satisfied with the compromise. Mediation should never be an alternative because one party refuses to accept a court verdict. Even the moderate Atal Bihari Vajpayee had said two years prior to the demolition of the mosque in 1992 that "no court can give a clear verdict on the issue and even if verdict was forthcoming, no government can implement it".

While it is true that the legal issue is nothing more than a property dispute, the SC is right in saying that the case involves the sentiments of millions of Indians. If it is a question of "faith" for Hindus in terms of the site being the birthplace of Lord Ram, for Muslims, the central issue is about their "faith" in the Constitution and a fair and impartial judicial adjudication by the highest court of the land. Those who demolished not just a mosque but

A slim chance

Can the parties in Ayodhya dispute display the spirit of accommodation needed to make mediation a success?

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the only surviving piece of Sharqi architecture have not been punished in 27 years. The SC has not even stayed the recent ordinance giving the disputed land to one of the parties even though the ordinance is in violation of its own orders.

There are six major concerns with respect to the mediation order: First, mediation has been imposed by the Court on the parties which opposed it during arguments and have made similar statements after the order was passed. Second, the choice of mediators, particularly Sri Sri Ravi Shankar who is on record asking Muslims to give up their claim as a "goodwill gesture" and had even doubted the highest court's competence in adjudicating this matter. In fact, he said in explicit terms that if the SC decided this matter, the losing party will have no option but to turn to extremism. Since the Court preferred to term the dispute a religious matter potentially impacting our politics, ideally a religious figure should have been kept away from the mediation process. Similarly, the mediation panel should not have been headed by a Muslim. It would have been better if an atheist, naturalist or follower of a third religion led the mediation process.

Third, though the Court has said that there is no legal impediment in referring this matter to mediation, it left the matter open. The parties opposing mediation did argue that as per the Supreme Court's judgment in *Afcons Infrastructure Ltd (2010)*, 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. Fourth, whether mediation can be done on behalf of deity is a grey area. The SC in the *Afcons* judgment said that matters involving rights of deities, minors and the mentally challenged should not be referred to mediation.

Fifth, some parties have outright rejected any compromise. The Akhil Bharatiya Hindu Mahasabha in their written arguments said so in as many words: "...the land in question [has been] a place of worship for Hindus for lakhs of years...It is a question of do or die for Hindus for the sake protection of the Deity's property." It went on to assert that "the

Hindus have religious faith, deep religious faith [associated] with the birthplace of Lord Ram and they are not ready for any compromise."

Sixth, the timeframe given for the mediation process is too short. The Court has asked mediators to start their work within a week and give it a progress report within four weeks and complete the work within eight weeks. Though as a general rule it is not necessary that all documents in the Court be sent to the mediation panel but in a matter of this magnitude, it will be too much to expect from the mediators to start their work without examining the huge volumes of documents. Though many would like to see one party simply giving up their claim, mediators cannot and should not do suggest giving up the title claim without first satisfying themselves that their suggestion will not cause any injustice to the rightful owner/s under law. It would be more appropriate for the mediators to first acknowledge, on the basis of documentary evidence, the rightful legal owner of the site where once Babri Masjid stood and then convince this party to give up its claim.

Generally, mediation proceedings start with an opening statement by the mediators and opening statements by the parties to the dispute. This is followed by mediators having separate sessions with the individual parties to understand their perspective on the dispute and possible solutions. Subsequently, joint sessions are held with all the parties so that a consensus is reached on the contentious issues. Mediation is an informal process and the rules of evidence are not used. Finally, a compromise is drafted. In this case, the compromise will eventually be recorded by the Supreme Court in its order.

Miracles do happen and bitter enemies do become friends. That's why the CJI preferred mediation even though chances of its success are slim. Let us welcome this initiative of the Court and hope that mediation panel and parties will be able to demonstrate spirit of accommodation and large-hearted tolerance.

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Views are personal*



JULIO RIBEIRO

I WAS TAKEN aback, a few days ago, when the staff in my office showed me a WhatsApp forward or "post" written by "Julius Reibeiro", chiding Mr Modi very gently for repeatedly saying that for 60 years the Congress party and the Gandhi family had done nothing for the country, and, it was the BJP and Narendra Modi, in particular, that had achieved all that the people aspired for!

Besides my name being misspelt, the post had described me as the retired director general of police, Maharashtra. I was commissioner of police, Mumbai, and DGP Gujarat for four months. I was also DGP Punjab for two years, but not DGP Maharashtra. The post seemed to have been widely shared, including with my daughters who were not amused by the grammatical errors written in my name. Despite this, however, the writer, whoever he is, made many people believe that it was Julio Ribeiro who had written the post.

In fact, I was amazed at the number of people who met me in the last three days to congratulate me on speaking out for what was they believed was right and correct. They were a trifle disappointed to learn that I was not the author of the post. Regardless, I assured them that I largely agreed with the contents of the post.

In fact, I thought that the writer had comprehensively rebutted Modi's oft-repeated insinuations that the Congress and the Gandhis were not at all interested in the development of the country but were only inter-

THE FAKE NEWS IS CORRECT

Constant tall claims by BJP detract from the positives of the government

ested in their personal fortunes. It is true that Modi's government has accelerated the development agenda in many spheres and has done a lot of good work that could have been done earlier. But it is not true that the earlier governments, including that of Morarji Desai (incidentally my father's classmate in Wilson College), had nothing to show the people.

So I became in a manner of speaking, the victim of "fake news", which was factually correct. The writer's opinion was shared by me and many other right-thinking people. When India gained Independence in 1947, I was in college, and I have seen the country progress since then. Modi's assertion that there was no progress in 60 years is simply not true.

Modi is right when he says that all villages in India have been successfully electrified under his reign, but he has forgotten to tell the people that the work to that effect had started much earlier — that 85 per cent or more was completed before he took over and that the remaining 15 per cent was done during his time, in the course of natural progression. Modi boasts about the provision of toilets in each village of the country but open defecation continues because of the acute scarcity of water to flush the toilets.

I am the chairman of an NGO which has taken on the task of improving the quality of life of the people living around Rajgurunagar in Khed taluka of Pune district. Electricity is available for not more than two hours a day, prompting my NGO to provide inverters and

solar panels to the 150-odd schools in the taluka so that e-learning — which depends on computers — is not suddenly interrupted. And, toilet blocks are being used by individual houses to store excess baggage for the simple reason that they cannot be used without water.

These are practical difficulties for which Modi cannot be blamed. His intentions are good and he certainly is working overtime to see a better India emerge. I also admire the fact that there are many senior leaders in his party who are similarly fired with true nationalist fervour to ensure that their work benefits the people. But their constant chest thumping and exaggerations are becoming embarrassments. They are taking the form of "fake news" which is something that people are beginning to see through.

For instance, the Balakot attack was one bold decision taken by a bold leader to cross the LoC and strike at the terror camps. It would have reaped electoral dividends for the BJP. But the unnecessary exaggerations regarding the number of people killed and the bringing down of an F-16, which has not been really proved, has greatly detracted from the good professional work done by the Indian Air Force. In my opinion, therefore, it is becoming counter-productive.

The writer, a retired IPS officer, was Mumbai police commissioner, DGP Gujarat and DGP Punjab

MARCH 9, 1979, FORTY YEARS AGO



PAKISTAN'S N-GAME

THE PRIME MINISTER has written to General Zia-ul-Haq, the Pakistan president, expressing concern over Islamabad's reported preparations to develop the nuclear bomb. India has been collecting information on the equipment, material and know-how that Pakistan has been trying to obtain from various sources to put up nuclear installations. Hoping that such reports are not correct, Morarji Desai has pointed out to Zia the repercussions that the production of nuclear weapons can have in the region. He has reportedly highlighted the efforts that India has made for peaceful use of nuclear energy.

CABINET WOES

A NEW DIMENSION has been added to the ongoing Uttar Pradesh ministry-making tangle by an associate of Charan Singh openly attacking the manner in which the chief minister, Banarasi Das, has constituted his ministry. Nar Singh, leader of the erstwhile BLD and minister of state for petroleum and chemicals, in a statement released to the public criticised Chief Minister Das for excluding the Jana Sangh and other sections of the party from his ministry. Singh is one of the four central ministers of state who had resigned last year in protest against the ouster of Charan Singh as home minister at the instance of the prime minister, Morarji

Desai.

EXAMS SCRAPPED

GOADED BY THE outcry raised by the public and the press, the Examination Committee of Meerut University has cancelled the examinations of 13 colleges where there was mass copying. Included among them is Meerut college, the largest affiliated to the varsity. This follows a resolution by the university's committee on March 6 that in the places principals have reported mass copying, the examinations need to be cancelled. The vice-chancellor, D C Sharma, has now sent a circular to principals, asking them to send in reports about the examinations by March 16.

