Mediation worth a try to resolve Ayodhya dispute

By Vishavjeet Chaudhary, March 15, 2019

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THE Ayodhya dispute, which has gone on for decades, concerns contentious elements of history, politics and religion. Recently, a five-Judge Bench of the Supreme Court referred the case for mediation. Despite resistance from some parties to the dispute, the court invoked Section 89 of the Civil Procedure Code (1908). The panel of mediators have eight weeks to engage all stakeholders and try and come up with a solution to the matter. The panel will report directly to the apex court.

The mediation committee is headed by Justice Kalifulla, a retired judge of the apex court. The other members are Sri Sri Ravi Shankar, spiritual leader and founder of The Art of Living, and Sriram Panchu, a senior advocate who has extensive experience in mediation. These names were invited by the court and suggested by the parties to the dispute. Meetings and deliberations of the mediators and the parties will be held in Faizabad (Uttar Pradesh) in camera; reporting the proceedings during this period is prohibited.

The court’s decision to order mediation is an attempt to resolve the dispute amicably. In legal practice, mediation, as an alternative mechanism for dispute resolution, offers a number of benefits. First, mediation is usually more cost-effective than litigation. Court resources, court fees, lawyers’ expenses etc. are spared. Second, it is informal and more flexible. The formality and regimented proceedings of the courtroom can be dispensed with; evidence, opinions, etc. can be taken on record without the strict procedures followed in the courtrooms. This degree of informality encourages a multi-faceted and multi-dimensional view of the parties privy to the dispute. Considerations, sometimes outside the ambit of the law, can be brought forward. Third, the tone and tenor of mediation is softer. While courts mostly focus on legal arguments, rules and solutions, mediation allows for more human and social emphasis. Mediation also allows the parties to avoid legal jargon and present their
concerns in human terms in a participative manner. It removes the hard facets of law and presents a more humanistic approach of the law with a more active participation of the parties. Mahatma Gandhi, himself a barrister, wrote extensively about mediation. He noted that the true function of a lawyer was to ‘unite parties riven’.

Perhaps most importantly, mediation, in sharp contrast to the law, is non-adversarial. The defining feature of our legal system is an adversarial process in which the parties come ahead with their evidence and present their version in front of an impartial judge. Each party looks at the dispute from its own perspective and disputes the other party’s version. This leaves very little scope for introspection and giving ground to the other party. Mediation, on the other hand, allows for ample opportunities to introspect and come forward with concessions and compromises. This allows for an atmosphere where innovative solutions are possible.

In this instance, the dispute is of an extremely complicated nature. It is also one which has caused massive political and social turmoil. In the past, mediation and any attempts at mediation have failed. There has also been scepticism about mediation at this stage, expressed by the parties as well. Nonetheless, the court is of the opinion that it is worth an attempt. The first status report will be submitted in four weeks. The final outcome will not be made public before the process ends. Any outcome of mediation, unlike that of adjudication, is not binding on the parties. Nonetheless, this is an opportunity for participative, inclusive justice.

Critics of mediation say that it can sometimes exclude the parties from the table. As resolution of the dispute potentially affects millions, the mediators as well as the parties would have to take into account diverse views from all stakeholders. What perhaps is non-negotiable is that all parties must enter the process with a sense of amicability, willingness and openness. The dispute must be resolved with sensitivity and due consideration for all social and political factors.

Rule of law, peace and harmony must be maintained. As a country as well as a civilisation, we will be sending out a message that will resonate — and we must send a message that is in congruence with our traditions and values. The outcome of this mediation will be closely watched; it certainly is an opportunity to make the most of this method of dispute resolution. As the Supreme Court noted, “The case is not only about property. It is about the mind, heart and healing, if possible.”