



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a diploma in Public Procurement from the World Bank.

professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh

Nautiyal



Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK
LEGAL

JUDICIAL INTERVENTION IN RELIGIOUS AFFAIRS IN INDIA

AUTHORED BY - YASH SINHA
2nd YEAR, ST XAVIER'S UNIVERSITY KOLKATA
B.COM LLB(HONS.)

“Cultivation of mind should be the ultimate aim of human existence.”

~B R Ambedkar

I. Abstract

The paper deals with the intervention of judiciary in religious matters and gives an opinion for the same by dealing with various provisions of The Constitution of India and referring to case laws.

II. Introduction

The Constitution of India, through Article 25 [1], guarantees our fundamental rights to freedom of conscience and the ability to freely profess, practice, and propagate religion. This provision in The Constitution of India ensures religious freedom for all citizens, granting them the right to establish and maintain institutions for religious and charitable purposes. It also allows them to manage religious affairs, own and acquire both movable and immovable property, and administer such property in accordance with the law. In recent times, judicial intervention has substantially encroached upon the freedom of religion, giving rise to numerous litigations. This has prompted a new concern within the judiciary regarding the extent to which applying judicial scrutiny and constitutional adjudication in religious matters is appropriate.¹

¹ ‘Interference of Indian Judiciary in Religious Matters - iPleaders’ (iPleaders) <<https://blog.iplayers.in/interference-of-indian-judiciary-in-religious-matters/>> accessed 31 January 2024.

III. History of Sabarimala Temple Case

In *Indian Young Lawyers Association & Ors. v. State of Kerala & Ors.*², The Supreme Court's verdict serves as a prime example of judicial involvement in matters of faith and beliefs. In this case, a five-judge bench, with a 4:1 majority, lifted the ban on certain religious customs at the Ayyappa Temple, citing untouchability and a violation of Article 14[3] due to the prohibition of women aged 10 to 50 from entering the temple. However, upon examining the temple's tradition, it becomes apparent that excluding specific groups of women is unrelated to untouchability. The deity Lord Ayyappa, worshipped in the temple, achieved divine status through celibacy, and the prohibition on women of a certain age group is rooted in their voluntary respect for his principles. Devotees, especially women, consider staying away from the temple as an expression of profound faith and respect for Lord Ayyappa's dedication to celibacy. K Parasaran clearly said that,

“Religious beliefs cannot be tested on the touchstone of Art. 14 or rationality. The right to equality in religious matters has to be adjudged amongst worshippers. To recognise marked differences that exist in fact is living law, to disregard practical differences and concentrate on some abstract identities is lifeless logic. Like ‘manifest arbitrariness,’ ‘constitutional morality’ is totally subjective and would itself be arbitrary.”

Justice Indu Malhotra, the lone dissenting judge in the case, supported her stance by referencing various cases from the United States, emphasizing the importance of non-interference by the court in religious matters. She specifically cited the First Amendment of the US Constitution, which states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Justice Malhotra highlighted the Free Exercise Clause as particularly significant, as it constitutionally allows individuals to profess their religion without any restrictions. In her dissenting judgment, she underscored that the challenge to the tradition of excluding women did not come from any woman or believer but from individuals she referred to as "busybodies" who did not identify as believers of Lord Ayyappa. Consequently, she argued that the technicality of locus was not applicable, as those who

² (2019) 11 SCC 1; 2018 (8) SCJ 609

approached the court were not worshippers but individuals keen on defying the tradition.

Expressing concern, Justice Malhotra feared that allowing such challenges in religious matters could potentially open the floodgates for non-believers to contest each and every religious practice. In concluding her judgment, she asserted that determining what constitutes an essential religious practice should be left to the religious community, emphasizing that this is not a matter that should be decided by the courts.

Furthermore, Justice Malhotra explicitly stated that notions of rationality should not be invoked by courts in matters of religion. She argued that religious customs and practices cannot be solely assessed based on the touchstone of Article 14 and the principles of rationality embedded therein.

IV. Challenge for Indian Judiciary

The emergence of certain legal cases has sparked a new debate regarding whether it is appropriate for the Indian judiciary to formulate a Doctrine of Religious Questions, akin to the Doctrine of Political Questions. The question at hand is whether religious practices should be left solely to the leaders of the respective religious groups, with the judiciary refraining from involvement.

Addressing the first question in the current context, it seems challenging for the judiciary to establish a doctrine of religious questions in a nation where multiple religions coexist and where the concept of religion itself is somewhat vague. On the flip side, considering the second question—that religious matters should be decided exclusively by the heads of religious groups—it proves impractical. Leaving all religious matters to be determined within the religious communities may lead to complications, especially when certain traditions are deemed harmful. Non-intervention by the judiciary in such cases could potentially escalate chaos and societal problems. A potential solution lies in the court's role being limited to determining the existence of particular customs, without delving into the verification of their validity. The court should focus solely on safeguarding beliefs integral to people's religions. The case of *States v. Ballard* in the USA provides a clear definition of the 'Doctrine of Religious Questions,' stating that judicial intervention in religious matters is akin to the doctrine of a political question, suggesting that religious bodies are better suited to decide questions about religion.

The court's lack of historical understanding and reasoning behind religious beliefs often leads to the application of judicial scrutiny to assess the validity of faiths and beliefs. This approach can result in interpretations differing from the beliefs of devotees. The court must recognize its limitations in dealing with religious beliefs and practices due to remoteness and lack of familiarity. Therefore, judicial intervention should only occur when practices seriously threaten the constitutional fabric. In the case of *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*³, the Supreme Court introduced the concept of the "Doctrine of Essentiality" to determine whether a practice is integral to a religion. The court intervenes only if it is satisfied that the practice is not essential to the religion.

Reference can be made to the case of *M. H. Qureshi v. State of Bihar*⁴, where the government's ban on cow slaughtering was challenged on the grounds of violating freedom of religion during Bakra-aid. The court, employing the Doctrine of Essentiality, ruled that cow slaughter is not mandatory according to the Quran, thus not an integral part of Islam. Similarly, in the case of *Masud Alam v. Commissioner of Police*⁵, neighbours of a mosque opposed the use of loudspeakers for Azan, arguing it was an essential practice for Muslims. However, the court disagreed, asserting that prayer, intended as silent communion with the Creator, does not require a tumultuous prelude or a noisy accompaniment.

Despite these established principles, there are instances where courts overlook the Doctrine of Essentiality and interfere in matters considered integral to religion, raising concerns both within the judiciary and society.

V. Intervention in Current Religious Matter

The Ayodhya land dispute, an enduring political, historical, and socio-religious debate in India, has spanned decades. The focal point of contention is a plot of land in Ayodhya, Uttar Pradesh, believed by Hindus to be the birthplace of the deity Ram.

³ AIR 1954 SC 282

⁴ AIR 1958 SC 731

⁵ AIR 1956 Cal 9

According to Hindu beliefs, the land originally housed a Hindu temple that was allegedly demolished to construct the Babri Masjid mosque. Muslims counter this claim, asserting that the land was rightfully titled to them, and the mosque was built in 1528 by Mir Baqi on the orders of the first Mughal emperor, Babur.

The controversy surrounding the modification or demolition of the temple gained momentum in 1949 when some Muslims reported seeing an idol of Ram placed inside the mosque. This dispute over ownership led to a government-enforced lockdown of the area.

In 1959, Nirmohi Akhara filed a suit seeking possession of the site, claiming to be the custodians of the disputed land. The Sunni Central Board of Waqf also filed a suit in 1961, asserting ownership of the site.

The contentious events took a tragic turn on December 6, 1992, when Hindu kar sevaks demolished the Babri Masjid, triggering communal riots across India and resulting in the loss of at least 2,000 lives.

Legal battles ensued over the years, with the Allahabad High Court ruling on September 30, 2010, that the disputed land should be divided among Hindus, Muslims, and the Nirmohi Akhara. However, the Supreme Court stayed the verdict in response to petitions.

In 2016, the Supreme Court initiated a fresh hearing, and in 2017, it suggested an out-of-court settlement due to the sensitivity of the matter. Despite efforts, no resolution was reached. In 2018, a five-judge Constitution Bench was established to hear the land dispute case.

On November 9, 2019, the Supreme Court, led by Chief Justice Ranjan Gogoi, unanimously ruled that the disputed land be given to the Ram Janmabhoomi Nyas for the construction of a temple. The Muslim side was compensated with five acres of land at a prominent site in Ayodhya to build a mosque.

In February 2020, Prime Minister Narendra Modi announced government approval for the "Shri Ram

Janmabhoomi Tirtha Kshetra" trust to oversee the construction of a grand Ram temple in Ayodhya. Six months later, despite the challenges posed by the coronavirus pandemic, Prime Minister Modi laid the foundation stone for the Ram Mandir at the Ram Janmbhoomi site, with an extravagant event attended by 175 invitees. Over 7,000 guests, including 3,000 VVIPs, have received invitations and the temple was inaugurated on 22nd January, 2024.⁶

VI. Opinion on the Interference of Courts in Religious Matters

The landmark decision of the Apex Court in the widely discussed Sabarimala case has redefined the constitutional exemptions related to freedom of equality, religion, and untouchability, diverging from the dissenting opinion of Justice Indu Malhotra⁷. Justice Malhotra emphasized that if a practice within a specific temple can be traced back to antiquity and is integral to the temple's essence, it should be considered an essential religious practice of that temple. She asserted that in such cases, the courts should refrain from interference. This perspective underscores the importance of respecting the historical and integral aspects of religious practices within specific temples, urging a cautious approach in judicial intervention.⁸

The judiciary should avoid intervening in all religious matters, as such interference is deemed immoral and contrary to public policy. Instead, it should only step in when the issue is exceptionally critical, faces significant opposition, and, after a thorough examination of all facts, the court deems it appropriate to interfere.

⁶ 'Ayodhya: Why the Ram Janmabhoomi case went on for as long as it did' (Moneycontrol) <www.moneycontrol.com/news/trends/features/ayodhya-why-the-ram-janmabhoomi-case-went-on-for-as-long-as-it-did-12099021.html> accessed 31 January 2024.

⁷ 'Interference of Indian Judiciary in Religious Matters - iPleaders' (iPleaders) <<https://blog.ipleaders.in/interference-of-indian-judiciary-in-religious-matters/>> accessed 31 January 2024.

⁸ 'Judiciary must not interfere in matter of religious faith and sentiment: Justice Indu Malhotra | India News - Times of India' (The Times of India) <<https://timesofindia.indiatimes.com/india/judiciary-must-not-interfere-in-matter-of-religious-faith-sentiment-justice-indu-malhotra/articleshow/65997571.cms?from=mdr>> accessed 1 February 2024.