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Troubled waters: Adjudicating Religious disputes in India - Inspired by the Gyanvapi Case

Aadithya J Nair[a]

[a]The National University of Advanced Legal Studies, Kochi, India

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The judiciary should not adjudicate religious disputes in India. The principle of secularism is an important concept of the Indian Constitution which also guarantees religious groups the fundamental right to freely practice and manage the affairs of their religion without outside interference. Notwithstanding its legal expertise, the judiciary while assessing religious disputes with its legal lens often fails to gauge the depth of the social, cultural, and historical sentiments that are inseparable from religious disputes. Hence, the judiciary adjudicating religious disputes is like sailing in troubled waters with high chances of igniting religious tensions and riots. The Sabarimala judgment is an example of the disastrous consequences of the judiciary attempting to adjudicate on religious issues. Therefore, for maintaining the peace of the nation and upholding constitutional values, it is better the judiciary stays clear of religious affairs. Alternative mechanisms such as community-resolution programs can be considered for handling these sensitive cases without making them nationwide controversies.

Keywords: *adjudicate troubled waters, secularism, judiciary, fundamental right.*

INTRODUCTION

India is a multi-religious country with diverse cultures and beliefs. Besides Hindus who are in majority, India is home to a significant population of Muslims and other religious groups such as Jains, Christians, Sikhs, and Buddhists. Despite a few occasions of religious riots and

violence, for most periods since Independence, the country has been able to accommodate the interests of various religious groups and ensure peaceful and prosperous co-existence. Yet, there have been instances when religious disputes have arisen and the resultant politicization of the issue has added fuel to fire and seriously threatened the peace and security of the nation. Thus, religion as a whole is a very sensitive issue that needs to be carefully handled, for it involves the sentiment of many people who have strong faith and belief in their customs and rituals however silly or illogical these may seem from outside. Thus, religion as an issue is a volatile one and cannot be taken too lightly despite the relatively secular nature of India.

This is precisely why this paper intends to highlight the dangers of trying to involve the state and its institutions in the field of religion. This is especially true in the case of the Indian judiciary, often referred to as the guardian of the Constitution of India and the last hope of any victim who feels violated or exploited. Judiciary has the right to adjudicate on wide-ranging issues and keep the executive or any other body in check especially if the latter tries to circumvent the sacred laws of the Constitution. Yet, religion is a different ball game altogether and religious issues and disputes shouldn't be handled in the same way as other issues are handled. Of course, issues that involve a serious constitutional violation or an inhumane act need to be adjudicated strictly and with no compromise. But, it's tricky when the issue is a religious dispute between two groups such as in the Ayodhya case or a traditional religious custom being questioned such as in the Sabarimala case. These are the cases this paper strongly argues should best be left to the communities themselves to resolve and not involve courts that are often not qualified enough to handle various non-legal intricacies of such cases.

This article discusses why courts should mostly avoid adjudicating religious disputes.

This study takes inspiration from the recent events unfolded by the Gyanvapi mosque dispute and observes why courts should not have involved themselves in such a contentious religious dispute that has all ammunition to trigger a long-standing religious dispute such as Ayodhya that lasted decades and was the source of riots, violence, and even political vote banks. This essay emphasizes why attempting to adjudicate on such contentious issues involving religion is not just wrong on many levels but is also a dangerous path to tread as will be observed

through the Sabarimala case as an example. In the end, this essay attempts to suggest an alternative mechanism that could keep the judiciary or any other arm of the state at bay.

BACKGROUND OF THE GYANVAPI CASE

The Gyanvapi case is the recent religious dispute that has hogged headlines and drawn attention from all corners of the nation. As mentioned earlier, this paper is inspired by the events that unfolded since the dispute between the ***Gyanpavi Mosque*** and the ***Kashi Vishwanath Temple*** emerged. The Gyanvapi mosque is located right next to the famous Kashi Vishwanath temple in Varanasi. The dispute first came into prominence when a petition was filed by local Hindu priests in the Varanasi civil court in 1991 seeking to worship in the complex of the mosque which they claimed to have been the demolished portion of the Kashi Vishwanath temple that was allegedly destroyed by Mughal Emperor Aurangzeb in the 17th Century. The petitioner had three demands back then: that the court should declare the entire Gyanvapi complex as a part of the Kashi Vishwanath temple, that it should oust Muslims from the complex area, and that it should allow the demolition of the Muslim complex to allow the reconstruction of a Hindu temple.[1]

THE CASE CAME INTO PROMINENCE NATIONALLY AFTER THE AYODHYA JUDGEMENT IN 2019

Five Delhi-based women moved a court in Varanasi with their plea on April 18, 2021, seeking permission for daily prayers before the idols of Hindu deities on the outer walls of the Gyanvapi mosque.[2]They also sought to stop the opponents from causing any damage to the idols.[3] The site at present is open to prayers to Hindus once a year – on the fourth day of the Navaratri in April.[4] The Varanasi Court allowed the petition and also asked for a video survey of the Gyanvapi mosque for the traces of a Shiv Ling or Nandi statue that was believed to have

[1] 'Gyanvapi Mosque Case Timeline: Sc Defers Hearing to Friday, Asks Varanasi Court to Not Hold Hearing Today' (*Outlook,* 30 May 2022) <https://www.outlookindia.com/national/gyanvapi-case-here-is-everything-about-the-issue-that-is-tearing-apart-india-s-syncretic-culture-news-195468> accessed 18 June 2022

[2] 'Explained: The Gyanvapi Mosque Case' (*The Daily Star,* 18 May 2022) <https://www.thedailystar.net/news/asia/india/news/explained-the-gyanvapi-mosque-case-3026321> accessed 18 June 2022

[3] *Ibid*

[4] *Ibid*

been at the western complex of the Kashi Vishwanath Temple which is where the mosque is allegedly standing.

The Varanasi court order for the video survey was challenged by the Anjuman Intezamia Masjid Committee before the Allahabad High Court.[5]But the High Court upheld the order of the lower court leading to the filing of a Special Leave Petition in the Supreme Court.[6] Some legal experts claim that the Gyanvapi order is a blatant violation of the 1991 Places of Worship Act, others argue that the 'Maa Shringar Gauri' shrine – supposedly located within the mosque complex – falls under the ambit of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and is, therefore, exempted from the Places of Worship Act as per Section 4(3)(1)[7] and there is no violation committed.[8]

Now the main bone of contention here is whether the whole episode of idol-tracing and gaining access to the mosque on a daily basis constitutes a violation of the Places of Worship Act, 1991 which was essentially enacted by the then P.V Narasimha Rao government to prevent incidents like Ayodhya from happening again. No person shall convert any place of worship of any religious denomination or any section thereof into a place of worship of a different section of the same religious denomination or of a different religious denomination or any section thereof.[9] If on the commencement of this Act, any suit, appeal, or another proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August 1947, is pending before any court, tribunal, or other authority, the same shall abate, and no suit, appeal or another proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority.[10]

Such sections were created as part of the act to ensure that the country didn't get engulfed in religious disputes and attempt to correct historical events or institutions. Yet by accepting this petition, the court has essentially done the same.

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[5] *Ibid*
[6] *Ibid*
[7] Places of Worship Act, 1991, s 4(3) (1)
[8] Zeb Hasan, 'Understanding the Gyanvapi Mosque Case: What Does the Places of Worship Act Say? (*The Wire,* 18 May 2022) <https://thewire.in/law/understanding-the-gyanvapi-mosque-dispute-what-does-the-places-of-worship-act-say> accessed 18 June 2022
[9] Places of Worship Act, 1991, s 3
[10] Places of Worship Act, 1991, s 4(2)

Many other such disputes are being raised in Mathura and other places regarding temples and idols fuelled by this petition and the Ayodhya Judgment. This is dangerous as it's not up to individuals of today to correct the past or claim a form of historical justice at the cost of peace in the present. With the court in Varanasi having decided to go ahead with this case, many claims and disputes are going to flare up igniting tension and hate between the two religious groups. It is highly likely that the verdict of the local court is going to disillusion one group and the case most likely will reach the Supreme Court which will only make the case more controversial and lay the ground for potential religious riots that can threaten to tear up this country and everything its founders stood for. The more this case gets media coverage and national attention the more likely politics will inflame tensions and spill blood.

December 6, 1992, was one of the darkest days in Indian history when a combination of anti-social elements and political groups demolished the Babri Masjid and nearly laid the grave for Indian secularism. The country struggled to recover from the incidents of that day and cannot allow itself to fall back. On January 31, 1986, an advocate unconnected to the dispute filed an appeal before a district judge in Faizabad, KN Pandey, and the appeal was subsequently allowed a day later.[11]The judge directed the gates to be opened for Hindus to worship and within minutes of the order being passed, the Babri Masjid's gates were opened.[12]From then a chain of events took place with the case making national headlines and the state directly involving itself in the case, the end result of which was the demolition of the mosque.

Rather than trying to fix "historical events" one should try to learn from them and not repeat the mistakes that led the nation into chaos and violence. By accepting the case the Varanasi court has essentially opened a Pandora's Box of dangers that can wreak the nation, for the present case is gaining the same level of national attention that the Ayodhya dispute had once got in the 1980s. The study in the next section tries to prove why taking up the case was wrong for numerous reasons and what is the best possible solution to resolve such cases without involving the judiciary that is not qualified enough to deal with the sensitivity and religious

[11] Umang Poddar, 'From Babri to Gyanvapi, How India's Courts Have Helped Escalate Hindutva Claims on Mosques' (*Scroll,* 18 May 2022) <https://scroll.in/article/1024134/from-babri-to-benaras-how-indias-courts-have-helped-to-escalate-hindutva-cases-about-mosques> accessed 18 June 2022

[12] *Ibid*

sentiment attached to such disputes. Such disputes can be solved amicably without making them a national sensation that unleashes communal polarisation.

WHY COURTS SHOULD NOT INVOLVE THEMSELVES IN RELIGIOUS DISPUTES

In this section, this paper intends to elucidate why courts should stay out of most religious disputes unless and until they involve a serious breach of basic human rights. To understand the scenario better, the example of the Sabarimala case in which the Supreme Court of India passed a verdict a few years ago is considered and analysed. Before moving on to the case, it is important to understand why the judiciary and religion need to be kept at a healthy distance from each other. Religion as mentioned earlier is not a simple issue in India.

As a nation of 1.3 billion individuals, India is home to multiple religious groups and sections. The customs and faiths of different religions have evolved over centuries and hold a very important place in the lives of the people. Hence, any attempt to change the status quo of religious practices is both a dangerous and strenuous proposition. Besides, most Indians possess a strong link with their cultures and beliefs and even practice them while living abroad. Thus, for them, many of the religious practices constitute a basic definition of their identity and roots and thus will certainly tend to strongly and rigidly oppose any outside interference to it and the result can potentially lead to chaos.

Taking this into account this paper will delve into the contentious Sabarimala Judgment[13] and how it is a clear example of why courts should not overstretch their judicial powers and stay clear of most contentious religious issues. Now the issue surrounded a certain custom in the temple of Sabarimala (literally 'Sabari's Hill) that is located in a dense forest in the district of Pathanamthitta in the state of Kerala. The custom states that while men of all ages can worship, the traditions of the temple place a restriction on women below 50.[14] This tradition was alleged to be patriarchal and highly discriminatory in nature and was the main contention of the case.

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[13] *Indian Young Lawyers Association v The State of Kerala* (2018) Writ Petition (Civil) No. 373/2006

[14] Rajeev Chandrasekhar, 'I Oppose Sabarimala Verdict Because This Is Not about Women's Discrimination at All' (*The Print*, 18 October 2018) <https://theprint.in/opinion/i-oppose-sabarimala-verdict-because-this-is-not-about-womens-discrimination-at-all/136444/> accessed 20 June 2022

The court in a 4:1 verdict ruled that the tradition was discriminatory in nature and that women of all ages should be allowed to enter the temple without grasping the various other intricacies in the said custom. It was widely criticised that the rushed manner in which the judgment was passed in the last few days of the then Chief Justice Dipak Mishra's term was to add a the last feather in the cap for the outgoing Chief Justice. Besides, the clear one-sided dimension the court took in the judgment also seemed to indicate that the case was an attempt by the highest forum of the Indian judiciary to level out Hindu-Muslim sentiment post the reformation of the Triple Talaq custom in Islam.[15]

This paper found the following while studying the case:

Firstly, a PIL was filed by a group that clearly was not the affected party, for they were not Lord Ayyappa (the presiding deity of Sabarimala) devotees but a group of lawyers with alleged Leftist links.[16]Thus, it can be deduced that from the beginning this didn't seem like a genuine grievance or an issue that an Ayappa devotee faced but rather was an attempt to 'break the barrier' by a few Left-leaning advocates who probably had nothing to do with the temple whatsoever.

Secondly, while examining this case, the Supreme Court had failed to recognize the difference between a unique custom and clear sexist discrimination. In arriving at the decision to permit women into the Sabarimala temple, the majority judgment declared that "...the subversion and repression of women under the garb of biological or physiological factors cannot be given the seal of legitimacy".[17]The supposed 'barrier' had a specific cultural reason and was not just blind discrimination against women. The God of Sabarimala, Ayyapa, in this temple is believed to be a Brahmachari or a celibate and is, therefore, by custom supposed to keep a distance from women and not all but those who have functional reproductive systems, i.e., those below the age of 50 and hence the restriction of women below the age of 50(in fact girls below 13 can enter the temple as their periods haven't yet begun). Thus, the restriction is not

[15] *Ibid*
[16] *Ibid*
[17] Nitin Pai, 'Sabarimala Temple Ruling Distances Courts from Indians Steeped in Tradition' (*The Print*, 2 October 2018) <https://theprint.in/opinion/sabarimala-temple-ruling-distances-courts-from-indians-steeped-in-tradition/127954/> accessed 21 June 2022

sexist but based on the nature of the deity and even His devotees (who undertake a 41-day penance before going to the temple during which they live their lives as celibates and abstain from meat and alcohol). Thus, women of a certain age due to specific reasons that are owing to their biological clock and system are not allowed in the temple. This is one of the unique customs of the temple which also includes the practice of the temple opening only in the first five days of every Malayalam month and for another special 41-day period. Thus, a specific custom that has a proper reason arising out of the nature of its deity was meddled with because it was alleged to be sexist but without grasping the full traditional context.

Thirdly, the court failed to assess many other factors and consequences of its verdict. The said custom is not a blanket ban on women as mentioned earlier but on a specific age group based on the biological clock. The ban is specific only to the Sabarimala temple as it is believed to be the place where Lord Ayyapa resides and thus this ban doesn't extend to all other Ayyapa temples. There are many Indian temples that ban men or bachelors or various other categories based on certain beliefs but all of those seemed to escape the court's watchful eyes, for they didn't involve women or were not temples as big as Sabarimala and thus didn't fit the agenda of social reform and feminist principles the court wanted to protect. If the Supreme Court really wants to apply this across the board, regardless of religion, then it becomes a global 'judiciopapist', swinging its sword of reason over the heads of all religious faiths around the world.[18] If it limits the application of these principles to those who it determines as Hindus (even if they self-identify differently), then it paradoxically violates the very principle — equality before the law — that it intends to uphold.[19]

Finally, the court failed to anticipate the dangers of infuriating a whole community and the people of Kerala in general, with the consequences of its action. Setting aside an age-old custom, not only hurt the sentiment of many Hindus but also set the ball rolling for a series of violent protests in the state of Kerala. Ironically, the dissenting judge in the verdict was a woman, Justice Indu Malhotra, who foresaw the dangerous consequences of blindly intruding into an ancient faith and custom of religion without considering all social and religious

[18] *Ibid*
[19] *Ibid*

intricacies. According to Justice Malhotra, entertaining PILs challenging religious practices could cause harm to the secular fabric of the country.[20]

The verdict was naturally controversial and people across the state protested. When some women attempted to enter the temple, the protest only grew bigger and more violent with hundreds of people getting arrested by the state government. Thus, the Sabarimala judgment and the resultant chaos and uproar it created in the state of Kerala (seriously threatening the peace and secular fabric of the state) was a clear example of the consequences of the judiciary attempting to adjudicate on religious affairs and disputes. Hence, from the above example, it is clear that the judiciary has a dangerous tendency to see religious disputes in a one-dimensional manner that can often lead to chaos and conflict and hurt the religious sentiment of groups while making the whole affair a national hot topic. This adds fuel to fire and instigates anti-social elements and political groups to exploit the situation. Given the consequences of such religious dispute resolutions, the judiciary should stay out of religious affairs unless and until it is a question of an inhumane practice like Sati or honour killing and why it should do so is detailed in the following.

FIRSTLY, WHAT DOES THE CONSTITUTION SAY IN ALL OF THIS?

The Indian constitution upholds the spirit of secularism, which is clearly mentioned in the preamble. Secularism basically means the state which here includes the executive, judiciary and legislature will keep a safe distance from all religions and will not meddle in the affairs of any religion. This is an important reason why the judiciary should not go about trying to resolve religious practices, for it seriously threatens the secularist principle. Article 25 of the Indian Constitution states that all persons in India, subject to public order, morality, health, and other provisions are equally entitled to freedom of conscience, and have the right to freely profess, practice, and propagate religion.[21]

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[20] Areeba Falak, 'Sabarimala Verdict: 5 Key Reasons Why Justice Indu Malhotra Differed with Majority View' (*The Times of India*, 28 September 2018) <https://timesofindia.indiatimes.com/india/sabarimala-verdict-5-key-reasons-why-justice-indu-malhotra-differed-with-majority-view/articleshow/65997997.cms> accessed 21 June 2022

[21] Constitution of India, 1950, art.25

Also, Article 26 of the Indian Constitution confers a right on every religious denomination or any section of such religious denomination (subject to public order, morality, health, and other provisions) in establishing and maintaining institutions for religious and charitable purposes, managing its affair with regard to religion, owning and acquiring property (movable and immovable) and administering the property in accordance with the law.[22]

Thus, the constitution has clearly laid down the scope of religious freedom and how devotees and religious groups have the right to maintain their religious practice without outside interference. These being fundamental rights need to be taken seriously and strictly followed. Courts, over the years, have ruled that the right to religious freedom would protect only "essential religious practices" and not all religious practices and have adopted varied approaches to the test over the years.[23]Yet, one can understand that most religious practices like the Sabarimala custom have been practiced over many decades and even centuries and have clear links with the identity and nature of the deities or religious institutions and thus are essential religious practices in nature. As the dissenting judge in the Sabarimala case observed, "The religious practice of restricting the entry of women between the ages of 10 to 50 years, is in pursuance of an 'essential religious practice' followed by the Respondents.[24]The said restriction has been consistent, followed at the Sabarimala Temple for years."[25] Many states such as Orissa, Madhya Pradesh, and Arunachal Pradesh have also passed the freedom of religion act which has essentially safeguarded religious customs from external interference recognizing values of secularism.

In 1954 the Shirur Mutt case[26] defined the constitutional scope of religious freedoms.[27]

In this case, it was stated that if the tenets of any religious sect of the Hindus prescribe that offering of food should be given to the idol at particular hours of the day, and that periodical ceremony should be performed in a certain way at certain periods of the year or that there

[22] Constitution of India, 1950, art.26
[23] Apoorva Mandhani, 'What Is an 'Essential Religious Practice', and Why Hijab Didn't Make the Cut for Karnataka HC' (*The Print,* 21 March 2022) <https://theprint.in/theprint-essential/what-is-an-essential-religious-practice-and-why-hijab-didnt-make-the-cut-for-karnataka-hc/880827/> accessed 21 June 2022
[24] Indian Young Lawyers Association (n 13)
[25] *Ibid*
[26] *The Commissioner, Hindu v Sri Lakshmindra Thirtha Swamiar* (1954), AIR 282
[27] Apoorva Mandhani (n 23)

should be a daily recital of sacred texts or ablations to the sacred fire, all these would be regarded as essential parts of religion.[28]

So, the case clearly defined that customs and practices followed as per tenets are essential parts of a religion and thus in nature should not be tampered with by outside interference especially the state in the current scenario. Certain obviously wrong practices aren't essential and need correction as was stated by the Supreme Court in a 1957 ruling that ruled bigamy to not be an integral part of the Hindu religion.[29] Besides, Article 13 of the Indian Constitution does give the state the right to make laws that remove inequality and discrimination.[30] However, as mentioned in the Constitution and in court rulings, religious practices clearly defined and practiced over time need to be deemed essential and have to be clearly understood from all angles before passing verdicts of nature like the Sabarimala verdict that do away with religious practices without grasping the entire scenario and background.

Also, as per Justice Indu Malhotra, the ambit of the abolition of untouchability[31], as mandated under Article 17, cannot be taken beyond the ending of discrimination against Scheduled Castes and Scheduled Tribes.[32]So courts should not justify their judicial overreach, especially in cases such as the Sabarimala one based on Article 17 if it doesn't involve SCs or STs. Legally it is clear that the constitution has granted religious groups fundamental rights to practice and manage their religion, and hence the judiciary should try to stay away as much as possible. Besides the legal requirement, there are other reasons why the judiciary should keep a distance from religious affairs.

Firstly, the criticism that the judiciary is just not qualified enough to adjudicate on religious disputes and practices, is harsh but has valid reasons. The judiciary is certainly highly qualified in the knowledge of laws and legal principles but it often misses the big picture when it fails to count the deep social, cultural, and historical elements attached to such disputes. A

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[28] The Commissioner, Hindu (n 26)
[29] *Ram Prasad Seth v State of U.P. and Ors.,* (1957) IILLJ 172 All
[30] Constitution of India, 1950, art.13
[31] Constitution of India, 1950, art.17
[32] Rajeev Dhavan, 'When the Judiciary Rewrites a Faith' (*The Hindu,* 6 February 2019) <https://www.thehindu.com/opinion/op-ed/when-the-judiciary-rewrites-a-faith/article25221633.ece> accessed 21 June 2022

lack of expertise in religious affairs and cultural history can act as a barrier to adjudicating the case. This was the case with the Sabarimala verdict as discussed. Many times the judiciary has failed to grasp the importance of the faith or custom to a religious group and ended up squeezing its own one-dimensional rationale into a religion by force. In the *Babri Reference Case* (2018)[33], the minority judge, S. Abdul Nazeer, stated it was his view that if a community bona fide believes in, and establishes the existence of practice as essential, it should be accepted.[34]Any other interpretation by the judiciary would amount to rewriting the faith.[35] The other constitutional limitations to restrict religious freedom would still be applicable and not obviated.[36]Thus, if not careful, the judiciary could end up rewriting the basic tenets of a faith or religion in its foray into reforming religions and end up seriously damaging the constitutional principle of secularism.

Secondly, if the judiciary starts to adjudicate religious practices, it will need to do so for all religions and its path to social reform can be dangerous. For example, the Sabarimala judgment opened a Pandora's Box and allowed essentially anyone to file a petition to challenge a religious practice regardless of whether it concerns them or not. Imagine Christian or Hindu petitioners approaching the Supreme Court on bigamy, Hijab, and other facets of Islam that Hindus or Christians do not like.[37]Imagine Hindus approaching courts to scrutinise the constitutionality of an aspect of Christianity that they do not like.[38]In such a scenario, the chances of riots and religious violence are high besides the clear risk posed to the secular fabric of the country.

Lastly, why courts shouldn't adjudicate on religious affairs is the consequences of its judgment that could unleash violence and chaos on a massive scale resulting in violation of law and order. Cases such as Sabarimala that were picked up by the judiciary stirred up nationwide sentiment and extended well beyond the concerned parties thus bringing many anti-social elements into the picture. When the verdict was passed not only were Ayyapa devotes deeply

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[33] *M Siddiq (D) ThrLrs v Mahant Suresh Das & Ors.,* (2019) Civil Appeal Nos. 10866-10867/2010
[34] Rajeev Dhavan (n 32)
[35] *Ibid*
[36] *Ibid*
[37] Rajeev Chandrasekhar (n 14)
[38] *Ibid*

hurt, they were prodded on to violently riot by external groups that used this as a political opportunity. Therefore, courts should step in only when a fundamental right is seen to be curtailed as it did through centuries of caste discrimination.[39]Judicial overreach could often be quite counter-productive.

CONCLUSION: HOW TO AVOID SAILING IN TROUBLED WATERS

Now that this paper has clearly made a case for why it is absolutely essential the judiciary stay clear of religious affairs and practices, the Varanasi court should not adjudicate on the Gyanvapi case and avoid what could prove to be a long road of religious disharmony, potential media trial, and communal backlash. The case of Gyanvapi as many Hindu radical groups have already claimed is one in a long list of their claims, such as Mathura and Mangalore. Besides, the case with its ongoing idol-searching, mosque survey, etc., has all the potential to become another Ayodhya, i.e., a local religious land dispute that was blown out of proportion making it a national issue and was used by religious radical organizations and political parties as the engine of growth. As discussed earlier, due to various constitutional and other reasons, the local court ought not to be handling the above dispute.

So, how to resolve this issue?

The most appropriate solution is through a local community resolution that strictly involves only the parties directly involved in the case who have clear knowledge and understanding of the issue from all angles and perspectives. Thus, the priests of the Kashi Vishwanath temple and the members of the Gyanvapi Mosque Maintenance committee need to come together and attempt to resolve the issue amicably without interference from the state or anti-social elements to ensure peace and tranquillity. This will involve only the stakeholders of the case engaging in a peaceful environment and arriving at a possible compromise solution that can benefit both parties without turning the case into a nationwide communal riot. This resolution may take the time and effort of both parties but will ensure that secularism is respected and peace is maintained which is of paramount importance.

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[39] Girish Shahane, 'Sabarimala: Courts Didn't Act When They Should Have – and Overstepped Their Boundaries When They Did' (*Scroll*, 24 October 2018) <https://scroll.in/article/899385/sabarimala-courts-didnt-act-when-they-should-have-and-overstepped-their-boundaries-when-they-did> accessed 22 June 2022

This resolution is basically an arbitration program that can be conducted at a local level with the affected parties and could be a balanced solution that satisfies them. The arbitration program could be presided over by the local people who visit the mosque and temple and by the panchayat of that region to ensure that all grievances of the locals are heard and resolved. The resolution should be reached in a democratic manner for each aspect of the dispute thus leaving no room for further conflict. This could be the best way to resolve religious disputes in the short run, but in the long run, it can be hoped that religious reform movements and internal community changes pave the way for dispute resolutions. All in all, this paper makes a strong case against courts hearing religious disputes and attempting to deliver judgments, such as the Gyanvapi case. It is high time India learned from her history rather than trying to correct it.