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**The Difficulties of Religious Pluralism in India:
Analysing the Place of Worship as a Legal Category in
the Ayodhya and Bababudangiri Disputes**

Geetanjali Srikantan

Centre for the Study of Culture and Society, Bangalore, India
gasrikantan@gmail.com

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Asia Research Institute

National University of Singapore

469A Tower Block #10-01,

Bukit Timah Road,

Singapore 259770

Tel: (65) 6516 3810

Fax: (65) 6779 1428

Website: www.ari.nus.edu.sg

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The Difficulties of Religious Pluralism in India: Analysing the Place of Worship as a Legal Category in the Ayodhya and Bababudangiri Disputes¹

INTRODUCTION: THE PROBLEM OF REGULATING RELIGION IN INDIA AND ITS BACKGROUND

In India today, there is a general consensus amongst parties of different political persuasions that the freedom of religion and the right to the preservation and practice of different religions is essential in a society as diverse as India. There is also widespread consensus internationally that a neutral secular state² is required to safeguard these rights.³ However unlike the Western state which pursues a policy of non-interference, the Indian state seeks to actively interfere in religion leading scholars to remark on its distinctiveness (Bhargava 2007) or inconsistency (Madan1998).⁴

The legal enforcement of religious rights flows from the Indian Constitution itself which guarantees the freedom of conscience and the right to propagate and practise religion,⁵ along with other significant rights such as the provision for religious denominations to establish and maintain institutions for religious and charitable purposes⁶ (such as educational purposes). Despite legal recognition of these rights, and a constitutional framework that enshrines religious pluralism, there has been considerable dissatisfaction with how religious pluralism is being legally enforced. Legal debates on the regulation of religion have revolved around the lack of coherence in judicial decisions determining the demarcation between the religious and the secular. This is despite the evolution of criteria for determining such demarcation in the form of the essential practices test. In 1954, this test was formulated in *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*.⁷ This test laid down that the essential part of a religion is to be ascertained with reference to the doctrines of that religion itself. These include offerings of food to the idol, ceremonies to be performed in a certain way at certain periods of the year, recital of sacred texts or ablutions to the sacred fire. It further clarified that all these would be regarded as parts of religion and that:

¹ Geetanjali Srikantan Ph.D Scholar, Centre for the Study of Culture and Society, Bangalore, India. I would like to thank Prof Micheal Feener and the anonymous reviewer for their comments on this paper.

² The understanding of neutrality and secularism however differs between the different Indian political parties. The Bharatiya Janata Party (BJP) known to be Hindu nationalist contends that secularism has been distorted, the result being “pseudo secularism”. A key figure in the BJP L.K. Advani comments that true secularism needs to adhere to its roots in religion which is the Hindu view that truth is one and that there are different roads to God <http://www.lkadvani.in/eng/content/view/381/349/>.

³ Such consensus has been built up due to the pressure of international conventions such as the Universal Declaration of Human Rights 1948, and the International Covenant on Civil and Political Rights, 1966 and more particularly the UN Convention on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981

⁴ Madan suggests that if the Indian secular state’s policy of interference in religion is described through the principles of sarva dharma sambhava (goodwill to all religions) or dharma nirpekshta (defensive religious neutrality) one merely renders its inadequate to govern religion.

⁵ These rights are granted under Article 25 of the Constitution of India. Other allied rights in relation to Article 25 are Article 14 which provides for equality before the law and Article 15 which guarantees non-discrimination on various grounds including religion.

⁶ These are granted under Article 26 of the Constitution of India.

⁷ AIR1954 SC 282

the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion

This reasoning was followed in certain other cases⁸ such as *Venkataramana Devaru v, State of Mysore*⁹ decided in 1958 but not in others such as *Shri Jagannath Temple Puri Management Committee Represented through Its Administrator and Another V. Chintamani Khuntia And Others, Respondents. State Of Orissa, Appellant;v Chintamani Khuntia And Others*¹⁰ (decided in 1997) wherein it was held that the duties performed by sevaks (temple servants) in the temple is secular in nature and the payment made to them is remuneration. The inconsistency and incoherence in the judicial application of the essential practices test has been elucidated by Rajeev Dhawan (1987). He shows how legal decision-making renders every aspect of human life as “religious” including the carrying of daggers, photography of women, parental custody and requirements of dress and diet. Dhawan expresses dissatisfaction with the imprecise manner in which the essential practices test has been used by the courts and comments that the unintelligibility of religion as a legal category is due to defective interpretation by the courts and their failure to lay down adequate guidelines for the proper implementation of such a test.

Dhawan’s assessment of the legal regulation of religion appears to be true if one understands law as an independent self contained discourse. However various scholars (Cotterrell 2006; Berman 1983) argue that law cannot be understood merely as rules but needs to be understood as being part of social practices themselves. A black letter approach merely sees law as interpretation or definition and thus advocates better definitions to achieve the purpose of regulation. However the purpose of a definition is to locate a coherent referent and not generate innumerable descriptions like the legal definition of religion has done. Therefore one must understand the theoretical framework that generates such descriptions .i.e. religion as a concept and the discourse that it generates in the form of the distinction between the religious and the secular. When one takes this into account it appears that Dhawan’s position on law’s inherent capability to demarcate the religious and the secular does not take into account the extensive critique of secularism made by scholars such as Ashish Nandy and T.N. Madan who see secularism in India as a failure.¹¹ Nandy (1998) argues that the concept of secularism helps identify and set up the modernised Indian as a principle of rationality in an otherwise irrational society and requires the internalisation of such values by Indians which are essential for the success of the modern democratic state. This assumes that religion is easily identifiable and cannot be confused with caste, sect, family traditions, rituals and culture.

This leads us to the question as to how” religion” as a phenomenon has been identified in India. Such an approach requires us to examine scholarship in religious studies that has challenged the assumption of religion being a cultural universal (Asad 1993) and has argued that the concept of religion is analytically redundant due to its Christian theological basis (Fitzgerald 2000). The strongest challenge to religion being a cultural universal comes from S.N. Balagangadhara (1994) who argues that religion does not exist in India based on a theory of religion which demonstrates

⁸ *Tilkayat Shri Govindlalji Maharaj v The State Of Rajasthan And Others* AIR 1963 SC 1638

⁹ AIR 1958 SC 255

¹⁰ 8SCC 1997 422

¹¹ However Dhawan’s position does find support from others such as Akeel Bilgrami (2007) who argues that law must subsume the claims made by multiculturalism and Rajeev Bhargava (2007) who believes that Indian constitutionalism is evidence of the distinctive nature of Indian secularism, thus assuming that Indian secularism has been a success and law has played a role in it.

what religion is and what its properties are¹². If this is the case, how does one understand “religion” outside a Western and Semitic context and more importantly, what are the implications for the legal regulation of religion?

The pursuit of such an endeavour necessarily involves exploration of the role of colonialism in shaping our understanding of both law and religion. Scholars such as Bernard Cohn (1997) have shown how Indian culture has been transformed by colonialism as evident in the social reform movements in the nineteenth century who looked upon their own culture as an object to be reformed in order to be consonant with European ideals of rationality. Such objectification could be traced to the census operations carried out by British officials themselves, who conducted such operations on the basis of widely held beliefs about Indians i.e. one such belief being that caste and religion are sociological keys in understanding the Indian people. The role of Western Orientalists in the creation of religion as a category has been highlighted by Richard King (1999) who shows how Indian traditions became increasingly “textualised” according to “colonial and Judaeo-Christian presuppositions (164)”¹³.

The Indian legal system which is the direct successor to the colonial legal system utilises these colonial concepts and categories. An examination of colonial legal history is imperative in order to understand why the legal regulation of religion has been so unsuccessful. In order to develop clarity on the conceptual issues behind the failure of the legal regulation of religion particularly its inability to demarcate between the religious and the secular, I investigate a specific category of religion within law which is the “place of worship”. In doing so I seek to develop a “conceptual history”¹⁴ that does not emphasise causality or interrelationships between events but instead tries to uncover the conditions by which individual cases arise. Such an approach dispenses with traditional legal reasoning and seeks to understand the structures that allow for legal reasoning to be deployed.

I trace the development of “the place of worship” and show that it has come into existence from the encounter with colonial legal culture. I then examine it in contemporary legal discourse in the context of two disputes, the Ayodhya dispute and the Bababudangiri dispute. In a comparative analysis of the two disputes I show the explanatory value of the conceptual framework that generates the legal debates in both the disputes. This conceptual framework which has colonial origins creates more conflict and also secularises itself in the form of the modern property law framework which is needed to determine religious rights. I argue that it is a mistake to resolve these disputes within the framework of rights to religious freedom and the principle of equal treatment, the application of such a framework prolonging and increasing conflict. I conclude by suggesting that such disputes need to be resolved outside such a framework and this must be done by understanding how traditions develop and survive.

¹² Balagangadhara argues that it is Christianity that can be identified as religion, and the properties of Christianity are the properties of religion. He also argues that only the Semitic religions can be an instance of religion although his book mainly deals with Christianity. In doing so he makes a distinction between tradition and religion seeking to see Hinduism as tradition and not “religion”.

¹³ Further light is thrown upon on this question by John Zavos (1999) who shows how the problem of quantifying and defining Hinduism was taken up by figures in the social reform movements such as Raja Rammohan Roy and Dayanand Saraswathi. The Vedas were projected as the Book of Hinduism and efforts were made to show that idol worship was not a necessary tenet of Hinduism.

¹⁴ In doing so I borrow from Reinhart Koselleck (2002) who is credited with developing the term and Michel Foucault (1972) whose approach to history is that of an archeology of knowledge i.e. an understanding of the rules that generate discourse.

THE LEGAL REGULATION OF THE PLACE OF WORSHIP AND ITS HISTORICAL TRAJECTORY

Colonial Legal History: A Preliminary Reading

A glance at the definition of the “place of worship” in the Places of Worship Act, 1991¹⁵ does not indicate any kind of relationship between colonial legal culture and current disputes around places of worship. Section 2 (c) of this Act states that the “place of worship” means a temple, mosque, gurudwara, church, monastery or any other place of public religious worship of any religious denomination or any section thereof, by whatever name called”.

It would seem from the Places of Worship enactment and the legal discourse that has been generated around the place of worship that such an entity is a contemporary one. However in the well known case of *Ismail Farooqui v Union of India*¹⁶ (popularly known as the Ayodhya case) it was acknowledged that the basis for the right to worship and its resolution in the present case had its foundations in British India, wherein the right to worship of Muslims in a mosque and Hindus in a temple had always been recognised as a civil right and that Indian courts in British India had maintained the balance between the different communities or sects in respect of their right of worship.

What was the basis for the recognition of the right of worship of two different communities? This lay in Warren Hasting’s Administration of Justice Regulation of April 11 1780. This stated “in all suits regarding inheritance, succession, marriage, castes and other religious usages or institutions, the laws of the Koran with respect to Mohamedans and those of the Shaster with respect to the Gentoos shall invariably be adhered to”¹⁷. In Regulation XIX of 1810 of the Bengal Code efforts were made to regulate religious institutions on the grounds that that the benefits of such property is used in many instances contrary to the intentions of the donors and that it was an important duty of every government to provide that all such endowments be applied to the real interest and will of the grantor (Khan 2005, 14).

Throughout the nineteenth century various other legislations on the regulation of these institutions were enacted. The Religious Endowment Act, of 1863 divested the Government of all direct matters concerning the management of these properties allowing for the formation of committees by the institutions themselves. This policy was unsuccessful and was abrogated leading to a series of enactments such as the Charitable Endowments Act, 1890, the Official Trustees Act, 1913 and the Charitable and Religious Trusts Act, 1920. This subsumed the regulation of religious institutions within the larger goal of regulating charitable institutions, the main aim being making these institutions publicly accountable.¹⁸

¹⁵ This enactment was brought into force to negate any further claims on places of worship by different communities. It provides that no alteration shall be made to any place of worship after August 15, 1947.

¹⁶ AIR 1995 SC 605

¹⁷ Quoted in Derrett (1961)

¹⁸ An illustration of this is the Charitable and Religious Trusts Act which allowed any interested person to apply to the Court of the District judge to seek information from the trustee regarding the value, condition, management, nature and object of the subject matter of the trust.

Despite a plethora of secular legislation that was applicable to religious institutions, the early twentieth century saw the modern categories of the wakf¹⁹ and the Hindu endowments come into being. The Mussalman Wakf Validating Act of 1913 provided for the recognition of the wakf as an institution²⁰. This was followed by the Mussalman Wakf Act, 1923 which provided for the public accountability of such wakfs by requiring the Mutavalli (manager) of every wakf (except a family wakf) to furnish to the District judge details of the property's income, revenue and expenditure.²¹ Various other local enactments followed such as the Bihar and Orissa Mussalman Wakf Act, 1926, the Bengal Wakf Act 1934, the Bombay Mussalman Wakf Act 1935, and the United Provinces Muslim Wakf Act, 1936.

A similar story followed in the case of Hindu endowments. Religious institutions considered to be Hindu were initially governed under the Religious Endowments Act of 1863 and the other enactments that followed it. Around the same time as the various wakf enactments, the Hindu endowments enactments also came into force. One of the first enactments was the Madras Hindu Religious Endowments Act of 1925, later followed by the Mysore Religious and Charitable Regulation of 1927.

The acceptance of this framework of the exercise of the right to worship for separate religious communities thus has its origins in the colonial legal enterprise. The separate frameworks that govern places of religious worship for Hindus and Muslims in the form of wakfs and Hindu endowments today are inherited from the colonial legal system and the conceptual framework that structured it. The wakf administration which is the Wakf Board governs all places of worship related to Muslims such as mosques, masjids and other places related to the Muslim community (which includes dargahs as well). There is a central enactment that is known as the Wakf Act, 1995 which governs all matters relating to wakfs. A wakf which is defined in Section 2(r) of the Act is the permanent dedication of a property recognised by the Muslim law as pious, religious or charitable. However each State has its own Wakf Board with separate rules framed for its functioning. A framework of religious and charitable endowments enactments that are separate for each state govern Hindu places of worship (that are similarly defined as being dedicated for purposes that are religious or charitable).

¹⁹ This is not to say that the wakf as an institution only came into existence during the colonial period. As an institution it has had a long existence in the Islamic world and came into India with the advent of Islamic rule. According to Khan (2005) the wakf made its appearance in India with the establishment of the Delhi Sultanate. Some illustrations of wakfs created during this period were the Sal'ar Masud's dargah on Bahraich, the graves of Miran Mulhin in Badaun and of Khwaja Maj al-Din and others in Bilgram, the Shamsi mosque built during the period of Iltumish..However the legal structures that underlied this form of regulation was different from the modern legal framework in the form of trusts, wakfs and Hindu endowments that was created by the British.

²⁰ The legal structure of the wakf resembled the trust which often led to British courts confusing the two. Under British law a trust could be created for public charity but not for the benefit of a family or individuals. This was however not the same in Islamic law as a wakf could be created for the benefit of the family which was known as wakf-al-aulad. It was held in in *Abul Fata Muhammad Ishak v Russamoy Dhur Chowdhry* 1894 22 I.A. 76 that if the primary object of charity was the aggrandisement of the family, then the gift to charity was illusory whether from its small amount or from its uncertainty and remoteness the wakf for the benefit for the family was invalid and had no effect. This was the cause of a major controversy in the Muslim community as Muslims could no longer make settlements in favour of their families, children and descendents. This led to much agitation and the enactment of the Mussalman Waqf Validating Act, 1913.

²¹ A peculiar feature of both the wakf enactments and the Hindu endowment enactments was the emphasis on public accountability with provisions for disclosure of income.

It is evident that the place of worship represented in the present day legal categories of the wakf and the Hindu endowment did not exist till the early decades of the twentieth century. The question then arises as to how these institutions or places were regarded prior to the advent of colonialism? What did colonialism do to these institutions? The legal history of the regulation of these institutions in Mysore State reveals unexpected findings.

Colonial Legal History: An Analytical Reading

A glance at government revenue records in the Muzrai Department of the Mysore State in the years 1881-1886²² shows categorisation into chattrams, mutts, langarkhanas, Hindu and Jain temples, masjids and dargahs. A perusal of the Mysore Muzrai Manual²³ in the nineteenth century reveals a similar categorisation of religious places into categories including but not limited to chattrams/musafir khanas, mathas, temples, and mohammadan institutions (once again divided into masjids, ashurkhanas and dargahs. Chattrams (which were subsequently abolished) and Musafir khanas were feeding houses that provided free food to travelers. Despite being described differently (they were seen as being set up by Hindus and Muhammadans respectively), they were subject to the same set of regulations. Temples and mathas had a different set of regulations based on the perceptions of the British administrators (the wealth of temples was subject to a high degree of regulation whereas there was an entirely different concern with mathas-that of succession)

Mohammedan institutions were classified into four kinds 1) masjid or daily place of worship 2) Dargahs which are tombs or places where the remains of the members of a royal family, saints and religious men are buried 3) Ashurkhana or the place where mourning services are held during Muharram 4) Takhia or the residence of fakirs and saints which is generally placed in a secluded corner of the kabrastan. There is also a description of the kinds of services that can be followed and elaborate narrations of what were the duties of the inhabitants of the spaces in the context of these services. The regulation of religious and caste processions,²⁴ and the care of ancient monuments²⁵ also fell under the ambit of the Muzrai Department.

Mohammedan institutions in this framework are characterized by their function and activity, and not their purpose as in the present framework of wakf law that characterizes any institution as being a wakf on the grounds of it having been dedicated by a Muslim for a religious or charitable purpose.²⁶ Services that are to be carried out are described as religious (recitation of namaz), subsidiary (service of food and water), official (management), burial, educational establishment and communal (the kazi performing dispute resolution services) with descriptions of what these activities were. One can also see that certain forms of activity could be characterized as religious. This is however different from modern wakf law wherein the institution of the wakf itself has a religious purpose and all the activities need to be justified as religious or charitable.

²² Report of the Administration of Mysore 1881-1886

²³ The set of orders and regulations deemed important by the Muzrai Department (the department of religious regulation in the princely state of Mysore)

²⁴ Section X of the Mysore Muzrai Manual

²⁵ Section VI of the Mysore Muzrai Manual

²⁶ Section 2 (r) of the Wakf Act, 1995

The Mysore Muzrai regulation of 1913, was however the first statutory attempt to regulate these spaces. This regulation for the first time defined²⁷ the kind of religious spaces that would be subject to such regulation as:

every temple, mosque, or other place of worship or religious service, any chatra or feeding house or rest for travellers without charge, or other institutions of a religious or charitable nature which is now actually in the sole charge of the Government or for the support of which any annual grant in perpetuity is made from the public revenues, or an inam has been granted and is recognized and registered at the inam settlement as a “devadaya or dharmadaya grant”,²⁸

This also included every institution of a religious or charitable nature which was taken under the sole management of the government. This regulation was eventually succeeded by the Mysore Religious and Charitable Regulation of 1927.

The similarity with current legislation is far too obvious, the statutory criteria for wakfs and endowments being that they should be religious or charitable. I would like to argue that the conceptual framework imposed through these legal structures determines much of the discourse on the conflict around many places of worship today as illustrated by the Ayodhya dispute and the Bababudangiri dispute.

A COMPARATIVE STUDY OF THE WAKF AND THE HINDU ENDOWMENT THROUGH THE AYODHYA DISPUTE

Among the various instances of conflict between communities in India, the Ayodhya dispute looms far above the rest having lasted for more than a century. This controversy mainly revolves on whether the birth place of the Hindu God Ram can be located on the site of a mosque built by the Mughal Emperor Babur four centuries ago. The allegation by Hindu devotees is that Babur had allegedly demolished a temple dedicated to Ram on the spot of Ram’s birthplace and built a mosque. The mosque was demolished by frenzied Hindu political groups on December 6, 1992. Since then Hindu groups have been demanding the rebuilding of a temple on the site of the demolished mosque.

A point of major significance in this dispute is that it originated in colonial times. In 1855, official British records state that there was a “Hindu –Muslim conflict”²⁹. According to one version, a Mahant³⁰ who was expelled by his brethren converted to Islam and in revenge spread a rumor that the mosque had been destroyed. This resulted in conflict near the mosque and a number of Muslims died. A compromise was worked out to allow Hindus to offer prayers at the chabutra (a raised platform) near the mosque.

²⁷ Section 1 (2) (i) of the Mysore Muzrai Regulation, 1913

²⁸ I would like to clarify that devadaya means religious and dharmadaya means charitable

²⁹ This was done with the intention of highlighting the collapse of the law and order machinery in Avadh prior to its annexation. (Srivastava 1991)

³⁰ This refers to an Hindu ascetic

In 1885 the Mahant filed a suit to construct a temple at the chabutra. The judicially recorded facts were that the 1855 riot had occurred at a nearby temple called Hanumangarhi following assertions by Muslims that it had previously been a mosque. The riot began at Hanuman Garhi, the Muslims being repelled by the Hindus. A number of Muslims died and were buried around the disputed area. A railing was made bifurcating the land in such a manner that Muslims used the inner courtyard near the Masjid and the Hindus used the outer courtyard. It was pleaded by the Mahant that a temple be constructed over the chabutra as the various changes in climate (rain, sun and extreme cold) caused hardship to devotees. This was rejected by the court on the ground that:

.....awarding permission to construct the temple at this juncture is to **lay the foundation of riot and murder**, hence between Hindus and Muslims, **which are two different religions**, in view of justice the reliefs claimed should not be granted³¹.

The Mahant appealed to the District court who remarked:

It is most unfortunate that a masjid should have been built on land specially held sacred by the Hindus..... it is too late now to remedy the grievance. All that can be done is to maintain the parties in status quo³².

The appeal was dismissed and the Mahant then appealed to the highest court in the province. The Judicial Commissioner also dismissed the appeal on the ground that the plaintiff was not in any sense the proprietor of the land in question. The dispute died down till 1934, when there were riots triggered by cow slaughter and the Babri Masjid was damaged (Noorani 2004). An inquiry conducted in 1936 by the Commissioner of Waqfs where it was held that the Babri masjid was built by Babur who was a Sunni Muslim. This was adduced in the 1945 litigation between the Shia central Board of Waqfs and the Sunni central Board of Waqfs in the court of the civil judge in Faizabad³³.

The key moment in the dispute however occurred on the night of 22nd/23rd December when idols were placed in the central dome of the mosque by Ram devotees. On 29th December the property was attached and placed under receivership. In 1986, the locks were opened to facilitate worship by the general public and the dispute no longer became local but national. This finally led to the demolition of the mosque on December 6, 1992.

The litigation involving the Ayodhya dispute is long and complex. However my objective in understanding this dispute is not by analysing the inadequacies in the legal argumentation and the law itself. Such analysis is counter-productive as it becomes internal to the law itself and does not allow us to understand the theoretical framework that generates legal discourse. I suggest that this dispute mainly revolves around two legal categories- the wakf and the Hindu endowment. The question before the courts is whether a temple exists or a mosque exists in law. To illustrate the unfolding of these legal categories, I propose to examine the latest development in the case in the form of the Allahabad High Court judgment delivered on September 30, 2010.³⁴

³¹ Sub Judge Hari Kishan, Faizabad in Judgement dated December 24, 1885 quoted in Noorani (2004)

³² District Judge Chamier in Judgement dated 18 March 1886 quoted in Noorani (2004).

³³ Report of Faizabad Wakf Commissioner and Judgment of S.A. Ahsan, Civil Judge, Faizabad dated March 30, 1946 quoted in Noorani (2004)

³⁴ <http://rjbm.nic.in/>. This majority judgement was delivered by three judges who wrote their independent judgements. This judgement divided the land between three parties and is presently being contested.

The colonial origins of the dispute which has been described above become even more significant in the judgment as colonial descriptions formed the basis for the recognition of the legal categories³⁵. Various Gazetteers from the colonial period and travel accounts were relied upon to establish that a mosque had been built by Babur (adduced by the Muslim parties) and that the temple of the Hindu god Ram was demolished by him.³⁶

However the story of the demolition of the temple assumed historical foundations with Cunningham's Report of the Archeological Survey of India (A.S.I.) who mentions that there were several very holy temples in Ayodhya, some of them built on the sites of older temples who have been destroyed by the Muslims. He did not however mention the Babri Masjid. A historical sketch of Faizabad by Carnegie turned these historical facts into more specific historical truths. He mentions that Ayodhya is to the Hindus in the same way Mecca is for the Muslims and Jerusalem is for the Jews. He also mentions a particular temple as the Janmasthan which marks the place where Rama was born. He suggests that there must have been a temple at the Janmasthan because its columns had been used in the construction of the Babri Masjid. He adds that the pillars of the Babri Masjid were of black stone and resembled Buddhist pillars.

These colonial descriptions are important because they have been relied upon by the Judges to produce legal truth and in turn have laid the parameters for historical truth. It is on this basis that other historical evidence has come into play such as subsequent archeological excavations³⁷. The legal categories in the dispute have also been established on this basis.

What are the key findings in this judgment? There have been a plethora of questions³⁸ addressed by the bench of three judges³⁹ such as 1) is the site of the demolished mosque the birthplace of Lord Ram? 2) Is the suit a representative suit, the two parties to the dispute representing the interests of all Muslims and Hindus respectively? 3) What are the rights of adverse possession with respect to both Hindus and Muslims? 4) How long have the idols on the site been in existence? 5) Is the building a mosque? 6) Has it been constructed on the site of an alleged Hindu temple? 7) Is the building dedicated to Almighty God? 8) Has it been used for prayers by Muslims since time immemorial?

In answering these questions a new doctrine of the place of worship was evolved by Justice Sharma who held that:

..... the Asthan, Ram Janambhumi has been an object of worship as a deity by the devotees of Lord Ram as it personifies the spirit of divine worshipped in the form of Ram Lala or Lord Ram, the child. Ram Janmbhumi is also a deity and a juridical person. It is established from evidence that the Hindus worship the divine place in

³⁵ This account of colonial descriptions in this section is taken from Justice Khan's judgment in the Ayodhya case.

³⁶ This included Neville's Gazetteer of 1928, Beveridge's translation of the Babur-Nama and, travel accounts of William Finch and Joseph Tieffenthaler.

³⁷ It is relevant to note that the truth of the birthplace of Ram was never discussed in the pre-colonial period. It is only the colonial and post colonial context that such an issue has become relevant.

³⁸ I do not propose to go into the issue of limitation or title or other procedural defects in the judgment as they are not key issues in a conceptual history and are emergent only when the discursive conditions for the dispute are present.

³⁹ This bench consisted of Justices Sibghat Ullah Khan, Sudhir Agarwala and Dharam Veer Sharma

the form of God. The Hindus can mediate upon the formless and shapeless divine. The spirit of Divine is indestructible. Birth place is sacred place for Hindus and Lord Ram, who is said to be incarnation of God, was born at this place. The Hindus since times immemorial and for many generations constantly hold in great esteem and reverence the Ram Janmbhumi where they believe that Lord Ram was born.

Sharma relied on classical literature, oral evidence, travel records and gazetteers to support the doctrine that this was the birthplace of Ram. He further held that the deity was a perpetual minor.⁴⁰ It had always existed on the property and the Muslims could not claim adverse possession against it by showing that they had also used the property. This doctrine was also supported by Justice Agarwala who argued that the long and continuous belief of the Hindus was sufficient to consider the place as deity. It was also held that the recognition of the birthplace of Ram was an essential part of the Hindu religion and the core of the Hindu faith under Article 25 of the Indian Constitution. It could not be held that there was a mosque on the site due to the prior possession of the deity. It was noted on the basis of the archeological findings that there was a temple under the demolished mosque. It was also held that if the mosque had been built by Babur it was against Islamic tenets.⁴¹

This judgment has evoked much condemnation for legitimizing a demolished mosque and providing legal truth to facts that have no historical basis such as the “true and real” birthplace of Ram. Whereas this is probably true, I would like to suggest that the problem is actually something different- a conceptual framework that is based on colonial descriptions of two religions in conflict is behind the judicial resolution of this dispute. Such a conceptual framework dictates the process of legal reasoning behind judicial decision making. Therefore there is no such thing as a “right decision” as any decision would be subject to the conceptual framework that determines the process of legal reasoning.

What are the conceptual conditions that are necessary for the establishment of the legal categories? I would like to argue that both the Hindu endowment and the wakf are subject to three conceptual conditions which are dedication to God, an authority to interpret God’s purposes and the public and the private.

What is dedication to God? The legal definition of the wakf is elucidated in *Vidya Varuthi v Balusami Ayyar*⁴². It means ‘the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings’. Further when such a dedication is done the right of the wakif (the grantee) is extinguished and the ownership is transferred to the Almighty. The nature of this dedication is elucidated in the following case of *Muhammad Rustom v Mustaq Husain*⁴³ where the words of the wakf document were as follows:

I was the lawful owner of the said property. I was partly in actual possession thereof, and partly in legal possession thereof, that is, I was in possession through my servants, mustajars(farmers or lessees) tenants and cultivators, I had power in every way to transfer the same .By virtue of the said power I divested myself of the

⁴⁰ Under Hindu law a deity can be a juridical person who can sue and be sued. As it cannot act for itself it needs to be represented by a natural person known as the Shebait/ Dharmakarta/ who must have certain qualifications and must protect and preserve the idol’s property

⁴¹ Justice Sharma at p. 181-182 Vol 4 O.S.4.1989. Both Justice Khan and Justice Agarwala did not agree that Babur had built the mosque on the basis of available evidence

⁴² 1921 48 I.A. 302

⁴³ 1920 47 I.A. 224

connection of ownership and proprietary possession thereof, and placed it into the proprietary possession of Him who is the real owner, that is God, the owner of the universe and changed my temporary possession known as proprietary possession into that of a 'mutwalli' (superintendent). With effect from this day the said property no longer belongs to me; nor am I any longer in proprietary possession thereof. It belongs to God, and is a sadka (alms) for His creatures. I am in possession thereof as a superintendent, that is, as a trustee for those who are according to the benefits of the said wakf entitled to be, in any way, benefited thereby.....

In the case of the Hindu endowment it is generally understood that dedication takes place through the consecration of the idol and certain religious ceremonies. But it would be a mistake to understand dedication as a mere matter of ritual as the objective of divesting human ownership is an essential element of dedication as seen in the case of *Maharani Hemanth Kumar Debi and Others v Gauri Shankar Tewari*⁴⁴. It was held the Maharani was not the hereditary superintendent of a religious endowment as dedication was incomplete due to her possessing ownership by various agreements with the occupiers of the ghat. Therefore the court concluded that there had been no dedication "in the full sense of the Hindu law which involves the complete cessation of ownership on the part of the founder and the vesting of the property in the religious institution or object".

Therefore dedication has the specific consequence of divesting property completely of human ownership and vesting the property in the institution or object. It is in this context that one notices a **basic contradiction**. In the case of the wakf, human agency in the form of the human representative in charge of managing the property **is subordinate to God**. In the case of the idol, **it actively seeks human agency as it cannot act for itself** and has to do so through the manager or Shebait.

What is the reason for this state of affairs? I would like to suggest that the reason for this contradiction is the concept of idolatry itself which finds itself in the legal framework. In an important work on idolatry in the Semitic religions Halbertal and Margalit (1992) have examined the meaning and nature of idolatry and how it has shaped Western thought.⁴⁵ The ban on idolatry in the Semitic religions is to map the exclusive domain of God. Worship must be exclusive to one force and sacrifices may be made only to God who is to be worshipped (Halbertal and Margalit 1992, 5). The question then arises as to what is the nature of this exclusive domain and what is it that makes something into idolatry?

In the Semitic religions, the sin of idolatry is that it is comparable to flaws in human relationships. In the Bible, idolatry is explained and understood metaphorically, God being depicted as a king, father and judge i.e. in various roles in human relationships. The rejection of idolatry is thus based on an accepted moral intuition in human relationships and acts towards fulfilling morally acceptable values and beliefs in society. Therefore idolatry as a prohibition is not just the acceptance of monotheistic principles but the moral assumptions behind it.

⁴⁴ AIR 1941 PC 38

⁴⁵ As Eck (1996) mentions idolatry is the term of an outsider, the peoples identified as "idolators" would not describe themselves by such a term. Such a term comes into being to describe the polytheistic imagination of the Hindus.

For the Semitic religions, the error that the idol worshipper commits is when the idol ceases to be the representation of God and is considered God itself. Such an error of false worship becomes defined as false belief. This error of substitution⁴⁶ is understood as a transition in belief in a first cause to the worship of idols as gradual and occurring in stages. In the first stage, the worshippers worshipped heavenly forces such as the moon and the stars and their images as intermediaries between them and God. The second stage involves the building of temples filled with idols on the advice of false prophets that the forces represented by the idols were independent forces. The error of substitution is the cause of idolatry and the purpose of the prohibitions against idolatry is to ensure that the worship of God would be free from substantive error. The cause of the error of substitution is the act of worship as beliefs follow actions (Halbertal and Margalit, 1992, 42-44).

What is the consequence of such an act of substitution? I suggest that this has to do with the relationship that the Semitic religions have with the pagan world. Balagangadhara (1994, 367) elaborates on this issue by describing the Christian attitude towards pagans as transforming tradition into religion. When transformed into another religion, the pagan tradition acquires the property of reflexivity which it did not earlier have. This is by providing the myths and legends of the pagan a deeper foundation. Such inconsistent practices which have allegedly been practised since time immemorial express a deeper truth as the pagan traditions have retained intimations of their original nature. Therefore realising that one had entertained false beliefs is not merely to be aware of this fact but also to recognise it as an expression of the thirst for truth. Thus belief in the Devil is due to the desire to believe in God.

Balagangadhara further maintains that being religious in the context of the Semitic religions is not just seeing that God exists but seeing one's life as part of the purposes of God. Thus an explanatorily intelligible account comes into being. This means that the origin of the Cosmos and human life is caused by God and that there is a link between the Will of God as creator and the cause of the universe in such a way that the world expresses his purposes. In order to maintain faith in God and consequently retain faith in this explanatorily intelligible account the worship of God becomes necessary. Worship involves seeing the Cosmos as explanatorily intelligible; and doing what is essential and as specified by the doctrines of the religion in order to continue to experience the Cosmos in this way.

Thus the legal act of dedication must be understood as mapping the exclusive domain of God. Therefore it becomes essential that property vests in God and rights to deal with the property flow from God itself. All actions in relation to a religious place therefore must be consistent with God's role as the cause of the Universe and the Universe being an embodiment of his purposes. His purposes are embodied in the doctrines of the religion itself. Therefore it is imperative that dedication be complete and not partial, and that it also shows no signs of being linked to human agency as we saw in the Maharani's case.

The transformation of tradition into religion thus underlies the Hindu endowment. In *Veluswami Goundan v Dandapani*⁴⁷ it was contended that the deed of dedication did not mention any particular deity and was void for uncertainty under Hindu law as Hindus worship numerous deities. The court held that "this was a fundamental misconception of Hindu theology" stating that the notion that a Hindu worships only particular deities and not one Supreme Being is incorrect and that Hindu gods are various manifestations of one Supreme Being. It also held that:

⁴⁶ This explanation by Halbertal and Margalit (1992) relies on commentary by the Jewish theologian Maimonides.

⁴⁷ 1 1946 MLJ 354

where no deity is named in the deed of endowment, it is sufficient to point out that in most cases the problem can be easily solved by ascertaining the sect to which the donor belonged, the tenets which he held, the doctrines to which he was attached and the deity to which he was devoted and arriving by such means at his presumed intention in regard to the application of the property

Therefore to map the exclusive domain of God, one has to rely on doctrines. However trying to derive a doctrine on the basis of God being image based representation meets with difficulties as one cannot claim an exclusive domain in case of the idol. The idol cannot have the properties of God as it is not the cause of the universe or embodies its purposes. Consequentially, it also does not have sovereignty or be able to possess inalienable rights over property. This however leads to something antithetical to Christian theology. Human agency takes predominance and “acts” on behalf of the idol. Therefore the legal doctrine of the idol being a minor became necessary, the Privy Council ruling that the status of the shebait is the same as that of the guardian of an infant heir.⁴⁸ This means that the shebait is required to do everything for the service of the idol and the protection and preservation of the idol’s property from loss. Thus the role of the Shebait is different from the role of the Mutavalli whose task is to manage the property according to God’s purposes.

The juridical status of the idol as a minor is thus derived from **a theological framework**. In declaring the deity as a perpetual minor and as having been in existence since time immemorial, Justice Sharma in the Ayodhya case merely turns the beliefs and practices of the Hindus into an inferior variant of the Semitic religions. The extension of the doctrine of the idol as a juridical person to a god’s “birthplace” is thus the result of legal reasoning which seeks to respond to Semitic theology. In deciding that the beliefs of the Hindus are sufficient to establish the historical fact of a god’s “birthplace” there is an assertion that myths and legends which are inconsistent are actually “true” against the Semitic claim that they are false. In stating that such belief is an essential part of the Hindu religion there is an attempt to create “religious doctrines” which mirror Semitic claims.

This brings us to the other two conceptual conditions which are the authority to interpret God’s purposes and the public and the private. Such a religious framework secularises religious concepts into secular legal frameworks and allows how property claims can be represented. This can be observed in the contrasting nature of the claims involved. The claims of the Muslim parties are based on modern property law whereas the Hindu parties make a historical claim. What is the reason for this contrast? This is due to the question of the ownership of property being an essentially theological problem. In his analysis of sovereignty, Siegfried Van Duffel (2007) argues that it is a secularized religious concept and that the God of the Semitic religions can be the only true example of a sovereign. If the distinguishing mark of a sovereign is that his normative control is supreme i.e. it is not controlled by an agent and is inalienable, human beings would not meet this criteria. This is as their domains overlap with other sovereigns and that they cannot create anything ex nihilo. The consequence of this argument is that human beings can only possess property on this Earth in accordance with God’s purposes. In dedicating property to God and divesting oneself of possession as in the case of the wakf, one seeks to affirm one’s relationship with God as his servant. This allows for clarity on the managerial and representational aspects of property ownership in the role of the mutavalli. In the case of Ayodhya, this was only slightly complicated by the role of the

⁴⁸ This position is elucidated in *Hanooman Persaud Pandey v Mussumat Babooee Munraj Koonweree* 6 M.I.A. 243.

Wakf Board whose duty was to ensure proper management of the wakf, the wakf being a "public" institution.⁴⁹

It is however clear that the idol is not sovereign or possesses inalienable rights to property. It instead makes a historical claim which has no connection with property law. This also complicates the question of who can represent it. In the context of the Ayodhya case it is the concept of the public and the private that dictates this. There has been much criticism of the judgment for allowing Hindu political groups as parties. However this does not take into account the rights of worshippers. In the declaration of the site as a public temple, one is bound to allow any Hindu, the right of worship. Such right of worship involves the right to sue on behalf of the idol in order to protect its interest.⁵⁰ What is the basis for this? The right of any believer to have access to God is essentially a theological notion. It is however a theme of great importance in the Protestant Revolution where the onus was on each believer to find God without intermediaries such as priests.⁵¹ The public temple is thus founded on the belief that all worshippers of all castes and creeds must be allowed to have access to God and is the basis for temple entry legislation.

In the context of the nature of the claims of the two parties being completely different, the question arises as to whether the principle of equal treatment and neutrality can be made applicable. The secular state is obliged to treat all its citizens equally irrespective of religion and must not favour one religion over another. This gives rise to another question i.e. **how does the secular state determine such equal treatment?** It determines such equal treatment through secular law. In the case of Ayodhya the modern property law framework becomes essential to determine religious rights. As we have seen such a framework is biased towards the Semitic religions. In such a case the secular state is placed in an awkward position i.e. it cannot remain neutral and attempts to articulate the legal claims of Hinduism in a form that can be fitted into a modern property law framework. The result is the distorted decision that the birthplace of Ram is real. This merely attempts to provide a foundation on which modern property rights can be claimed. It further distorts who can claim the property rights by making it available to "the public" thus resulting in competing claims between the various parties representing Hindus i.e. the Nirmohi Akarah (the group of ascetics who began the dispute in the nineteenth century) and Ram Lala Virajman (the idol) to the Hindu Mahasabha (a Hindu political party) which have further prolonged the conflict⁵². Such a conception of the public does not have the same implications in Islam as it results in one identifiable entity which is the Wakf Board.

⁴⁹ Supra n.18 &19. On the recognition of the wakf as an institution the Wakf Boards were formed in the colonial period due to the anxiety about corrupt mutavallis as reflected in the many provisions for the rendering of accounts. The conception of the wakf being a public institution was due to the fact that it was regarded as a public charity (as we have seen) and thus had to be accountable to the "public". Despite the fierce resistance by the Muslims to the legal treatment of the wakf in the context of the Mussalman Wakf Validating Act, they adopted the idea of the "public" in the context of the public wakf to be overseen by a Wakf Board. The mutavalli was appointed by the Wakf Board to ensure the same.

⁵⁰ *Bishwanath v Radha Ballabhji* AIR 1967 SC 1044

⁵¹ Please see Gelders (2010) for an explication of this theme and the manner in which this debate has been transplanted in India.

⁵² The judgement awards one- third of the land (this includes the birthplace of Ram) to Ram Lala Virajman .The Nirmohi Akarah (which has also been awarded one- third) has indicated that it would contest this decision.

THE BABABUDANGIRI DISPUTE: A FAILURE TO IDENTIFY RELIGION

At this stage it is tempting to suggest that the legal framework of the Hindu endowment be reformed not to reflect some of the conceptions in the Semitic religions. This is however not an easy task and I would like to suggest that the beliefs and practices of traditions in India cannot be understood as belonging to a “Hindu religion”. The dispute in the Bababudangiri dargah is evidence of the same. Once again my analysis seeks to look at the conceptual issues involved and not legal intricacies.

The shrine of Baba Budangiri in Chickmagalur District in Southern India is considered to be the seat of Dada Hayath Meer Khalandar or Baba Budan (a companion and contemporary of the Prophet Muhammad) who is rumoured to have arrived in the seventh century B.C. from west Asia to preach Sufism in India. The seat of Dada’s meditation was also believed to be the seat of Dattathreya Swamy, a reincarnation of the Hindu God Vishnu. Another belief was that Dada Khalandar and Dattathreya Swamy were the same person. The Bababudangiri shrine consisted of the graves of his disciples and other objects such as a Paduka (slippers) and a Nanda Deepa (lamp). The shrine was attended to by a Mujhawar (attendant) who performed fatiha (holy recitation) for the tombs and lighted the Nanda Deepa⁵³.

In 1978, a controversy arose over an order of the Government ordering the transfer of the shrine to the Wakf Board who had already issued a gazette notification declaring the property as wakf and appointing a mutavalli for the wakf. On learning of the action of the Wakf Board, certain Hindu devotees pleaded that Guru Dattathreyaswamy Peetha (the shrine) is not a Waqf as it is not dedicated by any person professing ‘Islamic faith’ for pious and religious purpose –the institution being worshipped by both Hindus and Muslims alike and being a major Muzrai institution which was under the control and management of the Government and being recognized as a “Holy Place” of both Hindus and Muslims. The court ruled that the shrine is a unique institution where both Hindus and Mohammedans offer their prayers to a common deity, but in different names. This was due to the nature of the rituals being representative of both Hinduism and Islam which included practices such as offering flowers and coconuts.⁵⁴ The Wakf Board went on appeal to the High Court who reiterated the findings of the lower court stating that the property could not be constituted as a wakf.⁵⁵ This did not deter the Wakf Board who went on appeal to the Supreme Court who dismissed their petition.

In the late 1980’s Hindu political groups such as the Vishwa Hindu Parishad launched a campaign to liberate “the temple of Dattathreya” from “Muslim control”. Datta Jayanthi has been reportedly celebrated since 1984⁵⁶. In 1989 various new rituals such as a Vedic puja were conducted outside the shrine of Baba Budhan.⁵⁷ Various efforts were also made to undermine the management of the shrine, the Sajjada Nashin being removed on the ground of mismanagement and the Muzrai

⁵³ An elaborate description of the ritual cycle is provided in Sitharaman (2010)

⁵⁴ A parallel litigation against the shrine against the managerial capacity of the sajjada nashin (the spiritual head) initiated in the early eighties of the twentieth century resulted in an inquiry to determine the practices prior to 1975 by the Charitable Endowments Commissioner which conclusively showed that the practices could not be identified with either Hindu or Islamic religions.

⁵⁵ *Karnataka Board of Wakfs v B.C. Nagaraja Rao and Others* AIR 1991 Kant 400

⁵⁶ Report by PUCL-Karnataka on Bababudangiri and communal situation in Chickmagalur town, 2000

⁵⁷ This has been seen as rituals associated with Brahmin castes (Sikand 2004, 166-186) but merely appear to be rituals associated with idols such as sankalpa and homa.

Department assuming control. There were attempts made to interfere with the ritual practices by endeavours to have a shobha yatra (procession) every year where such a puja was conducted⁵⁸. In 2000, a suit was filed in the High Court by a Hindu organization called the Guru Dattathreya Peeta Devasthanana Samvardhana Samiti alleging that the dargah was actually an ancient cave temple in which Guru Dattathreyaswamy (who is believed to be an incarnation of Lord Vishnu) performed penance. The organization further alleged that during the regime of Hyder Ali a Muslim ruler in the eighteenth century, an Ismail Shah Qadri who was the fakir at Srirangapatna was appointed as a manager and the institution passed on to Islamic hands. The institution thus lost trace of its Hindu practices.

The shrine was also brought under the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 in a Gazette notification under the Religious Endowment rules, where the disputed site was described as 'Sri Guru Dattatreya Devasthanana', thereby trying to project it as a Hindu place of worship⁵⁹. The Karnataka Religious and Charitable Endowments Act, 1997 was however struck down by the High court of Karnataka and thus the notification became redundant.⁶⁰

The attempts to change the nature of the practices of the shrine through legal means however continued. In 2007, the High Court⁶¹ held that the Guru Dattathreya Peeta Devasthanana Samiti's grievances on not being allowed to observe religious customs and practices such as offering of pooja and the appointment of an archaka (priest) need to be taken note of by ascertaining as to what was the practice prevailing from time immemorial. Therefore, a further enquiry must be conducted by the Endowments Commissioner to find out the nature of the practice prior to the time of Hyder Ali so that the Samiti may perform such practices as established by the Commissioner.

The notable aspect of this dispute is that there has been a failure of legal categories. It has been clearly held that the institution cannot be considered as wakf. On the contention by Hindu parties that this shrine was "Hindu", the court responds by trying to find how the legal category of the Hindu endowment can be established. Although the attempt has been made by the state to notify the institution as Hindu under the relevant enactment (which becomes redundant due to the repeal of the enactment) its position appears ambivalent as it needs to find out "the true practices" in the shrine and thus ascertain whether a "Hindu religion" exists. In doing so it makes the assumption that there are authentically "Hindu practices" which can be found and revived. In other words it assumes that there are doctrines of a religion which determine the nature of these practices. Once again this is a response to Semitic claims that the inconsistent myths of the pagan actually have a foundation, by suggesting that these inconsistent myths do not exist but a "true" religion. The question of who can interpret these myths as true allows for the aggravation of the conflict as it involves bringing in the concept of the public. The introduction of such a concept permits any worshipper to become a party allowing organisations such as Guru Dattathreya Peeta Devasthanana Samvardhana Samiti to come into existence merely for this purpose.

⁵⁸ From interviews with the management of the shrine.

⁵⁹ "Bababudangiri: Vedike comes upfront with the Sangh Parivar" <http://archive.deccanherald.com/deccanherald/nov112004/d2.asp> Accessed on October 11, 2011.

⁶⁰ *Shri Sahasra Lingeshwara Temple, Uppinangady, Puttur Taluk, Dakshina Kannada and Ors. v State of Karnataka* 2007(1) Kar. L.J. 1 (DB) This was due to its validity being questioned on the grounds that it did not equally apply to all Hindu religious institutions, various Hindu mutts being left out of its framework.

⁶¹ *Shri Syed Ghouse Mohiuddin Shahkadri v State of Karnataka* 2007 (3) KarLJ 341.

The Bababudangiri dispute is an example of how a framework of rights to religious freedom actually leads to conflict and causes the disappearance of a tradition. In imposing such a framework upon this dispute one forgets how traditions live, survive and develop. One also fails to see how certain practices that originate in Islam coexist with other practices that may seem idolatrous or antithetical to Islam. A greater understanding of the development of such traditions is required not just to resolve further disputes but to prevent them.

CONCLUSION

We have analysed the problem of the legal regulation of religion and discovered that resolving it through legal reasoning as a self referential discourse does not help us resolve the problem. We turn instead towards developing a conceptual history of religion as a legal category. In tracing the place of worship as a legal category, we discover that it has its origins in colonial legal culture and that the conceptual framework underlying it is behind contemporary legal disputes around places of worship. In the case of Ayodhya we see how colonial descriptions have determined the production of legal truth and the parameters for historical truth. The elements of such a conceptual framework in the form of dedication to God, an authority to interpret God's purposes and the public and the private are analysed along with an understanding of its secularization. We discover that in order to implement the principle of equal treatment, the state must determine religious rights through a modern property law framework which is itself theological in origin. Due to the framework being biased in favour of the Semitic religions, the state cannot remain neutral and tries to articulate the legal claims made on behalf of Hinduism within this framework leading to distorted results. In the Bababudangiri dispute we see the failure in establishing the legal categories of "Hinduism" and "Islam" and realize that a religious framework seeks to deny traditions their vitality. We then understand that an exploration of the same is vital in order to prevent disputes and ensure plural ways of living in India

The development of a conceptual history and the mode of investigation that has been followed yields a resolution to the problem of the legal regulation of religion unlike previous scholarship which has merely proposed ad hoc answers to the problem. The recognition of the fact that religion within contemporary legal discourse is a product of colonialism and that its conceptual framework gives rise to conflict allows one to move forward by proposing an alternative enquiry into traditions in India.

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