International Conference on
Religion and Law: Colonial and Post-colonial Encounters

Centre for the Study of Comparative Religions and Civilizations
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Law in the post colony has enjoyed at the best of times a fraught relationship with religion. Secularism – understood variously as expulsion of religion from the political domain, equi-distance from all religions, accommodation and tolerance – demanded a divorce between religion and law. At the same time, the stated reformist agenda of the new nation-state per force required an urgent intervention in hierarchical and degrading religious practices. Thus we see in both the judicial and legislative fields, hectic activity to define religion, to assign meaning to religious practices, to discard what seemed superfluous and to sift the essential from the non-essential. Derrett writes how the competence of the Constitution makers and courts to make such definitions and intervene in religious practices seen to be abhorrent to modern constitutional values (such as untouchability etc) could not be circumscribed by religious doctrine (Derrett 1968: 438-440).

Religious communities while being repelled by this reformism (as demonstrated by the resistance to the Hindu Code Bill for example) were simultaneously seduced by the potential of securing benefits through the courts. We see a continuous rush in the courts by communities seeking recognition, be it the Jains and Ramakrishna Mission asking for minority status, or the lower castes among Muslims and Christians petitioning for Scheduled Caste status. This litigation and the legal pronouncements need to be placed in the context of the concerns about religious freedom (Articles 25-28) and rights afforded to minorities (Articles 29 and 30) in a secular state.

Neither the fact of communities approaching the courts, nor the legal response was new. Colonial courts had already opened up an arena where claims to identities were being made. Vigorous litigation over religious practices and pilgrimage sites reached the British

courts. To be sure though, this was a continuation of the still earlier practice of appealing to political authority to resolve religious conflicts, but what was distinct now were the new legal and theoretical categories that British jurisprudence introduced. To give one example, the colonial codification of laws of succession, inheritance and adoption, in the opinion of legal historians, ended up in flattening out the diversity of practices and in the creation of schools implanted artificially upon Hindu law. (Cohn 1997: 73-4).

Many of the categories – 'custom', 'law', 'community', 'sect', 'religion' to name a few– deployed by the drafters of the Constitution as well as in judgments are an inheritance from the long history of judicial and legislative pronouncements, stretching back to the colonial imperative to administer. Implicated in this process was the production of orientalist knowledge: 'discovery' of sacred books and coda, their translation, publication, circulation and entry into colonial courts to authenticate whether a community was a religion, or a mere sect, or a religion without its own law. The post-colonial courts seeking to arbiter on these issues also sought to create a corpus of authoritative sources, which sometimes overlapped, and at other times conflicted with earlier authorities.

The encounter between religion and law has not always been smooth or easily resolved. Two recent events attest to the anxieties inhering in this relationship. The first is the judgment of the Rajasthan High Court criminalizing the Jain practice of sallekhna, i.e., ritual fasting to death by comparing it on the one hand to euthanasia and suicide, and on the other, to sati. Commentators have noted how law has misconstrued the practice of sallekhna by relying on Western and Protestant notions of living and dying. The second is the legal imbroglio flowing from the prohibition on Hijab in the premedical entrance test, leading a Muslim girl to petition the courts. The Supreme Court pronounced that removing the scarf for the period of test would not result in loss of faith for the girl.

Both these judgments in a way hark back to the long-standing impulse of the courts to define "the essential tenets of religion", and raise questions about rights of minority groups and freedom of religion. But they point to something else too: the seeming incommensurability between 'rational', reforming law and 'irrational' piety.

The Conference on Religion and Law seeks to unpack these categories and to map their evolution. We invite scholars in the field of anthropology, sociology, history, law, and political science to contribute original and unpublished papers on the following sub themes:

Personal laws
Minorities, citizenship and law
Blasphemy and free speech
Regulation of religious sites and trusts
Sectarian disputes and judicial interventions
Religious studies in the courts

These sub themes are indicative and not exhaustive. Comparative studies of India/ South Asia and the West are also welcome. As the title suggests, the focus will be on encounter between religion and law: this might yield sites and histories of collaboration or contestation.

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