**Identifying and Regulating Religion in India: Law, History and the Place of Worship, by Geetanjali Srikantan, Cambridge, Cambridge University Press, 2020, 251 pp, £85.00, (Hardback), ISBN: 9781108840538**

Geetanjali Srikantan’s remarkable new book opens, rather conventionally, with the 2010 Allahabad Court judgement considered by many as retroactive legal sanction for the 1992 destruction of the Babri Masjid in Ayodhya by a Hindu mob. (The 2019 Supreme Court judgement had presumably not come out when *Identifying and Regulating Religion in India* went to print.) The Allahabad judges found that the place on which the destroyed sixteenth-century mosque was built was considered by Hindus as the birthplace of the Hindu god Rama. Such belief was protected as an ‘essential religious practice’ of Hinduism under Article 25 of the Indian Constitution, which protects the freedom to practice and propagate religion.

Ayodhya is one of three prongs on which scholarship on religion and the law in contemporary India usually rests. The other two are women and secularism, as recently in fantastic new work by Saumya Saxena, also published by Cambridge University Press.[[1]](#endnote-1) Deliberately sidestepping these and backgrounding the Ayodhya case itself, Srikantan shifts the ground of the discussion. Her book deconstructs the ‘religion’ that is too often taken for granted in the literature. The trouble with *Identifying and Regulating Religion in India*, the book contends, is the Christocentric baggage of ‘religion’ that is enshrined in, and protected by, Indian law.

Cutting across disciplinary and area-specialist silos, Srikantan’s book takes a unique approach to the contention over religious freedom, religious endowment, and the ‘place of worship’ in India. Its points of call are Augustinian theology, Medieval canon law, nineteenth-century Anglo-Indian law, and highly public twentieth- and twenty-first-century Indian court cases. As ambitious in scope as its footnotes are eclectic, *Identifying and Regulating Religion in India* is a must read for anyone with serious interest in Indian legal history, global comparisons of religious freedom cases, the genealogy of ‘religion’, and intellectual histories of European law.

That ‘religion’ is a construct rather than a *sui generis* object has been established wisdom in religious studies these past twenty, thirty years.[[2]](#endnote-2) Religion, long assumed a universal human experience, has been utterly provincialized and its Christian and Eurocentric roots exposed. The Christocentric understanding of ‘religion’ was found to have become universalised and globalised as the one-size-fits-all model of ‘world religions’, thanks to colonialism and Europe’s epistemological dominance. Hinduism was, under the catchword of its ‘colonial construction’, nominated as a prime example of a non-Western tradition brutally squeezed into the uncomfortable fit of ‘religion’.[[3]](#endnote-3) The debate reached boiling point at the turn of the millennium with calls to abandon the use of the term ‘religion’ altogether, and disciplinary self-criticism over religious studies’ own complicity in constructing its subject matter,[[4]](#endnote-4) rivalled only by the colonial guilt complex of social anthropology.

One achievement of Srikantan’s book, then, is inter-disciplinary transfer: the first chapter introduces the conceptual unsettling of ‘religion’ into Indian legal history, where it has remained curiously absent. Hindu and Muslim law, the subsequent two chapter show, were made to fit the legal category of religion. For Hinduism, this meant creating a coherent theology where there was previously none. Bizarrely, to produce Hindu law, Srikantan shows how ‘[t]the secularising dynamic of Western law [had to] transfor[m] itself into the dynamic of theologisation’ (60). In other words, to make Hinduism governable like Christianity, British secular legal reasoning had to give Hinduism a theology and law codes, like Christianity. To codify Hindu law, the British privileged the oldest Sanskrit texts, but they also elevated ‘custom’ as a legal source. Srikantan gives this old familiar to scholars of India, ‘custom’, a novel intellectual itinerary leading straight to Europe at the cusp of the Middle Ages.

For Srikantan, heavily drawing on scholarship on the ancient and early medieval Judeo-Christian world, the distinction between religion and the secular that is made in Western law pinnacles on ‘idolatry’. Early on in its spread, ‘Christianity had to face the question of what was essential to itself and what it was indifferent to’ (32). It drew the boundary line at idolatry: local practises were permitted to survive as ‘custom’ only if they were not idolatrous. Legal ‘custom’ had to pass the further ‘tests’ of antiquity (existence from ‘time immemorial’) and of not contradicting positive or natural law (reason). This idea of ‘custom’ bequeathed itself to English common law and was applied by the British to India. It follows for Srikantan that the, in India, ubiquitous category of ‘custom’ does not result from colonial anthropology, let alone Mughal legal pluralism, but from Christian theology that is embedded as a deep structure in common law (26-35). In India, custom thus proved could overwrite written law (36). I understand Srikantan to mean that in Europe at the threshold of Christianisation can be found the earliest origin of the ‘essential practice’ test since 1954 applied by the Indian Supreme Court to decide what is and is not a constitutionally protected religious practice; among its major requirements: custom or belief ‘from times immemorial’.[[5]](#endnote-5)

The argument that idolatry functions as a boundary-drawing exercise in Western law – between objectionable and permissible custom, the religious and the secular, the public and private – has persuasive power but is subsequently overstressed. Above all, it remains unclear how the British made idolatry the dividing line within Hindu law, when all of Hinduism was viewed by them as idolatrous. To be sure, Srikantan rejects the ‘mundane’ understanding of idolatry as idol worship, proposing instead that ‘[i]dolatry must be understood as to how false worship becomes defined as false belief’ (33). But idolatry thus understood becomes over-capacious and unintelligible as an abstraction, having lost its real-life referent: more so in India where, in the words of James Fitzjames Stephen, Law Member to the Viceroy’s Council between 1868 and 1872: ‘English legislation in India proceeds on the assumption that both [Hinduism and Islam] are false.’[[6]](#endnote-6)

The case of Anglo-Muslim law, discussed in chapter two, was different. No theologisation was needed, as the ‘essential practices’ of Islam could be easily found in the Quran. Governing India’s Muslims instead pinnacled on the idea of religious community. This entailed the division of public and private domains, with Muslim law being excised from the public and confined to the private domain of ‘personal’ law (a term which Srikantan hardly if ever uses), namely, in matters pertaining to marriage, family and religion (78-85): all in all, a familiar story. Discussion of the famous nineteenth-century court cases by which it was decided that the Khojas were Shia Muslim, and their head the Aga Khan, furnishes a case study of what it takes to constitute normative Islamic community, while the legal thinker Syed Ameer Ali illustrates the acceptance by Indian Muslims of secular legal hermeneutics, in order to turn Muslims into an identifiable community in India.

The subsequent two chapters pick up the thread of the public and private in regulating religious endowments and the place of worship in India. Srikantan argues – convincingly – that the Hindu endowment and its Muslim equivalent, *waqf*, were modelled on the Christian religious trust. Christianity had always had a difficult relationship with private property, as all property in the last instance belonged to God. The trust, concludes Srikantan from the secondary literature, allowed religious orders like the Franciscans the usage, without ownership, of private property (106). The consequence of its transfer to India was an orientation towards two points: the act of dedication by the founder and the purpose of a religious endowment. The act of dedication ‘involves divesting property completely of human ownership and vesting the property in the institution or object’, the temple or idol (135). But where God has complete ownership, the Hindu idol (Ram, in the Ayodhya case) was made a perpetual minor in the law, as a beneficiary of a trust administered in its name by a guardian, the temple manager. The British legal misrecognition of the Hindu temple, for Srikantan, explains the enormous amount of litigation over mismanagement of temple funds, and fed a narrative of priestly corruption (144).

Dedication in case of the Muslim *waqf* that was codified into law in 1913 was more straightforwardly understood as dedication to God (151). Here, the issue was purpose, which had to be charitable. Deeply-rooted Islamic ideas of charity (*zakat* and *sadaqah*) were overwritten by Christian notions of charity as public poor relief (161-2). Charitable purpose hence defined a place as religious and public (131), making Muslim *waqfs* founded to keep property within families subject to allegations of misuse.

The final chapter drives Srikantan’s argument to a resounding conclusion: the problem with governing religion in India is the unsolvable problem of how to define religion in general, and Hinduism in particular. A similar case was famously made by Winifred Sullivan for the American Supreme Court deciding First Amendment (religious freedom) cases, as *The Impossibility of Religious Freedom*.[[7]](#endnote-7)

Srikantan is clear about who is to blame: the British are significantly called ‘the coloniser’ throughout the book. Yet there are several objections to, or moderations of, this line of argument. Srikantan falls into the diffusionist camp in which origins (of ‘religion’, law) neatly originate in Europe. But the constructivist account of ‘religion’ cannot account for why Hindu elites would embrace ‘ Hinduism’ if it was so blatantly alien, Christian even. Rather than viewing Christianity as the only ‘religion’ to fit the name, it appears more plausible to view the non-European ‘rest’ as a major force behind the pluralisation of ‘religion’ at the end of the nineteenth century. It is striking that Srikantan does not discuss neo-Vedantism (monism), the major theological current within nineteenth-century Hinduism, through which Hindu thinkers from Rammohan Roy and Swami Vivekananda to India’s second President, Sarvepalli Radhakrishnan, redefined what Hinduism means to this day. Srikantan’s line of reasoning cannot explain the 1995 Indian Supreme Court ruling that Hindutva is the Indian ‘way of life’, not a religion, and recourse to it by political parties thus secular. Yet this ruling would have made Hindutva’s arch-theorist V. D. Savarkar proud, who first promulgated that the Hindu subject is not defined by Hinduism (the Hindu religion) but by Hindutva, or Hindu-ness, in *Essentials of Hindutva* (1923). This failure to engage with Hindu nationalism, more than anything, makes visible the lop-sidedness of Srikantan’s argument about the European paternity of India’s legal trouble with religion.

Readers may object to the relentless quest for origins, which Srikantan paradoxically shares with the Orientalism that she criticises. Holding Foucault’s concept of ‘genealogy’ against Srikantan’s self-professed ‘archaeology’, however, one finds that there are no neat origins, only endless departures. ‘In a family tree, there are more ancestors the further you go back in time,’[[8]](#endnote-8) and besides, the remotest ancestors may not be the decisive ones. Nevertheless, Srikantan’s ability to draw Christian theology and medieval law into Indian legal history is a huge achievement and makes for boldly original reading. This bold move by an Indian legal scholar is rewarded. Srikantan’s book will galvanise the discussion on religion and the law in India.

Despite its lawyerly clear language, *Identifying and Regulating Religion in India* is not an easy read. At times compromising the lucidity of the argument are digressions (on the Ten Commandments, the Aryan invasion, Equity, the Lutheran two-kingdoms theory, etc.), which a careful editorial pen might have deselected. They make a challenging book even denser. The reading experience is not helped by a sloppy copy-editing job by Cambridge University Press.

The law is complicated, especially so in India. Srikantan is hazy on the origins of colonial jurisdiction and the development of the juridical system in India. She is hazy on historical causation, preferring what one might call ‘structures’. There are jumps from eleventh-century Europe straight to the mid-nineteenth century. Some readers, including the reviewer, will require more archival legwork to connect law’s Christian deep past to the Indian modern period. The author will not convince every reader of every minute point of her discussion. But I challenge anyone to go away from reading this book doubting that Srikantan has a point.

1. **Notes**

   Saxena, *Divorce and Democracy*. [↑](#endnote-ref-1)
2. Influential in this regard, and cited by Srikantan herself, are Masuzawa, *The Invention of World Religions*; Asad, *Genealogies of Religion*; Jonathan Z. Smith, *Relating Religions*; and Russell T. McCutcheon, *Manufacturing Religion*. [↑](#endnote-ref-2)
3. King, *Orientalism and Religion*,, also cited by Srikantan. [↑](#endnote-ref-3)
4. See Bergunder, “What is Religion?” [↑](#endnote-ref-4)
5. For the test of belief from ‘times immemorial’ in the 2010 Ayodhya case, see also Patel, “Idols in Law.” [↑](#endnote-ref-5)
6. Stephen, *Liberty, Equality, Fraternity*, 59. [↑](#endnote-ref-6)
7. Sullivan, *Impossibility of Religious Freedom*, also discussed by Srikantan. [↑](#endnote-ref-7)
8. Kennedy, “Savigny's Family/Patrimony Distinction,” 831.

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   Sullivan, Winnifred Fallers. *The Impossibility of Religious Freedom.* Princeton: Princeton University Press, 2005. [↑](#endnote-ref-8)