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## The legal framework of the British colonial government for the regulation of religions in India

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### Abstract

The paper begins by discussing the history of religion in India before the arrival of the British. It then goes on to discuss the ways in which the British colonial government regulated religion. The paper argues that the British government was interested in regulating religion for several reasons including maintaining order and stability in India, to prevent religious conflict and to promote its own interests. This paper discusses the work of Nancy Cassels, David Gilmartin, Franklin Presley, and Peter van der Veer. These scholars have all written extensively on the regulation of religion in colonial India. The paper argues that their work is important because it provides insights into the ways in which religion was regulated in colonial India. It concludes by arguing that these studies should be situated in a global history framework. This is because the regulation of religion in colonial India was part of a larger global process of the regulation of religion.

**Keywords:** British colonial government, colonial India, global history

### Introduction

The arrival of secularism in Indian society was never precisely or directly linked with the arrival of capitalism, or what it was seen as colonial modernity. The actual historical separation between religious institutions and the state came only with Independence. The British, though claiming to be secular and non-interferential, nevertheless penetrated into the religious structures of Indian society in a deep manner. Though economic motive was the primary motive for the colonial interference with religion, it was also a political and strategic interference.

### Pre-colonial Era

Richard Eaton begins by stating that in Islam, the Quran is the ultimate authority on moral and religious issues. However, historically, this has posed a problem for illiterate Muslims, as they have been unable to read the Quran for themselves<sup>[1]</sup>. Sufi shrines in India are places where Muslims can learn about, practice, and connect with their religion. They are often located in remote areas and decorated with tile work and calligraphy. The shrines are important to Muslims for their spiritual significance and as a place of community. They provide a space for people to practice their religion, connect with their community, and find peace and tranquility<sup>[2]</sup>. The growing influence of Islam in India from around 1000 CE to the eighteenth century can be ascribed to a number of factors. One factor was the low-caste and even outcaste status of the peasant population in the Sind-Punjab region, who were experiencing a transformation from pastoralism to settled agricultural practices. The Persian wheel, which was introduced in Punjab in the mid-millennium period, allowed for the extraction of a greater surplus from agriculture, making the peasant society and economy particularly important for the power-elite. This, combined with the fact that Islam offered a message of equality and opportunity to those who were oppressed, led to a large number of people converting to the religion. The spread of Islam in India was also aided by the fact that it is a proselytizing religion. Muslims are encouraged to spread their faith to others, and they often do so through education and preaching. This helped to increase the number of people who were exposed to Islam and who eventually converted to the religion. This made it easier for people to convert to Islam, as they did not have to fear persecution from the government.

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The spread of Islam was also influenced by the military conquests of the Mughal Empire. The Mughals, who were Muslims, conquered much of India in the sixteenth and seventeenth centuries, and their rule helped to spread Islam throughout the subcontinent. Additionally, the Sufi saints of India played a role in the spread of Islam. The Sufis were Muslim mystics who emphasized the importance of love and devotion to God, and their teachings appealed to many Hindus. As a result of these factors, Islam became the dominant religion in much of India by the eighteenth century. The Shrine of Baba Farid, which grew in religious influence since the 13th century, performed the dual tasks of converting the peasantry to Islam and then bringing them under Delhi's influence. The Punjab region was strategically important, as most invaders came through this route. As only a portion of the tax-in-kind <sup>[3]</sup> was transferred to the Shrine, which also supported a community kitchen, it became advantageous for the shrine to insist upon increasing agricultural surplus. Gradually, the Shrine became a kind of mini-state, even having its own armies but never quite being autonomous from Delhi.

### Colonial Era

The British East India Company used religion to justify its rule in India and to extract surplus from the population. This was done through legal mechanisms, such as taxes on religious institutions and the use of religious law to regulate economic activity. Religion became a site for surplus extraction and was used to justify the Company's power. The British East India Company's use of religion to rule and extract surplus led to new Indian elites loyal to the British, and Indian nationalism. The British policy was to formally respect the religious rights of the indigenous people, referred to as 'Compact Ideal'. However, there were voices within the British circles, which were ambivalent overall. Some colonists wanted to convert the indigenous people to Christianity so that their religious biases would no longer force them to shun their duties to the colonial state, as had been one voice after the Vellore Mutiny of 1806. On the other hand, some people wanted absolute abstinence of the colonial state from the religious lives of the people, which culminated in the 1858 Queen Victoria's Proclamations.

One of the issues in pre-colonial India was the *jizya*, a religious tax levied on non-Muslim subjects by Muslim rulers. According to Nancy Cassells, the British continued this practice in the form of a pilgrim tax, particularly at the Jagannath Temple in Orissa. Immediately after the annexation of 1765, Clive attempted to annex the Cuttack region, but with caution. Through a complex process of annexations, negotiations, and calculations, the pilgrim tax was continued in 1803. The traditional right of the King of Khurda was abandoned in this effort <sup>[4]</sup>. Regulation XII of 1805 directed the collection of a pilgrim tax and the appointment of a salaried Collector of the Pilgrim Tax. The tax was first collected in January 1806 by Collector James Hunter. This was necessary partly to maintain law and order, and partly to exert "governmentality" over the Indian subjects (to use a term from Foucault), but largely due to the Company's financial desires. The Company was looking to increase its revenue, and the pilgrim tax was seen to do this. The tax was also seen to control the movement of people, as pilgrims would need to pay the tax in order to travel to holy sites. This would allow the Company to keep track of who was coming and going, and to prevent any potential unrest.

As Nicholas Dirks has observed in *Hollow Crown*, one of the most important functions of the pre-colonial state in South India was to oversee temple affairs, which were almost mini-states given the overwhelming importance of temple-cities in the state's economy <sup>[5]</sup>. The Company frequently took over this responsibility, citing cases of corruption among the temple pundits. When the Commission of Cuttack Administration was later dissolved as part of administrative reform, Regulation XII of 1805 stipulated that the revenue collector would now preside over a Committee of Pundits to supervise temple affairs <sup>[6]</sup>. Even the fees of the *Pundahs* were sought to be fixed up, so as to bring the 'discipline' that capitalism imposed upon a pre-capitalist social formation, as suggested by E. P. Thompson <sup>[7]</sup>. Regulation IV prohibited temple officials from demanding more than taxation money from pilgrims. It was enacted in 1809 to afford every Hindu the right to perform rituals at the pilgrim site. The Raja of Khurda was restored and made Superintendent of the Temple, and three high-ranking priests were appointed to oversee him, creating a diarchy, as Cassells puts it. Cassells argues that the 1809 Regulation was a compromise that saved the Company from criticism by the Court of Directors and from the discontent aroused by the Raja's dismissal. Additionally, it graded pilgrims by the fees they paid and allowed for proper supervision and security.

Missionaries, free traders, and Utilitarians formed lobbies to pressure the Company state to withdraw from the ritual activities of pagans, as they believed it was not the legitimate task of a Christian state to manage the affairs of a pagan religion. Lord Bentinck's period as Governor-General was the subject of considerable debate, as he introduced several humanitarian measures, such as the abolition of sati. Bentinck had argued in favor of the abolition of sati, while asking to maintain the Pilgrim Tax, as it assisted in building infrastructure. The tax was considered an administrative fee or a regulatory tax that did not cause any harm but good. In what seems to be an early debate on the nature of state secularism, the Utilitarians argued in favor of the tax, while the Evangelicals considered it to promote idolatry. According to Nicholas Dirks, the princely state of Pudukottai, founded by the local zamindars, began to patronize the Pudu temple. He describes it as a "Hollow Crown" because the king had no function inside the temple other than performing rituals. However, the Company did not simply step into his shoes when it took over. The Madras government hesitated to interfere directly in temple politics. Instead, it continued to make generous donations to the temple, in exchange for which the Company managed much of its land and the temple lost most of its economic functions.

Presley argues that the East India Company's policy on temples was not a complete break from that of previous rulers. He claims that the Company did not completely withdraw from temple politics, and that it enacted laws from time to time to manage religious affairs. Regulation VII of 1817 stipulated that the properties of temples and monasteries that were donated be invested in agriculture and manufacturing. However, there were often reports of corruption from the temples, and the Company took back the property that had been violated. The Company attempted to oversee the temples through the Madras Board of Revenue. In the event of a scam, the District Officer would take over the temple's financial functions, while the

government would charge a hefty fee for its services. Much of the temple's property was kept in the Company's treasury. The Company derived financial benefits from these provisions. After 1833, it came under immense pressure from the Board of Directors in London to withdraw from its ritual role, but the trusteeship prevailed. The Company limited itself to financial management. In 1863, a new act was passed, known as Act 20 or the Religious Endowments Act. The Madras Board of Revenues stipulated 'self-governance' for the temples through various Area Committees. In temples where it was customary for trustees to be non-hereditary, the Area Committees were given a life term. In 1857, new rules were added. When the Company associated its activities with that of the Tanjore Temple in the 1830s, the prevalent was the drawing of the God's cart by low-caste labourers. There was an uproar against the Company's role in Britain, with several people alleging that the Company was encouraging slavery. So, in 1838, following the death of 10 low-caste labourers by being crushed under the wheels of the cart, the Company banned the practice of forced labour, drawing stringent criticism from the caste Hindus lasting until the 1860s. After the 1863 Act, all temple-related affairs were opened to public scrutiny.

Franklin Presler sees the relationship between religious institutions and the state as contradictory, especially in the case of South Indian temples, which have a history of conflict with the state. The temples have challenged the state in political, institutional, and cultural terms <sup>[8]</sup>. While the state tends to seek sovereignty in matters of land, education, property relations, and law, religious institutions, such as temples, also tend to assert their own spheres of influence in these areas. The struggle over these areas generates political conflicts, which then find expression in the cultural domain as well. The states face what Habermas would call a "legitimation crisis." Both the colonial and postcolonial states have undergone this conflict with religion. In the 19<sup>th</sup> century, the British East India Company began to take over more and more temples in India. They claimed that these temples were being mismanaged and that they could provide better management. However, the British were also motivated by financial interests. Land was a valuable resource, and the British wanted to control as much of it as possible. Land revenue was the Company's main source of income, and they sought to increase their profits by taking over more land.

The British takeover of temples and land in India was a complex issue with multiple motivations. The British were motivated by financial interests, as well as a desire to increase their power and control in India. The takeover had a significant impact on the Indian people, and it continues to be a source of controversy today. In 1887, the Civil Procedure Code was revised to make the courts the ultimate authority on judicial matters relating to temples. This allowed the state to actively investigate corruption in temple affairs. As Franklin puts it:

The most significant feature of section 539 of CPC dealt with what were called temple 'schemes'. A court was empowered to settle a 'scheme of administration' on a temple if the court deemed that no other short-range remedy was possible <sup>[9]</sup>.

Two decades later, in 1908, Section 539 was revised into Sections 92 and 93 of the Civil Procedure Code. This made judicial intervention even easier, as persons without specific

personal interest were permitted to initiate suits <sup>[10]</sup>. The Hindu Religious Endowments Act of 1927 was passed in response to non-Brahmin movements challenging Brahmin hegemony in religious affairs. It established public bodies to supervise temple affairs, including non-Brahmins, and resembled Public Interest Litigations. The British government withdrew the Act due to a divide among lawmakers and concerns about interference in religious affairs.

Peter van der Veer narrates the change in 'social configurations, such as the development of the pilgrimage market, and the field of religious experiences, values and fantasies' through the study of rivalry between two panda communities Bhareriyas and Gangaputras in Ayodhya. The growth of pilgrims started a rivalry based upon traditional rights versus new possibilities emerging out of an opening up of the pilgrim economy. As he puts it:

The general proposition here would be that the caste-like identities of both the Gangaputras and the Bhareriyas are the product of forces impinging on the group from within as well as those impinging on them from without... These identities are constructed in what is primarily a political process... The rules of interaction and categorization are defined and redefined according to changing interests <sup>[11]</sup>.

Van der Veer argues against a line of research which privileges ritual purity over the rest of the social-economic structures, such as that of Mariott and Inden. But such an argument originates not from American but French academe: it was precisely for the reason of privileging ritual purity that Irfan Habib had criticized Louis Dumont's *Homo Hierarchus* <sup>[12]</sup>. Veer argues, basing himself on a position suggested by Mauss and Heesterman, that in actual reality the recipient of the gifts is considered lower in status than the donor, and this poses the problem for the Brahmin. The ideal Brahmin can only be renouncer, as he is in the Vedic texts. So the Brahmin cannot be regarded as god on earth.

The Gangaputras were a caste of Hindu priests who lived in Ayodhya, India. They were not an endogamous caste in the 19th century, meaning that they did not marry within their own caste. However, they began to behave like one under pressure from pilgrim trade. Pilgrims would come to Ayodhya to visit the temples and shrines, and the Gangaputras would charge them for their services. This led to the Gangaputras becoming wealthier and more powerful, and they began to see themselves as superior to other castes. In 1889, the Gangaputras enacted a document called the Gangaputra Code. This document laid down rules for the behavior of the Gangaputras, and it also attempted to bring unity to their actions. The Code was a response to the growing conflict between the Gangaputras and the Bhareriyas. The Bhareriyas were a caste of Hindu boatmen who also lived in Ayodhya. They were considered to be of lower status than the Gangaputras, and they were not allowed to perform the same religious ceremonies. The Bhareriyas were also not allowed to use the same ghats (riverbanks) as the Gangaputras. The conflict between the Gangaputras and the Bhareriyas came to a head in the 1850s. The British had recently annexed Awadh, the region in which Ayodhya is located. The British were concerned about the sectarian conflicts in Ayodhya, and they decided to intervene. The British decided to divide the ghats in Ayodhya between the Gangaputras and the Bhareriyas. The Gangaputras were given control of the pakka ghats, which were the more well-maintained ghats. The Bhareriyas were

given control of the kaccha ghats, which were the less well-maintained ghats. The British decision to divide the ghats did not resolve the conflict between the Gangaputras and the Bhareriyas. The conflict continued for many years, and it eventually led to violence.

The British privileged customary law over religious law in the Punjabi legal system with the Punjab Laws Act of 1872. This was part of the British effort to integrate local societies into their rule. As Dirks notes, "The protection of the 'tribal' structure became, in effect, a central principle of and a justification for imperial rule <sup>[13]</sup>." The Alienation of Land Act of 1900 sought to protect the transfer of peasant land to moneylenders, through which the British sought to defend the traditional structure of rural power <sup>[14]</sup>. The law was found to be vague in terms of categories like 'tribal' or 'zamindar', which made the claim to political power in the realm of religion contestable. The British refusal to provide patronage to the Muslim religious culture led to a sense of crisis in the latter. However, the vagueness of the term 'tribal' in various legal entitlements brought many Islamic institutions under British control. This was because the British were able to use the vagueness of the law to their advantage, and they were able to control many Islamic institutions by claiming that they were 'tribal' institutions. This was a major blow to the Muslim religious culture, as it meant that the British were now able to control many of the institutions that were responsible for upholding and promoting that culture.

David Gilmartin's most thought-provoking assertion is that the distance between man and God in Islam, as well as its popular manifestations, is analogous to the distance between the rural Punjabi and the imperial state. Pirs, or Sufis, played an intermediary role between the devotee and God. And as Eaton suggests, shrines as institutions mediated between subjects and the crown in the pre-colonial period, thus providing a point of intersection between religion and politics <sup>[15]</sup>. While officially renouncing religious culture as a sphere of state functioning, the British left some room for co-opting it. The shrines provided considerable support for the British during the Indian Rebellion of 1857. However, the British found it legally difficult to engage directly with the functioning of these shrines. Nevertheless, they approached them closely during ritual ceremonies. The British focused on managing the shrines' economic activities, which the shrines found unacceptable as it undermined the authority of the *sajjad nishins*. However, things became simpler when a minor succeeded as *sajjad nishin*. As a result, the state had to take over the management of the estate. This did not mean, however, that the colonial state had become Islamicized.

## Conclusion

Religion in India had a dynamic of its own prior to the coming of colonial rule. The colonial rule not only regulated but also redefined the essence of religion, which became confined to its commodity logic. The response of the colonial state was to tap this commodity logic into surplus via taxation. Colonial modernity, therefore, made religion not so much an other-worldly but this-worldly affair. This development of religion was keeping in tune with the parallel developments in Western Europe around the same time when the moral economy of the rural population was done away with and replaced with capitalist logic. For a proper study of the transformation that went under colonial

modernity, therefore, we require a global framework that sees religion not only as a matter of superstructure but also related to the economic sphere.

## References

1. Richard M Eaton. The Political and Religious Authority of the Shrine of Baba Farid in Barbara Daly Metcalf (ed.), *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, California, 1984. p. 333-356. The author does not address the text's inaccessibility to non-Arabic speakers. This excludes a large portion of the population and can lead to isolation. The author should have provided translations or other means of access.
2. The Bhakti movement may have elevated the guru to a similar status, but it's also possible that it was due to the guru's personal charisma or teachings.
3. See Utsa Patnaik's 'Preface' to her *The Agrarian Question in Marx and His Successors*, New Delhi, 2007, and Irfan Habib in "Social Distribution of Landed Property" in *Essays in Indian History: Towards a Marxist Perception*, New Delhi, 2002 for a discussion of the effects of extraction of tax in money under Alauddin Khilji.
4. Thompson EP. *The Moral Economy of the English Crowd in the Eighteenth Century* in *Past and Present*, No. 50, 1971, pp. 76-136 describes 'the moral economy of the English crowd in the eighteenth century' as being decisive in the food riots in England. Here, the moral economy of the Indian rulers was harmed, as well as later, the moral economy of the population as well.
5. Nicholas B Dirks. *The Hollow Crown: Ethnohistory of an Indian Kingdom*, Cambridge; c1987.
6. Nancy G Cassells. *Religious and Pilgrim Tax under the Company Raj*, Delhi, 1984, p. 46. It is interesting to note here that the *Pundahs* and *Purohits* of the Jagannath Temple even sent emissaries to every part of the country which earned the title 'pilgrim hunters' from the British officials, as Cassells informs us.
7. Thompson, *op. cit.*
8. Franklin A. Presler, *Religion under Bureaucracy: Policy and Administration for Hindu Temples in South India*, Cambridge; c1987.
9. Franklin, *ibid.* p. 25-26.
10. Franklin, *ibid.* p. 27.
11. Peter van der Veer. *Gods on Earth: The Management of Religious Experience and Identity in a North Indian Pilgrimage Centre*, Oxford; c1988. p. 187.
12. Irfan Habib. *Essays in Indian History: Towards a Marxist Perception*, New Delhi; c1995. p. 162.
13. Nicholas B Dirks. *The Hollow Crown: Ethnohistory of an Indian Kingdom*, Cambridge; c1987. p. 16.
14. Dirks. *op.cit.* p. 45. But here it seems doubtful because the British were never so benevolent on the Indian peasantry. But there can be a conflict between the interests of the usurer and the one who wants to make revenue out of it, or for capitalist farming.
15. David Gilmartin. *Shrine, Successive Sources of Moral Authority* in Barbara Daly Metcalf (ed.), *Moral Conduct and Authority: The Place of Adab in South Asian Islam*, California, 1984; David Gilmartin, *Empire & Islam: Punjab and the Making of Pakistan*, California; c1989.