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Holy Places in an Unholy World: Will Religious Beliefs Halt India's Suez of the East

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Holy Places in an Unholy World: Will Religious Beliefs Halt India's Suez of the East

Cover Page Footnote

International Law; Commercial Law; Law

Holy Places in an Unholy World: Will Religious Beliefs Halt India's “Suez of the East”?†

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*“Who may ascend the hill of the LORD?
Who may stand in his holy place?”¹*

“And still I live in hope to see the Holy Ground once more.”²

“My boy, we are pilgrims in an unholy land.”³

†J.D, University of North Carolina School of Law, 2010. This article is dedicated to my father, Howard W. Brill, in appreciation for his suggestions, example, and love. I am also especially grateful for the constant encouragement and support of my wife, Seuli, and daughter, Asha.

¹ *Psalm 24:3* (New International Version).

² THE CLANCY BROTHERS, *Holy Ground*, on THE CLANCY BROTHERS: GREATEST HITS (Vanguard Records 1990) (1973).

I. Introduction

From Israel's King David to film's Indiana Jones, humans are constantly wrestling with the notion of holy places in a decidedly unholy world. There seems to be a common understanding—whether it is the exhortation to “never discuss religion and politics in mixed company” or Thomas Jefferson's “wall of separation between church and state”⁴—that the collision of the “sacred and profane”⁵ worlds of religious beliefs and government action can inflame passions.

As a result, religious holy sites are often a source of tension between believers and their governments. Take, for example, the Buddhas of Bamian, Afghanistan. In March 2001, the ruling Taliban government destroyed two 1400-year-old giant statues of Buddha “in a fit of indignation.”⁶ Although a Taliban official seemed to distinguish between these ancient structures and active religious sites by promising that the government would not demolish Hindu temples in the country, the act was condemned throughout the world as an intentional destruction of international treasures.⁷ This rhetoric is not confined to authoritarian regimes; in fact, a U.S. congressman and presidential candidate recently suggested that a threat to bomb Muslim holy sites would serve as an effective deterrent against terrorism.⁸

³ INDIANA JONES AND THE LAST CRUSADE (Paramount Pictures 1989) (Henry Jones, Sr., to Henry (Indiana) Jones, Jr., on entering Nazi Germany).

⁴ Letter from Thomas Jefferson to Danbury Baptists (Jan. 1, 1802), *available at* <http://www.loc.gov/loc/lcib/9806/danpre.html>.

⁵ See MIRCEA ELIADE, *THE SACRED AND THE PROFANE: THE NATURE OF RELIGION* (Williard R. Trask trans., Harcourt Brace Jovanovich 1987) (1957).

⁶ Barbara Crossette, *Taliban Explains Buddha Demolition*, N.Y. TIMES, Mar. 19, 2001, at A9.

⁷ *Id.*

⁸ *Candidate Suggests How to Deter Terrorists*, STAR-LEDGER (Newark, N.J.), Aug. 3, 2007, at A4 (quoting U.S. Rep. Tom Tancredo: “If it is up to me, we are going to explain that an attack on this homeland of that nature would be followed by an attack on the holy sites in Mecca and Medina. Because that's the only thing I can think of that might deter somebody from doing what they otherwise might do.”). *But see* Anne E. Komblut, *State Dept. Asks Hopefuls For a Little Diplomacy*, WASH. POST, Aug. 4, 2007, at A4 (State Department spokesman characterized Tancredo's suggestion as “absolutely crazy.”).

One of the long-standing dilemmas at the intersection of religious practices and politics concerns how governments should protect religious sites that are holy or sacred to faith adherents.⁹ Clearly, religious considerations cannot be eliminated entirely from political or judicial decisions, if for no other reason than because policymakers view the world through the perspective of their own faith.¹⁰ The question remains: To what extent should religious considerations inform policy decisions?

A massive infrastructure project off the southeast coast of India has brought this tension between religion and policy to the forefront.¹¹ India and Sri Lanka are separated by the Palk Strait, a shallow water passage navigable only by small fishing boats.¹² In 2005, India began dredging the seafloor in order to create a lane for commercial shipping traffic.¹³ Known as the Sethusamudram Shipping Canal Project, this waterway would destroy a rock formation that many Hindus believe is Ram Sethu—an ancient bridge built by the Hindu deity Rama to connect the island of Sri Lanka to the mainland.¹⁴ As of this writing, the important national infrastructure project has been stayed by the Indian Supreme Court, and the project's status remains uncertain, pending the resolution of a challenge in the nation's high court.¹⁵

The remainder of this Comment will use holy site protections around the world to help interpret India's Sethusamudram Shipping Canal Project. Part II of the Comment will discuss international law and treaties protecting religious freedom and religious sites. Part III will examine, in more detail, examples of judicial or statutory protections of holy sites in other nations. Part IV will discuss India's controversial Sethusamudram Shipping Canal Project, tracing the project's background and legal history. Part V will examine selected case studies to determine if they may

⁹ See generally RON E. HASSNER, *WAR ON SACRED GROUNDS* (2009).

¹⁰ Of course, this perspective is not limited to politicians. Judges, lawyers, and others also use their faith to guide their practice. See, e.g., Howard W. Brill, *The Christian Lawyer: Seven Distinguishing Marks*, 2001 *ARK. L. NOTES* 137.

¹¹ See *infra* Part IV.B.

¹² See *infra* Part IV.B.

¹³ See *infra* Part IV.B.

¹⁴ See *infra* Part IV.B.

¹⁵ See *infra* Part IV.B.

offer guidance in reaching a mutually acceptable resolution for both India's religious and policy leaders.

II. International Protection of Religious Sites

A. International Agreements

International agreements that protect religious freedom generally provide the first principles for protecting religious sites. For example, all signatories to the United Nations Universal Declaration of Human Rights have recognized the right of religious freedom: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁶ For purposes of this Comment, the final phrase—"freedom . . . to manifest his religion or belief in teaching, practice, worship, and observance"—is the most important, since holy sites provide a location for one to manifest one's religion.¹⁷ Therefore, the UN Declaration requires some basic level of protection for holy sites in order to allow an individual to manifest his religion freely.¹⁸

A second important international agreement is the United Nations International Covenant on Civil and Political Rights (ICCPR).¹⁹ As with the UN Declaration, the ICCPR protects the ability of an individual to "manifest his religion or belief in worship, observance, practice and teaching."²⁰ A major difference, however, is that the ICCPR specifically places limits on the freedom to manifest one's religion. The limitations must be 1) prescribed by law; and 2) necessary to protect public safety, order, health, morals, or the fundamental rights and freedom of

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217A, art. 18, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

¹⁷ *Id.*

¹⁸ Of course, governments can limit this freedom and apply different levels of protections to different holy sites. See *infra* text accompanying notes 19 and 214 (illustrating the limits of religious freedom and categories of holy sites).

¹⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

²⁰ *Id.* art. 18.

others.²¹ The first limitation protects against arbitrary government restrictions on religious actions. The second limitation, however, provides countries more flexibility in protecting this right; religious practices may be restricted with a valid justification.

Because these treaties allow individuals to practice their religion freely, international norms suggest that holy sites should generally be protected. However, religious freedom and the use of religious sites may be limited legally if the limitation falls under one of the ICCPR exceptions.

B. International Agreements on Religious Sites

In addition to international treaties addressing the broader issue of religious freedom, two agreements that deal more explicitly with religious sites are worth mentioning: The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and U.N. Resolution 55/254.

The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (the 1954 Convention) provides various protections for cultural property, defined as “movable or immovable property of great importance to the cultural heritage of every people . . . whether religious or secular.”²² Although earlier conventions provided some limited protection for religious sites, the 1954 Convention expanded and unified these previous protections, extending them to all armed conflicts.²³ The 1954 Convention is now universally accepted as customary international law.²⁴

The U.S. Senate did not ratify the 1954 Convention for more than fifty years.²⁵ When the Senate finally acted on September 25,

²¹ *Id.* art. 18, § 3; *see also* Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, 213 U.N.T.S. 211 (entered into force Sept. 3, 1953) (providing similar protections at the European level).

²² Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 1(a), May 14, 1954, 249 U.N.T.S. 240.

²³ David A. Meyer, *The 1954 Hague Cultural Property Convention and Its Emergence into Customary International Law*, 11 B.U. INT’L L.J. 349, 354-55 (1993).

²⁴ *Id.* at 356.

²⁵ *See* 154 CONG. REC. S9555 (daily ed. Sept. 25, 2008). Interestingly, on the same day, the House of Representatives passed H.R. Con. Res. 255, calling for the protection of a Jewish cemetery in Vilnius, Lithuania, and expressing Congress’s commitment to “protecting and preserving the cultural heritage of all national, religious,

2008, it included several reservations to the treaty.²⁶ The Senate emphasized that cultural property may not be used to shield military targets and that cultural property may be targeted “if required by military necessity.”²⁷ The Senate also noted that nuclear weapons are excluded from the Convention’s rules.²⁸

More recently, the U.N. General Assembly adopted a resolution specifically regarding religious sites.²⁹ The 2001 document condemned violence against religious sites and encouraged states to protect their religious sites and to “promote . . . a culture of tolerance and respect for the diversity of religions and for religious sites.”³⁰

Thus, the international community has gone on record to specifically support holy site protections which are independent from the right to freely practice one’s religion. While the U.N. has been primarily concerned about destruction of sites during wartime, it has also strongly emphasized that these sites should be protected as part of a broader culture of respect.

C. *International Courts*

International courts, perhaps surprisingly, have rarely considered issues relating to religious sites. The International Court of Justice (ICJ) has considered only one case of note. In a 1962 decision concerning a controversy over Preah Vihear, an ancient Hindu temple on the border between Thailand and Cambodia, the ICJ awarded sovereignty over the site to Cambodia.³¹ Although the case involved a holy site, the primary issue was a border dispute, and the decision made no reference to the religious nature of the site.³² More than forty years later, passions about the site still run high, no doubt in part because

and ethnic groups, including sacred sites of such groups.” See 154 CONG. REC. H9911 (daily ed. Sept. 25, 2008).

²⁶ 154 CONG. REC. S9555, *supra* note 25.

²⁷ *Id.* § 1.

²⁸ *Id.* § 3.

²⁹ G.A. Res. 55/254, U.N. Doc. A/Res/55/254 (May 31, 2001).

³⁰ *Id.* ¶ 3.

³¹ Case Concerning the Temple of Preah Vihear, Merits, (Cambodia v. Thai.), 1962 I.C.J. 6 (May 26).

³² See *id.*

Preah Vihear is considered sacred. In 2008, soldiers from the two nations faced off in an armed standoff, prompted in part by the designation of Preah Vihear as a U.N. Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site.³³ As recently as April 2009, Thai and Cambodian soldiers clashed at the temple site, resulting in casualties on both sides.³⁴

In its most recent consideration of the topic, the European Court of Human Rights emphasized the importance of holy site access in a 2002 case between Cyprus and Turkey.³⁵ Cyprus claimed that Turkey, which effectively controls the northern third of the Mediterranean island, had violated a number of articles in the European Convention on Human Rights, including the religious freedom protections of Article 9.³⁶ The court agreed with Cyprus, holding that Turkey had violated Article 9 by restricting the movement of the Cypriots.³⁷ Turkey's regulations "considerably curtailed [the Greek-Cypriots'] ability to observe their religious beliefs, in particular their access to places of worship outside their villages and their participation in other aspects of religious life."³⁸

Taken together, these two cases demonstrate that international disputes involving religious sites are infrequent. When issues do arise, the religious nature of a particular site tends to be peripheral. Additionally, the disputes that do arise tend to be heated—an expected result when religious beliefs and government action converge.

III. National Case Studies

In addition to the international framework protecting religious sites, many individual nation-states have legislation or case law that protects sites within their borders. Selected case studies, while not exhaustive, offer a helpful frame of reference for both

³³ See Seth Mydans, *Cambodia: Confrontation Over Disputed Temple Kills 2*, N.Y. TIMES, Oct. 16, 2008, at A10.

³⁴ Thomas Bell, *Cambodian and Thai Troops Clash at Temple*, DAILY TEL. (London), Apr. 4, 2009, at 20.

³⁵ *Cyprus v. Turkey*, 35 Eur. Ct. H. R. 30 (2002).

³⁶ *Id.* ¶ H1.

³⁷ *Id.* ¶ 246.

³⁸ *Id.* ¶ 245.

India's Sethusamudram Shipping Canal Project and similar issues in other countries.

A. Australia

In recent years, Australia has codified protections for the religious practices of its Aboriginal peoples.³⁹ The Aboriginal and Torres Strait Islander Heritage Protection Act of 1984 protects "places, areas, and objects" sacred to the Aborigines.⁴⁰ While religious sites are not explicitly in the act, they are implicitly included; "Aboriginal tradition" is used to determine which sites may be protected, including "any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships."⁴¹ The Northern Territory Aboriginal Sacred Sites Act, passed in 1989, was the first law to specifically address Aboriginal religious sites.⁴² The legislation established the Aboriginal Areas Protection Authority to register sacred sites⁴³ and provides penalties for anyone who enters, desecrates, or works on a registered site.⁴⁴ The Act defines a sacred site as "a site that is sacred to Aborigines or is otherwise of significance according to Aboriginal tradition."⁴⁵

The most significant recent holy site dispute in Australia concerned a proposed bridge to Hindmarsh Island, a resort outside Adelaide.⁴⁶ Aboriginal women protested the project on religious grounds under the Heritage Protection Act, and as a result of their religious concerns, a twenty-five year delay on the project was ordered.⁴⁷ A Royal Commission later found the women's claim to

³⁹ Richard B. Collins, *Symposium: Native Americans and the Constitution: Sacred Sites and Religious Freedom on Government Land*, 5 U. PA. J. CONST. L. 241, 252 (2003).

⁴⁰ Aboriginal and Torres Strait Islander Heritage Protection Act, 1984, at Long Title (Austl.).

⁴¹ *Id.* § 3.

⁴² Northern Territory Aboriginal Sacred Sites Act, 1984 (Austl.).

⁴³ *Id.* § 5.

⁴⁴ *Id.* § 33-39

⁴⁵ *Id.* § 3 (citing Aboriginal Land Rights Act, 1976 (Northern Territory) § 3).

⁴⁶ Collins, *supra* note 39, at 253.

⁴⁷ *Id.* at 253-54. The women refused to reveal the nature of their concerns to men, which made it difficult for the government to determine the legitimacy of the claim.

be false.⁴⁸ In the end, the Australian Parliament exempted the bridge project from the relevant statute and the bridge opened in 2002.⁴⁹ However, even this final step was not without controversy. In *Kartinyeri v. The Commonwealth*,⁵⁰ the Australian High Court upheld the project's exemption from the Heritage Protection Act.⁵¹

Australia, thus, is notable for its strong and systemic legislative protections of indigenous holy sites. Additionally, as illustrated in the Hindmarsh dispute, religious concerns about a site are taken very seriously, assuming that the concerns are legitimate.

B. New Zealand

The New Zealand Bill of Rights Act of 1990⁵² mirrors some of the protections of the ICCPR.⁵³ Article 13 protects the right to freedom of religion,⁵⁴ while Article 15 gives New Zealanders the right to manifest their religious belief “in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.”⁵⁵ Article 20 specifically provides that a member of a religious minority “shall not be denied the right, in community with other members of that minority . . . to profess and practise the religion . . . of that minority.”⁵⁶ The “in community” limitation ensures that an individual cannot create a religion and later claim that his particular religion, of which he is the only follower, is being infringed.

At least eight additional statutes recognize the right of the Maori, New Zealand's indigenous people, to protect their sacred sites, or “wahi tapu.”⁵⁷ Wahi tapu is broadly defined in New

⁴⁸ *Id.* at 254.

⁴⁹ *Id.* at 255.

⁵⁰ 195 C.L.R. 337 (1998).

⁵¹ *Id.* at 27.

⁵² New Zealand Bill of Rights Act of 1990, Pub. L. No. 109.

⁵³ ICCPR, *supra* note 19.

⁵⁴ New Zealand Bill of Rights Act of 1990, Pub. L. No. 109, art. 13.

⁵⁵ *Id.* art. 15.

⁵⁶ *Id.* art. 20.

⁵⁷ Collins, *supra* note 39, at 247.

Zealand's Historic Places Act 1993 as "a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense."⁵⁸ While religious sites have some protection, the net result of these statutes is to "diminish the relative importance of religious freedom by equating it to other cultural and environmental concerns."⁵⁹

Watercare Services Ltd. v Minhinnick,⁶⁰ likely the most important decision on Maori sacred sites,⁶¹ illustrates how courts balance these concerns. In this case, a local governmental authority planned construction of a major sewage pipeline across sacred Maori land.⁶² The Wellington Court of Appeal described the amount of weight that courts should give to religious belief:

The Court must weigh all the relevant competing considerations and ultimately make a value judgment on behalf of the community as a whole. Such Maori dimension as arises will be important but not decisive even if the subject-matter is seen as involving Maori issues. Those issues will usually, as here, intersect with other issues such as health and safety Cultural well-being . . . is accompanied by social and economic well-being. While the Maori dimension . . . calls for close and careful consideration, other matters may in the end be found to be more cogent when the Court, as the representative of New Zealand society as a whole, decides whether the subject-matter is offensive or objectionable In the end a balanced judgment has to be made.⁶³

The court allowed the "community at large" rather than "a reasonable Maori person representative of the Maori community at large" to determine whether the governmental intrusion interfered with religious beliefs, thus considering religious beliefs in the context of broader societal values.⁶⁴ Emphasizing the need for balanced approach, the court held that "[t]he views of individual

⁵⁸ *Id.* (quotations omitted).

⁵⁹ *Id.* at 248.

⁶⁰ [1998] 1 N.Z.L.R. 294, 307 (C.A.).

⁶¹ Collins, *supra* note 39, at 250.

⁶² Minhinnick, 1 N.Z.L.R. at 294.

⁶³ *Id.* at 305.

⁶⁴ *Id.*

members of society must always be sympathetically considered but the [relevant legislation] does not require those views to prevail irrespective of the weight of other relevant considerations.”⁶⁵

New Zealand’s legal system thus recognizes that religious beliefs are rarely the only consideration in a holy site dispute. The needs of a modern and diverse society require courts and policymakers to consider more than just the viewpoint of the believer.

C. Israel

Despite its small size, Israel has a disproportionate number of sacred sites, many of which have experienced conflict.⁶⁶ The multitudes of Christian sites alone have seen numerous disputes since the Crusades.⁶⁷ In the modern state of Israel, only days after the 1967 Arab-Israeli Six Day War, the Israeli Knesset passed explicit protections for sacred sites in the Protection of Holy Places Law.⁶⁸ The law treats all religions equally. Specifically, it provides that “[t]he Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them or their feelings with regard to those places.”⁶⁹ It also provides strong enforcement measures; a violator of the law can be imprisoned for up to seven years.⁷⁰

Although the mention of Israeli holy sites often invoke thoughts of the Dome of the Rock, the Temple Mount or the traditional burial place of Jesus, smaller, lesser-known sites garner just as much controversy. For example, Ethiopian Christian monks and Coptic Christian monks have disputed ownership of the Deir el-Sultan monastery atop the Church of the Holy Sepulcher for centuries.⁷¹ Although Ethiopian Christian monks

⁶⁵ *Id.*

⁶⁶ Natan Lerner, *Religious Liberty in the State of Israel*, 21 EMORY INT’L L. REV. 239, 256 (2007).

⁶⁷ *Id.*

⁶⁸ Protection of Holy Places Law, 5727-1967, 21 LSI 76 (1967) (Isr.).

⁶⁹ *Id.* § 1.

⁷⁰ *Id.* § 2.

⁷¹ Lerner, *supra* note 66, at 259. The Church of the Holy Sepulcher is the traditional crucifixion site of Christ and a particularly sacred site to Christians. *See id.* at

control the site, Coptic Christian monks believe they own it, and physical violence between the two groups occasionally erupts.⁷² The dispute was taken to the Israeli judiciary, but a court deferred a resolution to the political branches of government.⁷³ Unfortunately, more than thirty years later, the government has still not acted.⁷⁴ Although the current Israeli government plans to take an active role in mediation,⁷⁵ there is a high likelihood that a resolution is far in the future.⁷⁶

Despite this long history of religious site disputes, an interfaith commission known as the Holy Sites Project has suggested that Jerusalem's holy sites can still be protected.⁷⁷ The project argues that "a legal regime founded upon the fundamental human right of religious freedom . . . implemented through a legal regime to regulate . . . the obligations imposed by the regime, need not conflict with sovereignty and sovereign interests such as security and social and economic administration."⁷⁸ While the goal sounds promising, the difficulty lies in avoiding such a conflict.⁷⁹ The commission suggests several principles. The concerned parties should 1) respect the holy sites and use them only for religious and peaceful purposes; 2) share the power of control over the sites; 3) provide open access; and 4) prohibit seizing another religious

256.

⁷² *Id.*; see also Matti Friedman, *Christians Feud over Church of Holy Sepulcher*, ASSOC. PRESS, Oct. 25, 2008, ¶ 4, available at http://www.usatoday.com/news/world/2008-10-25-2248148370_x.htm (last visited Jan. 27, 2010).

⁷³ Friedman, *supra* note 72.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See *id.* (providing examples of feuds at this site, including the lack of agreement on where to build a fire exit, controversies over who sweeps the steps, and a ladder that has stood for over 100 years because no sect will let another take it down). See also Matti Friedman, *Monks Brawl at Christian Holy Site in Jerusalem*, ASSOC. PRESS, Nov. 10, 2008, ¶ 12, available at http://www.usatoday.com/news/religion/2008-11-09-monks-brawl_n.htm (last visited Jan. 27, 2010).

⁷⁷ DAVID E. GUINN, *PROTECTING JERUSALEM'S HOLY SITES: A STRATEGY FOR NEGOTIATING A SACRED PEACE* 192 (Cambridge Univ. Press 2006). The report is based on a study by the Holy Sites Project, initiated by the International Human Rights Institute of DePaul University College of Law. See *id.* at 2.

⁷⁸ *Id.* at 193.

⁷⁹ It may be appropriate to recall the aphorism, "The devil is in the details."

community's sites.⁸⁰ The custodial faith community should 1) administer the site "in accordance with their own religious beliefs and practices;" 2) "take all necessary and reasonable steps to protect and preserve" the sites; and 3) provide access to the sites for others.⁸¹

This systematic proposal is only one of many ideas that have been suggested to protect Israel's holy sites. Another plan would simply codify the current status of the sites; Israeli Justice Itzhak England noted that "great importance is attached to maintaining the status quo."⁸² Still others argue that the international community should become more involved. A former director-general of UNESCO, Federico Mayor, discussed a U.N. framework for protecting Israel's holy sites, suggesting that they belong to the common heritage of mankind.⁸³ At least one prominent fictional television show has even suggested that U.S. troops be used to maintain stability over the Holy Land, including religious sites.⁸⁴

One need not look any further than Israel to see how holy sites can cause a variety of conflicts, even within the same faith community. Especially in a land of shared and diverse faiths, resolution of these conflicts is difficult—a systematic, comprehensive, and balanced approach is needed.

D. United States

American religious protections began in 1789 with the First Amendment, which states only that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁸⁵ Baseline protections for holy sites have come more recently and have tended to deal with traditional Native American religions, similar to the legal protections for indigenous religions in Australia and New Zealand.

In 1978, Congress passed the American Indian Religious

⁸⁰ GUINN, *supra* note 77, at 193.

⁸¹ *Id.* at 193-94.

⁸² Collins, *supra* note 39, at 257 (citation omitted).

⁸³ *Id.* at 259 (citation omitted).

⁸⁴ *The West Wing: The Birnam Wood* (NBC television broadcast Oct. 27, 2004).

⁸⁵ U.S. CONST. amend. I. The judicial history of the clause's interpretation is unnecessary for this article.

Freedom Act, which reiterated U.S. policy to protect native religious practices “including but not limited to access to sites.”⁸⁶ Although the statute included no penalties, it was clearly designed to right a wrong; in fact, President Carter’s signing statement noted that the government had “on occasion, denied Native Americans access to particular sites.”⁸⁷

Another important statute governing holy sites is the Religious Freedom Restoration Act (RFRA), which provides Congress’s interpretation of the free exercise clause.⁸⁸ The law allows the government to “substantially burden” religious exercise only if there was a “compelling government interest.”⁸⁹ Congress passed RFRA in response to Supreme Court cases such as *Employment Division v. Smith*,⁹⁰ which “virtually eliminated the requirement that the government justify the burdens on religious exercise imposed by laws neutral toward religion.”⁹¹ Previous Supreme Court cases⁹² had required a compelling governmental interest before burdening religious practice, and Congress acted specifically to restore this compelling interest test.⁹³ However, Native Americans face a unique free exercise test. They must show that the religious practice is 1) central to their religion; 2) indispensable to their religion; and 3) cannot be done elsewhere.⁹⁴

After RFRA was passed, President Bill Clinton took additional executive action to protect American Indian sacred sites. Executive Order No. 13007 directed federal agencies to both accommodate the access and use of Indian sacred sites on federal lands and to avoid an adverse effect on the sites, keeping their

⁸⁶ 42 U.S.C. § 1996 (2001).

⁸⁷ American Indian Religious Freedom Statement on Signing S.J. Res. 102 into Law (signing statement of President Jimmy Carter) (Aug. 12, 1978).

⁸⁸ 42 U.S.C. § 2000bb (2001) [hereinafter RFRA].

⁸⁹ *Id.* § 2000bb-1b.

⁹⁰ 494 U.S. 872 (1990).

⁹¹ Mary L. Topliff, *Validity, Construction, and Application of Religious Freedom Restoration Act* (42 U.S.C.A. §§ 2000bb et seq.), 135 A.L.R. FED. 121, § 2(a) (1996).

⁹² See *Sherbert v. Verner*, 374 U.S. 398 (1963); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁹³ 42 U.S.C. § 2000bb-b (2001).

⁹⁴ Amber L. McDonald, Note, *Secularizing the Sacrosanct: Defining “Sacred” for Native American Sacred Sites Protection Legislation*, 33 HOFSTRA L. REV. 751, 762 (2004).

location confidential if appropriate.⁹⁵ For purposes of the executive order, a sacred site must be “specific, discrete, [and] narrowly delineated” and must be disclosed to the agency.⁹⁶

Legislative proposals on sacred sites have been rare. Most recently, U.S. Representative Nick Rahall introduced legislation in the 108th Congress “[t]o protect sacred Native American federal land from significant damage.”⁹⁷ Rahall identified four major purposes of the Native American Sacred Lands Act: 1) To enact Executive Order No. 13007 into law; 2) to allow Indian tribes to ask the government to exempt sacred land from development; 3) to maintain confidentiality of sites; and 4) to permit lands to be transferred from the government to the Indian tribes.⁹⁸ Despite these worthy goals, Congress rejected a scaled down version, which only prohibited funding for activities that would “adversely affect the physical integrity of sacred sites,” likely because of concerns about the broad language in Rahall’s proposal.⁹⁹

The one example illustrates the recurring tension between the federal government and Native Americans over holy sites. Oklahoma’s Fort Sill Army Base, founded in 1869, is home to the Army’s Field Artillery School.¹⁰⁰ Fort Sill has a rich history. It is the only active Army installation on the South Plains remaining from the time of the Indian Wars, and its famous residents ranged from “Buffalo Bill” Cody to Geronimo.¹⁰¹ Although over a century has passed since the Fort’s founding, conflict between the government and local tribes continues.

As part of Fort Sill’s expansion, the government planned to build an additional 43,000 square foot building¹⁰² known as the Training Support Center.¹⁰³ The new building is located near

⁹⁵ Exec. Order No. 13007, 3 C.F.R. 196 (1996).

⁹⁶ *Id.* §1(b)(iii).

⁹⁷ Native American Sacred Lands Act, H.R. 2419, 108th Cong. (2003).

⁹⁸ 149 CONG. REC. E1231 (daily ed. June 11, 2003) (statement of Rep. Rahall).

⁹⁹ 150 CONG. REC. H4244 (daily ed. June 16, 2004) (statements of Rep. Rahall and Rep. Taylor).

¹⁰⁰ *Fort Sill Military Facility*, <http://www.globalsecurity.org/military/facility/fort-sill.htm> (last visited Jan. 27, 2010).

¹⁰¹ *Id.*

¹⁰² For purposes of comparison, the building would be about the size of an acre, or about two-thirds the size of a football field.

¹⁰³ *Comanche Nation v. United States*, No. 08-849, at *3 (W.D. Okla., Sept. 23,

Medicine Bluffs, a religiously significant site to Native Americans that is listed on the National Register for Historic Places.¹⁰⁴ The Comanche Nation sued under RFRA, alleging that construction of the Training Support Center interfered with their religious exercises.¹⁰⁵ The court agreed and in September 2008, granted a preliminary injunction halting construction.¹⁰⁶ In his decision, District Court Judge Timothy DeGuisti found that construction would substantially burden the Comanche's religious practices by interrupting the "unobstructed view of all four Bluffs [which] is central to the spiritual experience of the Comanche people."¹⁰⁷ Rather than fight the injunction, the military is proceeding with construction of the facility at an alternate location.¹⁰⁸

The Fort Sill case illustrates that, despite limited statutory protections for Native American holy sites, the American judiciary is willing to enforce those protections when an important site is threatened. These types of decisions also uphold international norms, because RFRA's compelling interest test is consistent with language in the ICCPR allowing a government to only restrict religious practices with a valid justification.¹⁰⁹

IV. India's Sethusamudram Shipping Canal Project

A. *The State of Religion in India.*

Before turning to the Sethusamudram project, a brief examination of India's religious demographics provides a helpful perspective. India has approximately 1.1 billion people and is religiously diverse; the nation is approximately eighty-one percent Hindu,

2008).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* An additional claim was made under the National Historic Preservation Act of 1966.

¹⁰⁶ *Id.* at *49.

¹⁰⁷ *Id.* at *51; see also Ron Jackson, *Tribes: Judge's Ruling Shows Fort Sill Museum Director was Left Out of Decision-making Process; Warnings on Sacred Site Squelched, Memo Claims*, OKLAHOMAN (Oklahoma City), Sept. 25, 2008, at A10.

¹⁰⁸ *Fort Sill Plans New Warehouse Location in Sacred Land Dispute*, ASSOC. PRESS, Nov. 14, 2008, available at <http://www.newsok.com/fort-sill-plans-new-warehouse-location-in-sacred-land-dispute/article/3321945> (last visited Jan. 27, 2010)

¹⁰⁹ See *supra* notes 85-94 and accompanying text.

thirteen percent Muslim, and two percent Christian.¹¹⁰ There is, however, no state religion.¹¹¹ The nation is fast becoming a world power with industrialization and modernization providing both challenges and opportunities.¹¹²

General religious protections are included in Article 25(1) of the Indian Constitution, which protects “the right freely to profess, practise, and propagate religion.”¹¹³ This right is not absolute, however. As in the ICCPR,¹¹⁴ religious freedom is “subject to public order, morality and health.”¹¹⁵ Despite these statutory protections at the national level, state and local governments continue to restrict religious freedom.¹¹⁶ The U.S. Department of State has also noted that the Indian government has been criticized for “alleged indifference and inaction toward [religious] abuses [committed by] state and local authorities and private citizens.”¹¹⁷

One specific law protecting religious sites is India’s Places of Worship Act of 1991.¹¹⁸ The Act prohibits a place of worship (such as a mosque or temple) from being converted into a place of worship for another religion.¹¹⁹ However, it does not apply to ancient monuments or archeological sites.¹²⁰

Several sections in the Indian Penal Code provide criminal penalties for offenses against religion. Section 295 is the most relevant and prohibits the intentional destruction of religious sites:

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any

¹¹⁰ DEPARTMENT OF STATE INTERNATIONAL RELIGIOUS FREEDOM REPORT, INDIA (2009), available at <http://www.state.gov/g/drl/rls/irf/2009/127365.htm> [hereinafter IRFR].

¹¹¹ *Id.*

¹¹² See, e.g., THOMAS L. FRIEDMAN, THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY (Farrar, Straus, and Giroux) (2005) (assessing globalization and its effect on countries, corporations, and individuals).

¹¹³ INDIA CONST. art. 25, § 1.

¹¹⁴ ICCPR, *supra* note 19, art. 18, § 3.

¹¹⁵ *Id.*

¹¹⁶ IRFR, *supra* note 110.

¹¹⁷ *Id.*

¹¹⁸ India Places of Worship Act, No. 42 of 1991; India Code (1991).

¹¹⁹ *Id.*

¹²⁰ *Id.*

class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as a insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.¹²¹

Additional laws prohibit intentional acts, words, or gestures intended to “outrage religious feelings,” disruptions of religious gatherings, and trespassing on sites of worship or burial.¹²²

Unfortunately, these protections do not immunize holy sites from religious violence. The high-profile Ayodha dispute of the 1990s illustrates a common type of controversy over Indian religious sites. The dispute can be traced to 1528, when the Babri mosque was built in the town of Ayodhya.¹²³ Many Hindus believe that the mosque was built on the same site as the birthplace of the deity Rama, and as a result, religious violence has been recorded at the site since 1853.¹²⁴ In 1984, several political parties began a campaign to build a temple in honor of Rama on the site, and in 1992, Hindus destroyed the mosque.¹²⁵ In response to this destruction, religious violence erupted across the nation and killing thousands of people.¹²⁶ While this example may be extreme, Hindu-Muslim violence over religious sites is unfortunately still commonplace today.¹²⁷

B. The Sethusamudram Shipping Canal Project

Though perhaps less common in India than inter-religious conflicts over a single site, protests over religious sites threatened by development are no less controversial. Although virtually unknown in the United States, a contentious disagreement of this type is currently taking place off the southeast coast of India.¹²⁸

¹²¹ INDIA PEN. CODE § 295.

¹²² *Id.*

¹²³ *Timeline: Ayodhya Mosque Crisis*, BBC NEWS, July 5, 2005, ¶ 1, available at http://news.bbc.co.uk/2/hi/south_asia/1844930.stm (last visited Jan. 27, 2010).

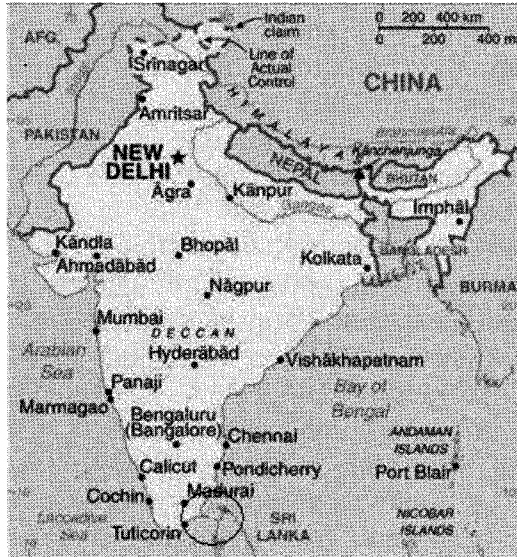
¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See IRFR, *supra* note 110.

¹²⁸ Map 1: India and the SCCP (This map is based on a Central Intelligence Agency MP. See CIA-The World Factbook- India (2009), available at <http://www.cia.gov/library/publications/the-world-fatbook/geos/in.html>.

Map 1: India and the SSCP¹²⁹

For almost 150 years, proposals have been floated to create a canal through the Palk Strait separating India and Sri Lanka.¹³⁰ Currently, commercial ships traveling around India must navigate around the island of Sri Lanka because the strait is so shallow.¹³¹ Unlike the canals through the isthmuses of Panama and the Suez, the forty billion rupee (US \$830 million)¹³² Sethusamudram

¹²⁹ This map is based on a Central Intelligence Agency map. See CIA – The World Factbook – India (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html>.

¹³⁰ Ripunjy Kumar Sarma, *What is this Sethusamudram Project?*, THE ECON. TIMES OF INDIA, July 5, 2005, ¶ 3; see also SUBRAMANIAN SWAMY, RAMA SETU: SYMBOL OF NATIONAL UNITY 24-31 (Har-Anand Publications 2008) (providing a historical outline of proposed canals at this location since 1860).

¹³¹ Sarma, *supra* note 130, ¶ 6.

¹³² Harry Sanna, *The Bridge to Nowhere*, NATIONAL (Abu Dhabi), Dec. 20, 2008, ¶7, available at <http://www.thenational.ae/article/20081220/FOREIGN/961783012/1103/NEWS>. Despite the canal's high cost, it is still far less expensive than the homes of American professional sports teams. See Manny Fernandez, *Fans in Mourning as Sun Sets on the Old Yankee Stadium*, N.Y. TIMES, Sept. 21, 2008, at B2 (detailing the new \$1.3 billion Yankee Stadium in New York); Richard Lacayo, *How 'Bout That Stadium?*, TIME, Sept. 28, 2009, at 52 (discussing the \$1.2 billion Cowboys Stadium in Dallas and the \$1.6 billion Jets-Giants Stadium under construction in East Rutherford, New Jersey).

Shipping Canal Project (SSCP)—“the Suez of the East”—would dredge a 103 mile ship channel through the existing waterway to allow nautical traffic to pass.¹³³ When completed, the project is estimated to save ships as much as 424 nautical miles and 36 hours of sailing time.¹³⁴ Proponents point to the enormous trade, economic development, and national security benefits of the completed project.¹³⁵ Prime Minister Manmohan Singh touted these benefits to the nation when he officially launched the SSCP on July 2, 2005, saying that “the lives of the people will be transformed with the implementation of this project.”¹³⁶

But almost since its inception, the Sethusamudram project has seen significant opposition, primarily at first on environmental grounds due to the destruction of habitat resulting from the project’s extensive dredging.¹³⁷ As the project progressed, however, religious opposition began to emerge. For example, the Chief Minister of the state of Madhya Pradesh (similar to a U.S. governor) called on India’s president to choose an alternative route, saying the project “is likely to damage the Ram Setu and hurt the deep rooted religious feelings involving issues of faith.”¹³⁸ Religious leaders soon petitioned a court for an injunction to stop construction.¹³⁹ Traffic blockades were held in Mumbai, Delhi,

¹³³ Sanna, *supra* note 132, ¶ 7; *see also* Shaikh Azizur Rahman, *Hindus Rip Plan to Breach Mythical Bridge: Indian Shipping Channel Would Cut Travel Costs*, WASH. TIMES, Sept. 22, 2007, at A6; Padma Rao, *By Building a New Shipping Line, India Realizes an Old Dream*, SPEIGEL MAG., Oct. 10, 2005.

¹³⁴ Rahman, *supra* note 133, at A6.

¹³⁵ *Id.*

¹³⁶ *PM Opens Sethu Project*, STATESMAN (Kolkata, India), July 3, 2005; *see also* The Sethu Canal, www.sethucanal.com (arguing that the canal will symbolize “India’s dominance in the international trading route” while minimizing religious and environmental disruptions) (last visited Jan. 27, 2010).

¹³⁷ *See* Sarma, *supra* note 130; *see also* SWAMY, *supra* note 128, at 69-127 (outlining the environmental, economic, and national security opposition to the canal); Tony George Puthucherril, *Ballast Waters and Aquatic Invasive Species: A Model for India*, 19 COLO. J. INT’L ENVTL. L. & POL’Y 381, 415-16 (2008) (discussing how the SSCP may spur India to adopt additional environmental protections).

¹³⁸ *Sethusamudram Project “Hurting” Hindu Sentiments: Chouhan*, INDO-ASIAN NEWS SERVICE (New Delhi, India), April 23, 2006, ¶ 4, *available at* <http://www.indiaenews.com/pdf/5371.pdf>.

¹³⁹ *Religion Latest Hurdle for Sethu Ship Canal Project*, INDIAN EXPRESS (Mumbai, India), Jan. 6, 2007, ¶ 1, *available at* <http://www.indianexpress.com/news/religion-latest-hurdle-for-sethu-ship-canal/20227/>.

and other major cities,¹⁴⁰ and over 50,000 opponents of the project protested in the capital of New Delhi.¹⁴¹ Perhaps most disturbingly, a fundamentalist political leader offered a reward in gold to anyone who beheaded the party leader in charge of the state of Tamil Nadu, who is a strong supporter of the project.¹⁴²

Why would this construction project arouse such strong feelings? The religious opposition is based on the ancient Hindu text of the Ramayana, which describes a bridge across the ocean built by Rama's army of monkeys. The relevant passage is worth quoting at some length:

[T]he mighty Nala, foremost among the monkeys . . . constructed a great bridge, ten leagues in width and one hundred in length, right through the middle of the ocean, lord of rivers and streams.

. . . .

The bridge that Nala constructed over the ocean, abode of sea monsters, was as majestic and splendid as the path of the constellation Svati through the heavens.

. . . .

The leaping monkeys were bounding, bellowing, and leaping. All beings gazed upon that inconceivable, seemingly impossible, and hair-raising marvel: the building of a bridge across the ocean.

And so, constructing that bridge over the sea, those hundreds of billions of immensely powerful monkeys reached the farther shore of the ocean, the great receptacle of the waters.

Broad, well-built, majestic, smooth-surfaced, and beautifully proportioned, the great bridge resembled a

¹⁴⁰ *Nationwide Protests over Sethusamudram Project*, PRESS TRUST OF INDIA (New Delhi), Sept. 12, 2007, ¶ 2-3, available at <http://us.rediff.com/news/2007/sep/12sethu.htm>.

¹⁴¹ *Thousands Protest in Delhi Against Sethusamudram Project*, ASIAN NEWS INT'L (New Delhi), Dec. 30, 2007, ¶ 3, available at http://www.thaindian.com/newsportal/india-news/thousands-protest-in-delhi-against-sethusamudram-project_10010758.html.

¹⁴² Praful Bidwai, *India: Hindu Fundamentalists Oppose Canal Project*, INTER PRESS SERVICE, Sept. 24, 2007, ¶ 5, available at <http://ins.onlinedemocracy.ca/index.php?name=News&file=article&sid=9838>.

dividing line in the midst of the ocean.¹⁴³

Fundamentalist Hindu groups believe that this bridge, known as the Ram Sethu,¹⁴⁴ was built from the southeast coast of India across the Palk Strait to the island of Sri Lanka.¹⁴⁵ According to these believers,¹⁴⁶ the remains of this twenty-seven mile long and one mile wide bridge still exist in a chain of shoals stretching across the shallow strait.¹⁴⁷ Geologists, however, have determined that the structure is simply “a naturally occurring chain of calcareous limestone shoals created by sedimentation.”¹⁴⁸ The opinions of scientists notwithstanding, the dredging of the Sethusamudram canal would thus destroy this bridge; a result unacceptable to these believers.

Prompted by their religious concerns, a number of Hindu groups have organized campaigns to save Ram Sethu and prevent the channel's construction. The Viswa Hindu Parishad (World Hindu Organization) began a protest in 2005, and a major opposition political party, the Bharatiya Janata Party (BJP),¹⁴⁹ has also joined the campaign.¹⁵⁰ Some secular organizations are also calling for the site to be declared a UNESCO World Heritage Site due to its religious and environmental significance.¹⁵¹

¹⁴³ THE RAMAYANA OF VALMIKI: AN EPIC OF ANCIENT INDIA, 155-56 (Robert P. Goldman et al. trans., Princeton Univ. Press 2009).

¹⁴⁴ The structure is also known as Adam's Bridge. See Rahman, *supra* note 133. For the sake of consistency, Ram Sethu will be used in this Comment.

¹⁴⁵ *Id.*

¹⁴⁶ As with any religion, this belief is by no means uniform.

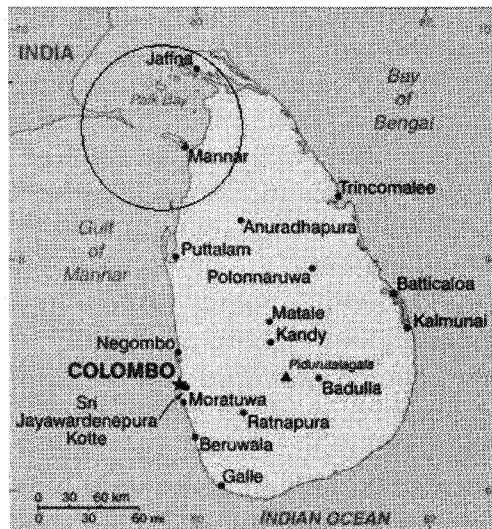
¹⁴⁷ SWAMY, *supra* note 130, at 58-68.

¹⁴⁸ *Id.* The structure is approximately thirty miles long, and the water is no more than four feet deep. See 1 THE NEW ENCYCLOPEDIA BRITANNICA 88 (15th ed. 2005).

¹⁴⁹ Atal Bihari Vajpayee, who served three terms as India's Prime Minister between 1996 and 2004, is a member of the BJP. See BJP website, www.bjp.org (last visited Jan. 27, 2010).

¹⁵⁰ Bidwai, *supra* note 142; see also BHARATIYA JANATA PARTY MANIFESTO, LOK SABHA ELECTION 48 (2009), available at http://www.bjp.org/images/pdf/election_manifesto_english.pdf (listing realignment of the canal as one of the party's key platform points in the 2009 national elections).

¹⁵¹ Press Release, Living Planet Foundation, Campaign to Declare Gulf of Mannar a World Heritage Site Holds First International Meeting in London, UK (Oct. 3, 2008), available at <http://www.livingplanetfoundation.org/Press%20Release.pdf>.

Map 2: Location of the SSCP¹⁵²

1. Indian Courts and the SSCP

Legal proceedings challenging the public hearing process in the Madras High Court were filed against the SSCP well before the project was inaugurated.¹⁵³ In 2004, the court upheld the hearing process and ordered the SSCP to be “completed as expeditiously as possible.”¹⁵⁴ While religious concerns were not at issue in the case, the court made it clear that environmental concerns should take a back seat to progress and industrialization:

[W]e should not obstruct the scientific and technical progress of the country in the name of environment protection. No doubt, the environment has to be protected, but at the same time [w]e must never overlook the basi[c] aim of our country which is to make India a powerful and modern industrial state. . . . [I]f we wish to get respect in

¹⁵² This map is based on a Central Intelligence Agency Map. See CIA – The World Factbook – Sri Lanka, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ce.html>.

¹⁵³ Fernandes, *Coastal Action Network v. Tamil Nadu Pollution Control Board*, et al., Madras H.C. W.P. No. 33528 (2004); *Tuticorin Port Trust v. Tamil Nadu Pollution Control Board*, Madras H.C., W.P. No. 34436 (2004).

¹⁵⁴ Fernandes, *Madras H.C., W.P. No. 33528 (2004)*, at no. 16.

the world community we must make our country highly industrialized and prosperous

[Relevant constitutional] provisions have to be read long with the basic objective of the country . . . and protection of [the] environment must be regarded as only incidental to this main aim, and not itself the main aim.¹⁵⁵

As a result, the Madras High Court allowed the SSCP to go forward in order to further India's modernization, thus equating industrialization with both environmental awareness and more importantly, world respect.¹⁵⁶ This decision indicates that other Indian courts may prioritize progress over other concerns such as environmental or religious objections.

Despite the court's approval of the project, additional challenges were soon filed in the Madras court.¹⁵⁷ In July 2007, the Indian Supreme Court transferred and consolidated the challenges to determine 1) If an additional alternative route could bypass the Ram Sethu; and 2) whether an archeological survey could be done to determine whether the structure qualified as a national monument.¹⁵⁸ The statute in question gives the government the power to declare and protect sites as "ancient monuments" of "national importance."¹⁵⁹ Opponents of the SSCP argue¹⁶⁰ that the structure should qualify under the specific delineation for religious sites: "A protected monument maintained by the Central Government under this Act which is a place of worship or shrine shall not be used for any purpose inconsistent with its character."¹⁶¹ Presumably, destruction of Ram Sethu—if it

¹⁵⁵ *Id.* at no. 17-18.

¹⁵⁶ *Id.*

¹⁵⁷ See *Rama Gopalan v. Union of India & Ors.*, W.P. No. 18076 (2007); *Dr. Subramanian Swamy v. Union of India & Ors.*, W.P. No. 18223 (2007); *Dr. Subramanian Swamy v. Union of India & Ors.*, W.P. No. 18224 (2007). The case statuses of these writ petitions are available at <http://courtnic.nic.in/chennai/content.asp>.

¹⁵⁸ *Sethusamudram Corpn. Ltd. v. Rama Gopalan & Ors.*, Transfer Petition (civil) 430-32 (2007), available at <http://judis.nic.in/supremecourt/chejudis.asp>.

¹⁵⁹ Ancient Monuments and Archaeological Sites and Remains Act of 1958, No. 24; India Code (1958), available at http://www.asi.nic.in/pdf_data/6.pdf [hereinafter Ancient Monuments Act].

¹⁶⁰ SWAMY, *supra* note 130, at 33 ("If only because of the sheer faith of the masses of India in Sri Rama, the Rama Setu must be declared an 'Ancient Monument' . . . and it must be protected and nurtured as a revered national heritage.")

¹⁶¹ Ancient Monuments Act § 16(1).

is indeed a place of worship—would thus be “inconsistent with its character.”

In order to resolve these questions, the court stayed the canal’s construction in an interim order in August 2007, making the order permanent two weeks later.¹⁶² Despite the pause in construction, tensions in India remained high. Hindu opponents of the SSCP became even more resolute in September 2007 after the Archaeological Survey of India filed an affidavit questioning the historical validity of the deity Rama.¹⁶³ Days later, widespread outrage at this religious affront caused the government to withdraw the affidavit.¹⁶⁴ In July 2008, with the controversy not yet resolved, the Supreme Court appointed an expert committee to consider alternative alignments to the canal.¹⁶⁵ As 2009 ended, the panel had not yet made its report, and the government told the Supreme Court that the report could be delayed until mid-2011.¹⁶⁶ Opponents alleged that the government was delaying in order to suppress a damaging environmental report that would cause the entire project to be abandoned.¹⁶⁷

While the experts deliberate, both supporters and opponents of the SSCP continue to argue before the Supreme Court. The government claims that the stay on construction should be overturned based on *Narmada Bachao Andolan v. Union of*

¹⁶² *Ram Sethu: Govt to Approach SC to Resume Work*, PRESS TRUST OF INDIA (New Delhi), Sept. 17, 2007, ¶ 2, available at <http://www.rediff.com/cms/print.jsp?docpath=//news/2007/sep/17sscp.htm>. To date, approximately twenty-five percent of the canal has been completed. See Sanna, *supra* note 132.

¹⁶³ *Government Retracts Lord Ram Reference in Sethu Affidavit*, INDO-ASIAN NEWS SERVICE (Chennai), Sept. 13, 2007, ¶ 1, available at <http://www.encyclopedia.com/doc/1P3-1335145761.html>.

¹⁶⁴ *Id.*; see also *Ram Sethu Affidavit is Cong’s Gravest Mistake: BJP*, PRESS TRUST OF INDIA (New Delhi), Sept. 13, 2007, ¶ 11, available at <http://www.rediff.com/news/2007/sep/26sethu.htm> (where the BJP opposition party accused the ruling government of blasphemy and doing the work of a demon).

¹⁶⁵ J. Venkatesan, *Sethu Project: Supreme Court Asks Centre to Reveal Stand*, HINDU (Chennai), Nov. 3, 2009, ¶ 3, available at <http://beta.thehindu.com/news/national/article42732.ece>.

¹⁶⁶ *Need 18 Months for Sethu Report*, TIMES OF INDIA, Dec. 15, 2009, ¶ 1, available at <http://timesofindia.indiatimes.com/india/Need-18-months-for-Sethu-report/articleshow/5338239.cms>.

¹⁶⁷ *Id.* ¶ 6.

India.¹⁶⁸ In that case, which involved challenges to construction of a major hydroelectric dam, the Supreme Court deferred to the political branches of government:

In the case of projects of national importance where Union of India and/or more than one State(s) are involved and the project would benefit a large section of the society and there is evidence to show that the said project had been contemplated and considered over a period of time at the highest level of the States and the Union of India and more so when the project is evaluated and approval granted by the Planning Commission, then there should be no occasion for any Court carrying out any review of the same or directing its review by any outside or "independent" agency or body. In a democratic set up, it is for the elected Government to decide what project should be taken that unless and until it can be proved or shown that there is a blatant illegality in the undertaking of the project or in its execution, the Court ought not to interfere with the execution of the project.¹⁶⁹

In February 2008, the government also filed a new affidavit to replace its withdrawn submission.¹⁷⁰ In it, the government took a more conciliatory view toward religious belief, recognizing the importance of faith in Indian society, but arguing that policy decisions cannot be based on faith alone.¹⁷¹ Only months later, however, the government, using a different religious text, argued before the Supreme Court that the god Rama had himself destroyed the Ram Sethu.¹⁷² This was contrary to its earlier affidavit that faith should not be used to make policy decisions.¹⁷³

Representative of canal opponents and Hindu activist Rama

¹⁶⁸ W.P. No. 319 (1994), available at <http://www.narmada.org/sardar-sarovar/sc.ruling/majority.judgement.htm>.

¹⁶⁹ *Id.* ¶ 18 of Conclusion.

¹⁷⁰ *Centre Files Fresh Affidavit on Sethusamudram Project*, ASIAN NEWS INT'L (New Delhi), Feb. 29, 2008, ¶ 1, available at http://www.thaindian.com/newsportal/india-news/centre-files-fresh-affidavit-on-sethu-samudram-project-in-sc_10022715.html.

¹⁷¹ *Id.* ¶ 2.

¹⁷² *Ram Sethu: Centre's Stand in SC Triggers Fresh Controversy*, PRESS TRUST OF INDIA (New Delhi), July 23, 2008, ¶ 1, available at <http://www.rediff.com/news/2008/jul/23sethu1.htm>.

¹⁷³ *Who Worships at Ram Sethu, Asks SC*, Press Trust of India (New Delhi), Apr. 15, 2008, ¶ 13, available at <http://getahead.rediff.com/news/2008/apr/15sethu.htm>.

Gopalan¹⁷⁴ filed an affidavit of his own, arguing that the Ram Sethu should be declared a national monument and protected.¹⁷⁵ He noted that the structure is sacred to every true Hindu¹⁷⁶ because it was built by Rama at an actual historical time and place.¹⁷⁷ Gopalan argued that whether or not the court believes Ram Sethu to be a holy place, it should extend protection simply because many Hindus do believe that it is holy.¹⁷⁸

Opponents base this argument on *Chettiar v. Naicker*, a 1958 Indian Supreme Court opinion.¹⁷⁹ In its decision, the court seems to ascribe broad protection to sacred objects, regardless of how many adherents believe it to be holy:

Any object however trivial or destitute of real value in itself *if regarded as sacred by any class of persons* would come within the meaning of the penal section¹⁸⁰. . . Courts have got to be very circumspect in such matters, and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the court.¹⁸¹

As a result, canal opponents believe “there is no room left not to respect the sentiments of the vast majority of Indians who regard the Rama Setu as an inalienable heritage.”¹⁸² At least in principle, these opponents believe that the same approach should be taken even if the SSCP were to destroy a Muslim or Christian

¹⁷⁴ See *Sethusamudram Project Protestors Demand 'Independent' Reviewers*, INDO-ASIAN NEWS SERVICE (Chennai), Oct. 20, 2007, ¶ 8-9, available at http://www.monstersandcritics.com/news/india/news/article_1367055.php/Sethusamudram_project_protestors_demand_independent_reviewers (characterizing Gopalan's organization, the Hindu Munnani, as leading religious opposition to the project).

¹⁷⁵ Aff. of Rama Gopalan, available at <http://www.scribd.com/doc/3043870/rejoindermay2008>.

¹⁷⁶ *Id.* ¶ 78.

¹⁷⁷ *Id.* ¶ 85.

¹⁷⁸ *Id.* ¶ 88.

¹⁷⁹ A.I.R. 1958 S.C. 1032.

¹⁸⁰ INDIA PEN. CODE § 295.

¹⁸¹ A.I.R. 1958 S.C. 1032, 1035 (emphasis added).

¹⁸² SWAMY, *supra* note 130, at 34.

holy site.¹⁸³

These dueling affidavits, charges, and countercharges vividly demonstrate the intersection of religion and law in India.¹⁸⁴ Courts have significant discretion on the matter:

[T]he courts can determine what is an integral part of religion and what is not Therefore the courts can discard as non-essentials anything which is not proved to their satisfaction – and they are not religious leaders or in any relevant fashion qualified in such matters – to be essential, with the result that it would have no constitutional protection.¹⁸⁵

The Supreme Court could well determine that Ram Sethu is so sacred to Hindus, and thus the nation, that it should be protected as a national monument.¹⁸⁶ Regardless of its decision, the court has the difficult task of sorting through these various claims to determine what Hindus believe about the site. Only after this determination can the court reach a decision about whether the need for a canal outweighs those concerns.

2. *International Courts and the SSCP*

Despite the tangled story of lawsuits in the Indian courts and the project's impact on India and Sri Lanka, the international legal system is not currently involved in the Sethusamudram dispute. However, its involvement could emerge as a possibility in the future; Sri Lanka previously threatened legal action against India as “a measure of last resort” if environmental concerns were not resolved.¹⁸⁷ At the time, Sri Lankan international legal experts believed that a complaint could be based on the military,

¹⁸³ E-Mail Interview with Subramanian Swamy, Former Union Law Minister, Government of India (July 17, 2009) (on file with author) [hereinafter Swamy Interview]. Swamy currently serves as National President of the Janata Party. See Janata Party Website, <http://www.janataparty.org/president.html> (last visited Jan. 27, 2010).

¹⁸⁴ J. DUNCAN M. DERRETT, *RELIGION, LAW AND THE STATE IN INDIA* 437 (2d ed. 1999).

¹⁸⁵ *Id.* at 447.

¹⁸⁶ From a Western perspective, this would be similar to a court—rather than Pope Benedict XVI—determining a tenet of the Catholic faith.

¹⁸⁷ V.S. Sambandan, *Sethu Project: Sri Lanka Wants “Joint Monitoring,”* HINDU (Chennai), July 8, 2005, ¶ 2, available at <http://www.hindu.com/2005/07/08/stories/2005070804641200.htm>.

ecological, and archaeological implications and the international law of the sea.¹⁸⁸ Notably, religious concerns were not cited as a rationale.¹⁸⁹ By late 2007, however, that threat had apparently dissipated.¹⁹⁰ As a result, only the Indian court system is currently examining the legitimacy of the Sethusamudram project.

V. Lessons from Case Studies

The high stakes and tangled legal questions of the SSCP case have clearly made this case a difficult one for the Supreme Court, even after nearly three years. Can the experiences or legal systems of other countries help reach a resolution?¹⁹¹

First, it must be noted that India poses two unique challenges distinguishing it from Australia, New Zealand, Israel, and the United States. One major difference is the amount of latitude that Indian courts have in determining, as a matter of law, the essentials of religious belief.¹⁹² Although American courts, for example, do examine religious beliefs more closely,¹⁹³ the basic test under the Religious Freedom Restoration Act is simply whether the religious practice has been substantially burdened.¹⁹⁴ The centrality of the practice to the religion is not the key question. Indian courts, in contrast, must be intricately involved in issues of faith when considering holy site disputes.

The second difference is rooted in the history and demographics of the country of India. Despite the religious

¹⁸⁸ Ravi Ladduwahetty, *Controversy-ridden Sethusamudram Canal Dredging Project: Time Ripe for Lanka to Sue India?*, NATION (Colombo, Sri Lanka), Jan. 7, 2007, ¶ 2.

¹⁸⁹ *Id.*

¹⁹⁰ Bidwai, *supra* note 142 (explaining that the Indian Government appears to have won over Sri Lankan government experts by arguing that the project will increase the movement of naval ships and help intercept militants).

¹⁹¹ This assumes, of course, that one nation's law should have an influence on another nation's legal system, which is far from a settled question. See, e.g., Adam Liptak, *U.S. Court, a Longtime Beacon, is Now Guiding Fewer Nations*, N.Y. TIMES, Sept. 18, 2008, at A1 (noting divergent opinions and trends in the U.S. on the role and importance of foreign law).

¹⁹² DERRETT, *supra* note 184, at 437.

¹⁹³ See, e.g., *Sherbert*, 374 U.S. 398 (stating that where an otherwise neutral law imposes a "significant burden" on an individual's exercise of religion, the government must show a compelling interest to not grant an exemption to that individual).

¹⁹⁴ McDonald, *supra* note 94, at 762.

diversity of India, the overwhelming majority of the country remains Hindu (as well as ethnic Indian).¹⁹⁵ This marks a sharp contrast with the United States, New Zealand, and Australia,¹⁹⁶ which were all settled by Europeans and now have a primarily non-native population. In the American context, for example, history plays an important role in the conflicts over indigenous religious sites: “[B]ecause the United States gained its property through the denial of native land rights, American values have been formed against traditional Native American religions and, therefore, Americans have been less than accommodating in providing the native population access to lands it considers sacred.”¹⁹⁷ This argument cannot be made in the Asian-Indian context. Despite the country’s growing secularization, Indian values cannot be said to be squarely set against Hindu religious values or principles, and Hindu law still plays a large role in modern Indian law.¹⁹⁸ Courts may well afford different weights when considering a protest by a nation’s religious majority—as in India—as opposed to a protest by a Native American minority.

A. Options for Resolving the SSCP Controversy

With those differences in mind, how can the Indian Supreme Court resolve the Sethusamudram controversy while balancing religious beliefs and national economic development?¹⁹⁹

One alternative for resolution of the controversy would be to use international legal norms on religious freedom and exercise, which are reflected in the Indian Constitution.²⁰⁰ However, these guarantees do not necessarily provide broad protection for sacred

¹⁹⁵ CIA – The World Factbook – India (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html>.

¹⁹⁶ To a lesser extent, the modern state of Israel was also settled by Europeans.

¹⁹⁷ McDonald, *supra* note 94, at 759-60.

¹⁹⁸ See DERRETT, *supra* note 184, at 437.

¹⁹⁹ Despite the high-profile nature of the project, a resolution may not necessarily be imminent. See *India Court 466 Years Behind Schedule*, ASSOC. PRESS, Feb. 12, 2009, ¶ 1, available at <http://www.msnbc.msn.com/id/29164027> (noting that the Delhi High Court may need 466 years to clear its docket of pending cases). It should also be noted that opponents believe the SSCP is already “de facto dead” based on a “secret report” which “rubbished” the government’s original analysis of the project. See Swamy Interview, *supra* note 183.

²⁰⁰ See INDIA CONST. art. 25, § 1.

sites and are often interpreted very narrowly.²⁰¹ One scholar argues that the right to “practice” one’s religion should “not be used as a vehicle for expanding the scope of the freedom into the public sphere and permit followers of a religion or belief to act in a fashion which is in accordance with their beliefs but cannot be linked to a form of worship, observance or teaching.”²⁰²

Thus, even if Ram Sethu is a historical site constructed by Rama’s monkey army in accordance with Hindu beliefs, it can only be protected if it is connected to a form of worship. In fact, opponents of the SSCP are arguing this very point, that Ram Sethu is not just a historical bridge, but an object that is worshiped.²⁰³ However, since the court has not resolved this threshold issue of whether Ram Sethu is connected to worship, international norms cannot yet provide specific guidance in this situation.

A second option would be for India (or Sri Lanka) to ask an international court to decide the issue. However, this also does not appear to be a viable solution. Even if Sri Lanka reversed course and challenged India’s right to construct the SSCP, religious objections would likely not be raised. The question at issue would more likely concern questions of boundaries and the impact on the ecosystem. Additionally, a decision in the International Court of Justice (ICJ) would likely take years and may not permanently solve the dispute.²⁰⁴ Even if there is no precise controversy at issue, India or Sri Lanka could ask the ICJ for an advisory opinion concerning the canal’s completion, which the court is empowered to give on “any legal question.”²⁰⁵ However, this too would likely delay the project for years while the ICJ deliberates. As a result, even an ICJ advisory opinion is not a likely solution, particularly when the Indian government is anticipating enormous national benefits from the timely completion of the canal.

²⁰¹ See Malcolm D. Evans, *The United Nations and Freedom of Religion: The Work of the Human Rights Committee*, in LAW AND RELIGION 35, 35-61 (Rex J. Ahdar ed., 2000).

²⁰² *Id.* at 46.

²⁰³ Aff. of Rama Gopalan, *supra* note 175, ¶¶ 76-101.

²⁰⁴ The underlying religious passions about a particular holy site are likely to remain after judicial resolution of a dispute. See *supra* notes 31-34 and accompanying text (discussing the armed skirmishes at the Preah Vihear holy site decades after an ICJ decision).

²⁰⁵ Statute of the International Court of Justice, ch. IV, art. 65, § 1.

A third option would be for the Court to simply wash its hands of religious questions by deferring to the political branches of government. This option would enable Parliament, a branch that is theoretically more responsive to the people, to decide the difficult issues. The Indian Supreme Court has already shown its interest in allowing the political branches of government to decide questions of national infrastructure.²⁰⁶ Particularly, in light of the national security implications of the canal, case law from other countries could support such deference.²⁰⁷

The fourth option would be for the Indian Supreme Court to directly resolve the SSCP religious dispute.²⁰⁸ Opponents of the project would likely support this option, on the belief that the current route was chosen “arbitrarily, unreasonably and for malafide motives” and that the judiciary or mediators are best equipped to resolve holy site disputes.²⁰⁹ If the court decides to determine the canal’s future, the observations of the New Zealand court in *Minhinnick*²¹⁰ may be helpful. The *Minhinnick* court determined that: 1) The balance between holy site protection and development should be determined by a reasonable member of the community at large, not a reasonable member of the religious group; and 2) the court’s decision could incorporate religious beliefs, but should not be based solely on them.²¹¹

As to the first question, defining the “reasonable person” poses a difficulty. The court may have to determine whether members of the fundamentalist Viswa Hindu Parishad (VWP) adequately represent the larger Hindu community, many of whom are not protesting the project. Based on the VWP’s alleged involvement

²⁰⁶ *Narmada Bacho Andolan v. Union of India*, W.P. No. 319 (1994) ¶ 7 of Conclusion, available at <http://www.narmada.org/sardar-sarovar/sc.ruling/majority.judgement.htm> (noting that the Court is ill-equipped to engage in policy making).

²⁰⁷ See, e.g., *Korematsu v. United States*, 323 U.S. 214 (1944) (giving great deference to military judgment and upholding the internment of Japanese-Americans during World War II).

²⁰⁸ *Sethusamudram Corpn. Ltd. v. Rama Gopalan & Ors.*, Transfer Petition (civil) 430-32 (2007).

²⁰⁹ Swamy Interview, *supra* note 183.

²¹⁰ *Watercare Services Ltd. v. Minhinnick*, [1998] 1 N.Z.L.R. 294 (C.A.).

²¹¹ *Id.*

in the Ayodhya mosque dispute,²¹² a court could easily find that the group is on the fringes of Hindu belief, and thus, not representative of the larger community of belief. In this scenario, a reasonable member of the larger community would be an Indian who was culturally Hindu—perhaps someone who believed in the deity of Rama but was less convinced of the historicity of the Ram Sethu.

As to the second question, helpful language comes from the United States's Religious Freedom Restoration Act.²¹³ Government can only “substantially burden” religious exercise if there is a “compelling government interest.”²¹⁴ In this analysis, the government interests in trade and economic development are fairly compelling; the difficulty lies in determining whether the SSCP, by destroying the Ram Sethu, is a substantial burden on Hindu religious practice. This again forces the court to determine whether the Ram Sethu is an object of worship and whether it is central to Hinduism. Since Hinduism has no single theological authority, the court will have to use its judgment to determine whether veneration of Ram Sethu is an essential element of the Hindu faith.

B. Options for Preventing Future Problems

Once the current SSCP issue is resolved, it is important for India to establish a structure for preventing future disputes of this type. India's religious diversity, rapidly increasing population, and history of religious conflict indicate that controversies over holy sites are likely to continue. A three-step process based on other nations' solutions provides a helpful framework for managing India's religious sites.

First, India should take a similar approach to that proposed by the Israel Holy Sites Commission.²¹⁵ The commission suggests

²¹² *Timeline: Ayodhya Crisis*, *supra* note 123, ¶ 5.

²¹³ RFRA, 42 U.S.C. § 2000bb-1b.

²¹⁴ *Id.*

²¹⁵ GUINN, *supra* note 77. Of course, the Holy Sites Commission offers only one potential framework for evaluating, protecting, and managing holy sites. *See, e.g.*, Int'l Union for Conservation of Nature (IUCN), *Sacred Natural Sites: Guidelines for Protected Area Managers* (2008), available at <http://data.iucn.org/dbtw-wpd/edocs/PAG-016.pdf>. The important point is that future holy site claims must be evaluated systematically.

identifying common features of holy sites, defining various types of holy sites, and then categorizing existing sites.²¹⁶ The Commission identified four common features of holy sites, that they are “(1) historic, (2) often connected to particular important religious figures, (3) supported by a community of faith, and (4) they provide a space or locus for worship or ritual.”²¹⁷

How does Ram Sethu fare under this analysis? While there is a dispute about whether the shoals are in fact historic remains of an ancient bridge, the Commission’s approach is focused more on whether the site has been important to believers throughout history than whether it is a historical reality. “[T]he most important sites among the holy sites must be those that possess a long historical association with that faith.”²¹⁸ As a result, Ram Sethu does well under the first two factors. It is clearly connected to an important religious figure, the deity Rama, and dates back thousands of years. Ram Sethu, however, is not “home to a living community of believers”; rather, it is more like an archaeological relic.²¹⁹ Therefore, the third factor leans in favor of the canal’s construction. The final factor in the analysis is whether Ram Sethu is home to religious rituals and services. The dueling affidavits in the SSCP case show that this question remains unsettled.²²⁰ Ram Sethu will have the strongest claim for protection as a holy site if it meets all four factors.

Once these factors are weighed, the Israel Holy Sites Commission proposes that a site be placed into one of several categories: 1) iconic holy sites (central sites that are the focus of believers from across the world); 2) cultic holy sites (where regular worship takes place); 3) latent holy sites (where no regular worship currently takes place but may in the future); 4) cemeteries; 5) historical and archaeological sites; and 6) contested holy sites.²²¹ It would not remove the courts completely from the process (since a judge may still need to determine the category in

²¹⁶ GUINN, *supra* note 77, at 130-41.

²¹⁷ *Id.* at 131.

²¹⁸ *Id.* at 132.

²¹⁹ *Id.*

²²⁰ Aff. of Rama Gopalan, *supra* note 175, ¶ 76-101.

²²¹ *Id.* Of course, these factors might not all be applicable to India, but this type of analysis would be a helpful framework.

which a contested site belongs), but it would provide a good starting point. Additionally, some of the most controversial sites (like Ram Sethu) could be categorized ahead of time, thus anticipating the question of how much protection each site deserves.

Step two of this proposed process would be based on Australia's Northern Territory legislation.²²² The Aboriginal Sacred Sites Act begins by establishing a new agency with broad power to protect sacred sites, including the authority to acquire land.²²³ The Aboriginal Areas Protection Authority is also charged with creating a register of sacred sites that can then be protected from trespass, encroachment, or development.²²⁴

Legislation of this type might be helpful for the nation of India.²²⁵ Once existing sites are placed into different categories, a mechanism for protecting religious sites can be established. India's population density is much greater than Australia's, so a register may deal less with protecting undiscovered places than ensuring that existing sites are not overtaken by India's rapid growth and development. Admittedly, this proposal does create additional bureaucracy. But if prolonged and heated conflicts such as that over Ram Sethu and the SSCP can be minimized, the government's additional expenditures, agency staff, and political structure will be worthwhile.

The third step in this process is not so much a statutory requirement as an executive necessity: Increased enforcement of religious site protections. The 2008 International Religious Freedom Report cites multiple examples of religious violence in 2008 in India.²²⁶ According to the Indian government, there were 943 instances of violence along religious grounds in 2008-2009.²²⁷ Attacks against Christian churches and believers were common,

²²² Northern Territory Aboriginal Sacred Sites Act, 1994, § 5 (Austl.).

²²³ *Id.* § 41.

²²⁴ *Id.*

²²⁵ *But see* Lawrence Cox, *Freedom of Religion in China: Religious, Economic and Social Disenfranchisement for China's Internal Migrant Workers*, 8 *ASIAN-PACIFIC L. & POL'Y J.* 370, 383-84 (2007) (noting that China's mandatory registration system for religious sites contributes to de facto state control of religious activities).

²²⁶ *See* IRFR, *supra* note 110.

²²⁷ *Id.*

and Hindus and Muslims often clashed.²²⁸ Although many of these instances were not related to sacred sites, the lack of enforcement is clear. "While the law generally provides a remedy for violations of religious freedom, it was not enforced rigorously or effectively in many cases pertaining to religiously oriented violence."²²⁹

Any new statutory protections for religious sites should include criminal penalties. More important than statutory penalties, however, is government commitment to enforce protections on holy sites, whether the violation is motivated by religious hatred or economic development. Although the West is not immune to religious violence, an increased emphasis on enforcement would boost India's desire to be viewed as a modern and civilized nation.²³⁰

One potential enforcement difficulty lies in the Indian political system. Indian state governments have "exclusive jurisdiction over law enforcement and the maintenance of order, which limits the National Government's capacity to deal directly with state-level abuses, including abuses of religious freedom."²³¹ This means that federal officials need the permission of the state government to investigate a crime, although the national government has "intervened to maintain order when state governments were reluctant or unwilling to do so."²³² As a result, both federal and state government officials must commit to enforce protections on religious sites.

VI. Conclusion

The Sethusamudram Shipping Canal Project is by no means the only current conflict over a religious site. From expanding U.S. army bases to the contested Temple Mount, development poses a threat to holy places. Nevertheless, the high-profile nature of India's current dilemma highlights the need to balance religious beliefs with other political and societal values.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See Fernandes, *Coastal Action Network v. Tamil Nadu Pollution Control Board, et al.*, Madras H.C. W.P. No. 33528 (2004).

²³¹ IRFR, *supra* note 110.

²³² *Id.*

International legal norms outline basic guarantees on religious freedom and exercise that can be extended to guarantees on the protection of holy sites. But what qualifies as holy? And what counts as a holy site? Both of these questions are at issue with Ram Sethu. Is this structure a true object of worship and veneration? And if so, is this the belief of all, or only some, Hindus? Even if some people consider Ram Sethu a holy place, should the remains of this underwater bridge be protected at all costs, particularly with disputed historical proof?

These are significant, and difficult, issues for a court. Regardless of whether the Indian Court permits the SSCP to go forward as is, suggests an alternate route, or halts the project altogether, additional religious protections are clearly needed to delineate a helpful framework for resolving future disputes. By incorporating the examples of other world countries, India will have a better opportunity to prevent religious disputes and encourage a peaceful state.

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