



Religion Under International Law

Shankarlingamma Patil*

Research Scholar
Department of Studies and Research in Law
Gulbarga University, Kalaburagi
Karnataka.

&

Dr. M. Rajashekar**

Department of Zoology
Gulbarga University
Gulbarga 585106
Karnataka, India

m_rajshekar@rediffmail.com

Abstract

The primary sources of law underpinning the mandate of the Special Rapporteur on freedom of religion or belief are article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (United Nation). The present paper focused on religion and law at international level. In this paper the issues and legislation has been discussed and presented under various sections.

Introduction

Religion has been a powerful social factor in all phases of human history and in all parts of the human world. It remains so, everywhere on the globe, also in the present third millennium. Anti-religion ideologies periodically emerging in certain parts of the world having miserably failed, religiosity remains the order of the day.

The constitution uses but does not define the expression religion and religious denomination and therefore the court have found it necessary to explain the meaning and connotation of these words the supreme court has observed that:

- In the background of the provision of the constitution and the light shed by judicial precedent we may say that religion is a matter of faith it is a matter of belief and doctrine it concerns the conscience i.e. the spirit of man. It must be capable of expression in word and deed such as worship or ritual.
- Spmittal v/s Union of India Air 1983 sci.
- * Constitutionally India is a secular country and has no state religion. However it has developed over the years its own unique concept of secularism that is fundamentally different from the parallel American concept of secularism requiring complete separation of church and state as also from the French ideal of *laïcité* described as an essential compromise where by religion is relegated entirely to the private sphere and has no place in public life what so ever.

Despite the clear incorporation of all the basic principles of secularism into various provisions of the constitution when originally enacted, its preamble did not then include the word secular in the short description of the country which it called a sovereign democratic republic. This was not an inadvertent omission but a well calculated decision meant to avoid any misgiving that India was to adopt any of the western nations of secular state Twenty five years later by which time India's own concept of secularism had been fully established through judicial decisions and state practice the preamble to the constitution was amended by the constitution (forty second amendment) act 1976 to include word secular along with socialist to declare India to be a sovereign socialist secular democratic republic.

Universal Declaration of Human Rights 1948

India attained independent on 15th August 1947 and adopted a Constitution which came in force on 26th January 1950. In between these two historic occasions, India joined hands with the other civilized nations of the world for the proclamation of the Universal Declaration of Human Rights 1948. The Constitution which we the people of India 'enacted, adopted and gave to ourselves' nearly two and a half years after attaining independence eminently reflected the spirit of this Declaration. The basic charter of human rights proclaimed on 10th December 1948 declared at the outset that All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood-Article 1.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status-Article 2.

Proceeding further, the 1948 Declaration pronounced religious liberty to be everyone's basic human right; 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, and worship and observance article 18.

The Declaration also issued a direction for the promotion of ‘understanding, tolerance and friendship’ among the various religious groups in the human fraternity;

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial of religious groups and shall further the activities of the United Nations and maintenance of peace article 26(2)

International covenants of 1966

The international human rights law later marched forward to usher in a liberal regime of religious freedom for individuals and groups and equality of all religions and of their adherents as manifestations of basic human rights. Two international Covenants-one on Civil and Political Rights (ICCPR) and the other on Economic, Social and Cultural Rights (ICESCE) – were adopted by the world body one after the other in 1966 and opened for accession. The two covenants invited the nations of the world to pledge themselves for ensuring full compliance with the Universal Declaration of Human rights :

1. Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status-ICCPR Article 2 (1)
2. The state parties to the present covenant undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political of other opinion, national or social origin. Property, birth or other status-ICESCR, Article-2 (2)

The ICCPR elaborated in the following terms the right to religious freedom proclaimed for all individuals by the 1948 universal declaration of human rights:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in Community with others and in public or private, to manifest his religion Or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or belief may be subject only to such Limitations as are prescribed by law and are necessary to protect public Safety, order, health or morals or the fundamental rights and freedoms of others.
4. The states parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction- Article 18.

The ICCPR outlawed all kinds of discrimination in respect of child-protection measures introduced by the states;

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state-Article 24(1)

For the protection of individuals in general against any discrimination the ICCPR provided that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, Birth or other status-Article 26

For the religious minorities the ICCPR laid down a soleman obligation for all states in the following words:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language-Article 27.

In 1979 by a presidential proclamation India acceded to both the international covenants of 1966 (subject to a few reservations not relating to their clauses on religious equality, freedom and rights)-see instrument of accession by India to human rights covenants, 27 March 1979

UN Convention on rights of the child 1989

The principles of religious equality, liberty and non-discrimination laid down in the universal declaration of human rights 1948 and the two international Covent of 1966 were later incorporated into the following provisions of the UN convention on rights of the child 1989

1. State parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status-Article 2(1)
2. States parties shall respect the right of the child to freedom of thought, conscience and religion-Article 14(1)
3. In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practices his or her own religion, or to use his or her own language-Article 30

Eliminating Religious Intolerance and Discrimination

The most important human rights instrument so far promulgated by the UN in the context of religious freedom of people in general is the Declaration on the elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief 1981. In view of its relevance to the subject of the present study its full text is reproduced below:

The General Assembly:

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

Considering that the Universal Declaration of Human Right and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief.

Considering that the disregard and infringement of human right and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other states and amount to kindling hatred between peoples and nations,

Considering that religion belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed.

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief should be fully respected and guaranteed.

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the charter of the United Nations, other relevant instruments of the United Nations and purposes and principles of the present Declaration is inadmissible.

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination.

Noting with satisfaction the adoption of several, and the coming into force of some. Conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination.

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still evidence in some areas of the world.

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief.

ARTICLE 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

ARTICLE 2

1. No one shall be subject to discrimination by any State, institution, group of persons or person on grounds of religion or other beliefs.

2. For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition. Enjoyment or exercise of human rights and fundamental freedoms on an equal basis

ARTICLE 3

1. Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of human rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

ARTICLE 4

1. All states shall take effective measures to prevent and eliminate discrimination on the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

ARTICLE 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up. In a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others. And in full consciousness that his energy and talents should be devoted to service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.

5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present declaration.

ARTICLE 6

In accordance with Article 1 of the present Declaration and subject to the provisions of Article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

1. To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
2. To establish and maintain appropriate charitable or humanitarian institutions;
3. To write, issues and disseminate relevant publications in these areas;
4. To teach a religion or belief in places suitable for those purposes;
5. To solicit and receive voluntary financial and other contributions from individuals and institutions;
6. To solicit and receive voluntary financial and other contributions from individuals and institutions;
7. To train, appoint elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

ARTICLE 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Under international standards, a state may declare an official religion, provided that basic rights, including the individual right to freedom of thought, conscience, and religion or belief, are respected for all without discrimination. Thus, the existence of a state religion cannot be a basis for discriminating against or impairing any rights of adherents of other religions or non-believers or their communities. Providing benefits to official state religions not available to other faiths would constitute discrimination, as would excepting state religions from burdensome processes required for faith communities to establish legal personality. Under the ICCPR, the fact that "a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant

Reference

- An-Na'im, Abdullahi A. 1990. Toward an Islamic Reformation. Civil Liberties, Human Rights, and International Law (Contemporary issues in the Middle East). Syracuse: Syracuse University Press.*
- Benito, Elizabeth Odio 1989. Elimination of all forms of intolerance and discrimination based on religion or belief. New York: United Nations.*
- Capotorti, Francesco 1979. Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities. New York: UN Publications.*
- Hannum, Hurst 1993. Documents on Autonomy and Minority Rights. Dordrecht/Boston/London: Marticus Nijhoff Publishers.*
- Krishnaswami, Arcot 1960. Study of Discrimination in the Matter of Religious Rights and Practices. New York: United Nations.*
- Lerner, Natan 1982. "The Final Text of the U.N. Declaration Against Intolerance and Discrimination Based on Religion or Belief", Israel Yearbook on Human Rights 12.*
- Tibi, Bassam 1994. "Islamic Law/Shari'a, Human Rights, Universal Morality and International Relations", Human Rights Quaterly 16 (2): 227-299.*
- van der Vyver, Johan D. und John Witte (ed.) 1996. Religious Human Rights in Global Perspective. 2 vol. The Hague/Boston/London: Martinus Nijhoff Publishers.*