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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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RELIGIOUS FREEDOM: ANALYSIS OF INTERNATIONAL COVENANTS.

AUTHORED BY - B.R. BENCI JERALD¹

Abstract

Freedom of religion and belief is one of the fundamental rights which are entitled to every individual irrespective of who they are, where they belong, their age, race, gender, and ethnicity. In India, The constitution protects religious rights of people under Article 25, But over the passage of time, this particular right has been diluted to a larger extent. The interference of the State in religious affairs has maximized. This in turn had the right of freedom of religion diminished to just words in the Constitution. “Anti- conversion laws” which are paradoxically known as “Freedom of Religion Acts” are enacted by various State legislatures in India; to prohibit conversion through means reprehensible to the conscience of the community such as allurement, force, inducement, fraud. These legislations were enacted with the object of prohibiting forcible conversion but these laws are executed in a way that prohibit even genuine conversion by the people out of their conscience. Not only India, the global society is also facing various religious tensions around the world and there are various international covenants advocating religious freedom. The researcher, in this article has comprehensively dealt with the concept of freedom of Religion in India and the various international covenants advocating Religious freedom.

The Concept of Religious Freedom:

Freedom of religion or belief (FoRB) is a fundamental right of every human being. It is universal in nature in the sense that it applies to all persons equally, regardless of who they are, where they live, their age, gender, race or ethnicity and what they believe or do not believe in.² Free exercise of this right will directly contribute to democracy, development, rule of law, peace and stability. Further it protects

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² Cited from European Union Guidelines on the Promotion and Protection of Freedom of Religion or Belief, Para 16.

the conscience of all people and allows us to think, express and act upon what we deeply believe.³

FoRB is an expansive bundle of rights covering extensive issues of distinct yet interconnected issues. Universal Declaration of Human Rights noted that “all are endowed with dignity and conscience” meaning that, freedom of religion and belief, is not just a privilege provided by a State but an individual’s birthright. Added to this, an individual has an absolute and unconditional right to hold any religion or belief. Under no circumstances, limitations can be placed on beliefs of an individual.⁴

There are two dimensions to Religious Freedom;

1. Right of individuals to freedom of religion and beliefs:

Freedom of religion protects the right of all people to hold their own religious beliefs and express them openly and freely without the fear of persecution; it also protects the equal rights of citizenship. Further the freedom, ensures that the people can freely choose or change any religion and teach their faith, beliefs to their children and to receive, disseminate religious information also to gather with others in a fellowship and worship and participate in ceremonies and practice their faith. Moreover, this freedom protects individuals from discrimination in employment, housing and other basic services on the basis of religion and prevents people from being denied the right to have an occupation, business or a professional license based on their religion.⁵

2. Right of Religious communities to practice or manifest their religion, in public or in private, through worship, observance, practice and teaching.⁶

It is not only individuals who are protected under freedom of religion but also religious organisations that make faith communities possible. It encompasses the right to form churches and other religious institutions, such as religious schools and charities. It affords such institutions the freedom to establish their doctrines and modes of worship; to organise their own ecclesiastical affairs; to determine requirements for membership, ecclesiastical office and employment and to own property

³ Article on Religious Freedom. Available at <https://newsroom.churchofjesuschrist.org/official-statement/religious-freedom>

⁴ European Union Guidelines on the Promotion and Protection of Freedom of Religion or Belief,

⁵ Inputs from <https://www.churchofjesuschrist.org/topics/religious-freedom?lang=eng&old=true>

⁶ Universal Declaration of Human Rights, Article 18; International Covenant on Civil and Political Rights, Article 18; European Convention on Human Rights, Article 9.

and construct places of worship.⁷

Other fundamental rights are intrinsically and inextricably intertwined with the right to religious freedom, including the right to freedom of expression, freedom of association, right of privacy and the universal principles of non-discrimination and equality of all.⁸

Further religious freedom also provides that, no one may be compelled to reveal adherence to a religion or belief. Likewise, no one may be mandated to declare non-adherence to religious beliefs to obtain employment or other social or economic benefits.⁹

As reiterated, freedom of religion encompasses in its ambit that; without being subjected to the approval of State or majority religion community, one has the right to manifest one's own religion and it includes the right to share one's religion or belief to others peacefully. However, in exceptional cases, limitations can be placed on the freedom to manifest religion or belief but such limitation must be in compliance with international standards.¹⁰

Therefore, the health of a diverse society depends on the enjoying of the right of religious freedom of freedom of conscience. It allows different faiths and beliefs to flourish together. Religious freedom thus protects the rights of all individuals and groups, including the most vulnerable, whether religious or not.¹¹

The importance of religion for human, social and political flourishing was understood by the American founders. That is the reason they drafted the right of religious freedom as their first freedom, which provides; freedom to all to exercise their religion. They were convinced that religious freedom was essential for the well-being of their citizens, for the common good and also for the public virtue without which they believed that the new republic would fall. This view was most accurately called the 'free exercise equality'.¹²

⁷ Ibid

⁸ Inputs from <http://www.scientologyreligion.org/religious-freedom/what-is-freedom-of-religion/page2.html>

⁹ United Nations Human Rights Committee General Comment 22.

¹⁰ European Union Guidelines on the Promotion and Protection of Freedom of Religion or Belief.

¹¹ Inputs from <https://newsroom.churchofjesuschrist.org/official-statement/religious-freedom>.

¹² "What in the World is Religious Freedom." Available at <https://www.religiousfreedominstitute.org/blog/what-in-the->

In the past few decades, government action has encroached upon Religious Freedom. Reports from various sources, provides that throughout the world, right to freedom of religion is curtailed in one form or the other. A recent global study conducted by the Pew Research Centre, which focussed on 197 countries and territories comprising 99.5% of the total world's population. It has discovered that approximately five billion people, i.e. 75% of the world's population, live in countries whose high government had laid restriction in one form or the other on religion and also shows that there is an increase in high social hostilities involving religion, which often target religious minorities.¹³

Freedom of Religion Provisions in International Instruments:

The significance for the right of religious freedom in international law came with the creation and manifestation of the international community through the United Nations. It has provided a robust international human rights law and organisations to check on human right violations.

The UN charter has been signed by 193 member States and they have agreed to 'practice tolerance' and 'promote and encourage respect for human rights and for the fundamental freedoms for all without distinction race, sex, language or religion.' These rights and freedoms include the freedom of conscience, thought and religion or belief which is affirmed and protected in numerous international documents, including UDHR 1948, ICCPR 1966.

Thus, freedom of religion features in number of international instruments like;

- Universal Declaration of Human Rights 1948,
- International Covenant on Civil and Political Rights 1966,
- Declaration on the Elimination of All forms of Intolerance and discrimination Based on Religion or Belief 1981,
- European Convention for the Protection of Human rights and Fundamental Freedoms 1950,
- UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities,
- EU Guidelines on the promotion and protection of freedom of religion or belief

[world-is-religious-freedom.](#)

¹³ "Rising Tide of Restrictions on Religion," September 2012, Pew Research Centre.

- American Convention of Human Rights,
- African Charter.

India has ratified the International Convention on Civil and Political rights on March 27, 1979. By ratification it has established in the international community its consent to be bound by them. With regard to UDHR, Supreme Court observed in *Kesavanda Baharti v. State of Kerala*¹⁴ that the Universal Declaration of Human Rights may not be a legally binding instrument but many of its ideals were adopted when Indian Constitution was formulated, showing its importance. In a number of cases this Declaration has been referred to in the Supreme Court and High Court decisions.

All these international documents have reiterated the ideals of religious freedom. Following is a brief note on it:

Right to Freedom of Thought, Conscience and religion has been provided in the following documents.

1. UDHR: Under Article 18 provides that “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.”

UDHR also affirms right to freedom of association and non-discrimination that bear on law affecting the structuring of religious communities.¹⁵

Though UDHR is not a binding document, as already mentioned, the above same provision has been reiterated in International Covenant on Civil and Political Rights (ICCPR). This Convention is ratified and legally binds India.

2. ICCPR: This Instrument in addition to the same provision as in UDHR. Further adds in Article 18(2) that, “no one shall be subjected to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”

¹⁴ AIR 1973 SC 1461

¹⁵ Article 20 of UDHR.

In Article 18(3), it provides “Freedom to manifest one’s religion or beliefs maybe subjected 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.

The special attribute of this Article in ICCPR is that, this right is non derogable, meaning that even in times of public emergency; the State must still protect such rights.¹⁶

UN Human Rights Committee, a treaty body that reviews compliance with the ICCPR commented that;

“Article 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one’s choice”¹⁷

“Further the Committee observes that the freedom to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or beliefs.”

Even after such significant provisions on religious freedom, the global society was facing various religious tensions around the world. There was a need for the enlargement of the concept of religious freedom in the international law, therefore the United Nations on the Elimination of All forms of Intolerance and Discrimination based on Religion or Belief, (The Declaration on Religious Freedom) in 1981 came into existence, manifesting the declarations and provisions of previous international agreements. This document has also reiterated the same provision of UDHR and ICCPR- Article 18, in its 1st Article and so is ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms 1950) in its Article 9.

Although not legally binding, 1981 Declaration has significant weight as it was passed by the General Assembly and is entirely devoted to religious freedom.

¹⁶ Article 4(2) of ICCPR

¹⁷ Para 3 of UN Human Rights Committee General Comment 22.

3. UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992,¹⁸ in Article 2(1) provides that, “people belonging to religious minorities have the right ‘to profess and practice their own religion’... in private and in public, freely and without interference or any form of discrimination.

The declaration also provides that the minorities have the right to participate effectively in cultural, religious, social, economic and public life emphasised under Article 2(2).

The right of religious freedom further evolved within national and regional agreements, rendering feedback to international law and practice. European Convention on Human Rights, which came into effect on 1953, is one such regional arrangement among the countries forming European Union (EU). Article 9 of the said convention reiterated the second part of Article 18 of UDHR. Subsequently to further strengthen the right of religious freedom in EU; Oslo Declaration on the Freedom of Religion and Beliefs was enacted in 1998,¹⁹ which is a binding document for all EU States. This document is the most advanced legal document on the right of religious freedom till date as it gives a very detailed and specific account of the freedom of religion and conscience. It is treated as an orientation document for all subsequent international documents.

Apart from these international agreements, there are also robust transnational NGOs and civil groups which had played a vital role in the evolution and manifestation of religious freedom and conscience. Around the globe they have successfully advocated issues relating to religious freedom and minority religious rights. International Coalition for Religious Freedom, the Centre for Religious Freedom are some of the groups to mention. They excel in gathering information professionally and publicize the information about religious freedom and violations of conscience.²⁰ World Report on ‘Freedom of Religion and Belief’ 1997, a highly regarded material has been the outcome of such groups.

Various countries have proclaimed and incorporated the right of religious freedom as one of the most

¹⁸ Adopted by General Assembly Resolution 47/135 of 18 December 1992.

¹⁹ The Oslo Declaration on Freedom of Religion or Belief. Available at <https://www.jus.uio.no/smr/english/about/programmes/oslocoalition/docs/oc-declaration.pdf>

²⁰ Inputs from; The Human Right of Religious Freedom in International Law.

https://www.researchgate.net/publication/233454941_The_Human_Right_of_Religious_Freedom_in_International_Law

fundamental human rights in its Constitution.²¹

Conclusion:

Despite numerous proclamations from the United Nations and the Individual Countries about the importance of religious freedom, there is still not single legally binding covenant or instrument and world tribunal to monitor religious freedom as still the world society witnesses religious tension across the globe. There are many covenants on other human rights like covenants on freedom of press, rights of women, torture, duties owed to refugees, then why not for religious freedom as it is the need of the hour.



²¹ US Constitution; 1st Amendment has guaranteed the 'Freedom of Religion, Speech and the Press, Rights of Assembly and petition'. Further the amendment forbids the Congress from making any law with respect to establishment of religion. Canadian Constitution 1982; Under Article 2, it provides that ;Everyone has the following fundamental freedoms:
Freedom of conscience and religion;
Freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
Freedom of peaceful assembly; and
Freedom of association.
Constitution of Germany; Under Article 4 provides,
Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.
The undisturbed practice of religion shall be guaranteed.
Australian Constitution; Under Section 116 provides, "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".