
FROM RELIGARE TO RIGHTS: ANALYZING RELIGIOUS FREEDOM IN A GLOBAL CONTEXT

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ABSTRACT

The contemporary examination of religion, influenced by 19th-century developments, incorporates anthropology, sociology, psychology, and history, but remains devoid of a singular widely recognized definition. The principle of religious freedom, grounded in liberal political philosophy, is seen as vital for personal liberty, social cohesion, and international tranquility. International law, from the Peace of Westphalia to the United Nations framework, has increasingly acknowledged religious liberty as a fundamental human right, reconciling individual and collective identities. Diverse models—namely neutrality, laicity, and separationism—exhibit distinct state methodologies, while regional treaties and UN institutions underscore both the safeguarding and constraints on expression. Although legally protected in several jurisdictions, freedom of religion encounters real obstacles including discrimination, persecution, and conflicts with other rights. Nonetheless, its acknowledgment promotes stability, mitigates extremism, and advances economic and social growth.

Introduction

Religion constitutes the most important part of any human social life. Speaking etymologically, the word religion is derived from the Latin word “*religare*” which means to bind fast. Similarly ‘*re*’ is a prefix that is used to indicate ‘again’, and ‘*legio*’ is the Greek term which means ‘to unite’. Therefore, when such lexicons are combined together, the resultant term emerges either as ‘to re-unite’ or ‘to bind’. Strictly speaking, the concept evokes a union that is a man made organization. Religion is intensely a personal matter, for that matter, every individual is able to decide for himself as to which set of beliefs to adopt. No law can force people certain things vis a vis their belief in religion, after all it is a principle which involves an intricate relationship of man with God.

Religion, in common parlance, refers to a collection of beliefs. A system of thought, feeling, and action that is shared by a group and that gives the members an object of devotion. It is a code of behavior by which individuals may judge the personal and social consequences of their actions. Usually, religion concerns itself with that which transcends the known, the natural, or the expected. It is thereby an acknowledgment of the extraordinary, the mysterious, and the supernatural. The religious consciousness generally recognises a transcendent, sacred order and elaborates a technique to deal with the inexplicable or unpredictable elements of human experience in the world or beyond it. Religion has been defined as recognition (conscious or unconscious) of a force or power outside man or men, not subject to the control of a man or men, which is nevertheless in a constant relation to a man or men, which recognition as fact, manifests itself in thought, action or abstention from action in order that;

- a) a benefit may accrue, whether seen, unseen or both, whether in this life, openly or secretly or in some other life of state of being, by reason of thought action etc., or
- b) evil may be averted, whether seen, unseen or both, whether in this life etc., or
- c) both benefits may accrue and evil may be averted.

So far as the nature of Religion is concerned, no system and no philosophy is a prerequisite. No rituals, no priests, no temples, no scriptures are necessary.

It is to be noted that religion is not necessarily theistic. Since, there are well known religions

[in India] like Buddhism and Jainism which are atheistic in nature i.e., they do not believe in God. This might have been the reason that there is not a single universal definition of religion, since the definition, and understanding of religion differs for each of the different religions.

The study of religion emerged as a formal discipline during the 19th century, when the methods and approaches of history, philology, literary criticism, psychology, anthropology, sociology, economics, and other fields were brought to bear on the task of determining the history, origins, and functions of religion. There is no consensus of scholars on a particular way of the study of religion, or its development. Because, there are too many methods of every discipline to study namely, Historical, Anthropological, Sociological, Psychological so on and so forth. The scholars are unable to resolve the problems between these intellectual perspectives. It is thus difficult to establish a definition acceptable to all. There are many attempts made to establish a definition and to search common and distinct elements in different religions for example: supernatural forces, spirituality, and relation of sacred and profane and believing in god, one or more.

There are hundreds of religions practiced in the world, but there are only five that have much influence on the world and are notable:

- 1) Christianity
- 2) Islam
- 3) Hinduism
- 4) Buddhism
- 5) Judaism

These are world religions and this classification of religion has great dissimilarities in practice and overall bodies of religion. At least three of them viz., Islam, Christianity and can be grouped due to a similarity of having a holy book but is being practiced in different ways and represents different culture and society. But, the other two Hinduism and Buddhism are synonyms to the above mentioned three religions.

Justification for Freedom of Religion

Religious freedom is a right many consider as self-evident. It is noteworthy to mention what religious freedom connotes. Religious freedom is the lack of religious persecution and repression, characterised by governmental activities of a particular religious group, sometimes with the objective of eradicating that grouping the short or long term. Religious persecution is often linked to severe abuses, including torture, sexual assault, and wrongful incarceration based on religious beliefs. Sarkissian uses a similarly broad definition of religious repression, including constraints on the free practice of religion with political and economic limitations imposed on religious organisations. Religious freedom includes:

Religious tolerance; It places an emphasis on providing religious minorities with equal rights and advantages. There is a difference between acceptance and tolerance. It is putting up with people about whom you have a negative opinion or with whom you disagree. A strict interpretation would be to ensure that religious minority have the same protections as the majority. In this way, religious freedom may be protected for all faiths.

Absolute separationism; It is fundamentally the US paradigm, whereby the government must officially refrain from any involvement in religion, neither endorsing nor constraining it. This encompasses the principles of free exercise of religion, guaranteeing people the ability to practise their beliefs without any obstruction. Nonetheless, it does not justify the imposition of limitations on religious minorities. According to this concept, the state must uphold religious freedom, guarantee equal participation of all individuals in public affairs, and abstain from endorsing or privileging any religion.

Neutrality necessitates that governments regard all faiths impartially, without exhibiting preference or bias. Favouring some religions while marginalising others might yield outcomes akin to the active suppression of particular faiths, even if such favouritism does not directly impede the observance of other beliefs. Differential support may not inherently infringe upon the free exercise rights of unsupported faiths, nor constitute repression or persecution; yet, it still positions such religions at a structural and symbolic disadvantage in the public domain.

Laicism model; It is named after the religious policy of France. It prohibits official endorsement of any religion and limits religious expression in the public domain. The public realm must remain entirely secular, restricting religion to the private domain. This mandates restrictions on

religion in the public sphere. Any such restrictions apply equally to all religions, including the majority religion.

Numerous proponents contend that endorsing religious freedom fosters a more stable and liberated society, mitigates terrorism and bloodshed, and enhances national security and economic success. It has also become a significant component of the foreign policy of Western nations. However, a number of studies have shown that the concept of religious freedom is often more prevalent in principle than in reality. Even democratic nations routinely engage in discriminatory practices against religious minorities and govern the religion of the majority.

In liberal political thought, the freedom of religion is seen as absolutely essential, significant, and advantageous. On the other hand, many governments that are not liberal see religion as a possible threat to their authority. As a consequence of this, a collection of recent writings contends that the freedom of religion has both economic and practical advantages. One of the goals of this is to persuade those who do not belong to any particular ideology about religious liberty that it is in their political and material advantage to support the cause of religious liberty. The fundamental liberal premise is that a free society is cherished, and that all types of freedom, including religious freedom, are inextricably linked. It is stated that religious freedom involves freedom of worship and freedom to propagate religious views in civil society and prohibits religion from interfering with democracy, law, and other people's religious freedom.

Religious freedom and security: There is an increasing body of literature that argues that the absence of religious freedom and state support for religion have adverse repercussions. Religious freedom, as a result, provides tangible advantages. One of these advantages is the reduction of conflict and terror. The reduction of conflict can be achieved by religious freedom, which in turn reduces grievances against the state. This argument, which is based on grievances, is also present in the ethnic literature. Studies have demonstrated that states with a higher proportion of religious freedom are less likely to engage in international conflict and experience domestic conflict. Others attribute this advantage to processes specific to religion. Government endorsement of religion may foster radicalism and terrorism. Freedom of religion, on the other hand, has a number of important advantages. It challenges the narrative that is being spread by religious extremists, which is that their religion is being attacked by the state. As a result, the possibility of violence and radicalisation is reduced.

Religious freedom and economy: The relationship between economic prosperity and religious freedom is that religious freedom facilitates cross-religious interactions, which in turn reduces cultural barriers to trade and stimulates economic activity. People of different faiths have more freedom in religiously secular nations. As a result, more members of religious minorities are likely to immigrate, which is considered beneficial for commerce with their country of origin. In contrast, discrimination against religious minorities diminishes commercial relationship with nations where that minority is the majority. Religious institutions and activities, including charity and education, have an economic influence.

The right to choose one's religion is a constitutional protection not offered to other individual choices. There is no constitutional right to choose what one eats, for example, though that is undeniably important to people. Religion is an important area of individual autonomy, but so are choices of dress or vocation or countless other areas of personal autonomy. The privileged status of religion in constitutions may fairly be questioned. This is especially true when religious freedom appears to conflict with other freedoms, such as gender rights.

Brian Leiter— an American legal philosopher who has questioned the reason for privileging religion. He claims that no one has offered a credible principled argument for tolerating religion itself, as opposed to other personal choices. While there are ample philosophical justifications for tolerating personal differences, he says that religion may not be so special as to warrant a specific constitutional protection. He suggests that there is no principled reason for constitutions to single out religion for special legal protection.

Leiter, being particularly ardent in his pursuit of the point, is not alone in his beliefs. Ronald Dworkin is essentially in agreement with him. On the contrary, various philosophers disagree with Leiter for his views about the protection of religious freedom. John Witt Jr.,—a prominent scholar in law and religion, contends that religion is special and more than simply a peculiar form of freedom of speech and assembly, privacy, and autonomy. Perhaps religion is a uniquely important aspect of human autonomy. It has been called a “defining feature of the human personality” as per Boyle & Sheen Kent Greenawalt, a scholar well-known for his work on the intersection of law and religion, argues that for many individuals, religion holds a significance that surpasses other aspects of personal life.

As per Douglas Laycock, “traditionally, religious beliefs have been considered important enough to die for, to suffer for, to rebel for, to emigrate for, to fight to control the government

for". He highlights the extraordinary depth of commitment that religion has historically inspired in individuals and communities.

Freedom of Religion and Development of International Law.

Religious freedom is a unique right recognised under international law. It is a double-sided right based on two conceptions of religion. One conception of religion stresses on the aspect of religion as an expressive activity of belief, criticism and inquiry. This carves out an individualist perception of religion, which relates to the liberal view, and connotes freedom of religion. The second conception of religion relates to a communitarian view. It stresses upon the aspect of religion as identity and equality between religions. This view relates religion to groups. Therefore, religious freedom is a double-sided right, a right of expression and a right of identity, at the same time has two aspects i.e., *individual* and *group* perceptions of this right. The historical development of the right to freedom of religion and its incorporation in international legal documents reflects a move from protection of groups to recognition of the rights of the individual.

The development of a legal principle of religious freedom parallels the development of international law itself.. Indeed, according to Mark Janis, 1990, the relationship between religion and international law is close, but it is understudied. According to him, there are two reasons for this. One is the effort made in the nineteenth and twentieth centuries to turn international law into a science, which meant keeping religion out of the discipline entirely. Secondly, the addition of more than a hundred western states to the international community, since, western values are not always shared by other cultures. Many international lawyers are hesitant to discuss religion, ethics, and morals for fear of alienating those with beliefs that differ from their own.

Initially, this freedom was recognized only as a freedom of the ruler to choose the religion of his territory, *cuius regio eius religio*. For example, The Peace of Augsburg (1555) gave Lutheran princes the same status as Catholic princes and let the amateur princes decide which of the two religions to adopt within their territories. Similarly, The Peace of Westphalia Treaties, in 1648 which concluded the Thirty Years War by setting up an organization of states with different Protestant faiths, obliging them to respect the diverging religious beliefs of individuals subject to their jurisdiction. The state borders no longer paralleled (remained distant) the religious border, and religious freedom in a true sense was recognized. The authority of the

sovereign under this system was no longer seen to spring from divinity but from the will of people. Thus, it gave birth to legal positivism, in international law.

Moreover, The Treaty of Westphalia assured freedom of religion for three religions (Calvinist, Lutheran and Catholic Christian faiths). The Union of Utrecht (1579), which later became the Constitution of the Netherlands, had already guaranteed general freedom of religion. Hence, international law developed a right of religious freedom, but religious freedom, in turn, was pivotal to the development of international law.

According to Hugo De Grotius, religion was proof. He relied heavily upon the philosophical and religious sources. According to Emmerich de Vattel, religion appears to be a problem. According to Henry Wheaton, religion was a sanction. He saw religion as a moral sanction. According to Lassa Oppenheim, religion was mostly history.

More concisely, this course of religion through the development of international law is stated by David Kennedy. He states as, "Religion begins as a social force, is transformed into a philosophy and survives only as a set of principles, guiding the practice of institutions"

Recognition of Religious Freedom at International level

In a world where mono-religious countries are becoming increasingly rare and the traditional dominance of a single religion is dwindling, maintaining social peace is becoming a growing priority for modern governments and the international community. As a result, it is expected that the protection of religious rights will become an important theme in international law.. The need to protect religious freedom was one of the first formally recognized movements in favor of human rights that emerged after World War II. President Wilson of the United States proposed that a provision addressing religious equality be included in the League of Nations Covenant.

The legal standards governing religious freedom were negotiated and adopted by states during the Cold War era. During the Cold War, the concept of universal rights, particularly "freedom rights" such as freedom of thought, religion and belief, and freedom of information and expression, was at the heart of the ideological competition between the Soviet Union and Western democracy. One of the consequences of the Cold War in international negotiations over human rights standards was that individual religious freedom came to be considered alongside

the freedom to adopt materialistic rather than spiritual values and beliefs. The Soviet Union was ultimately dissatisfied that the international standards that were adopted did not reflect a strict balance between the recognition of religious freedom and the rival freedom for atheistic belief and ideology. It might have been better for the protection of religious freedom if it had been codified as a separate norm and not been linked to broader issues of freedom of thought. But that is now just a passing thought.

United Nations and Freedom of Religion

The United Nations influence in the field of religious freedom has been indirect, i.e., by preventing numerous causes that led to devastating wars, such as the first and the second world wars. The Second World War was the major cause for the change in approach for religious protection. Europe has been a hotbed of religious faith-based warfare. Even Nazi Germany's anti-Semitism, which resulted in the killing or prosecution of millions of Jews during World War II, was a denial of religious freedom and even life to the individuals born as Jews. Since the Treaty of Westphalia in 1648, religion has had no role in setting state borders. The United Nations' human rights movement requires member states to respect all ethnic and religious minorities equally and refrain from religious intolerance, persecution, and genocide.

The United Nations has sponsored a number of well-known international, regional, or supranational instruments in order to protect various aspects of religious freedom. These instruments operate during normal times, in times of war or non-war conflicts. The most prominent of these provisions are:

- The United Nations Charter, 1945, states in Article 1, among the Purposes and Principles of the United Nations i.e., to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. The same principle --- “without distinction as to race, sex, language or religion” has been copied in subsequent human rights conventions and treaties.
- Universal Declaration of Human Rights, 1948: Adopted on 10 December, 1948 is considered as the standard-setting norm and basic charter of human rights. At the outset it declares 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”

In the next provision, it outlaws any distinction in the enjoyment of human rights and freedom inter alia on the ground of religion. In clear terminology, this declaration pronounces religious liberty to be every one's basic human rights under Article 18. Article 18 identifies three rights: the right to believe, the right to change one's belief or religion, and the right to manifest one's belief. Under Article 26(2) It also directs for promotion of understanding, tolerance and friendship among various religious groups in the human fraternity.

- International Covenant on Civil and Political Rights, 1966: The international human rights law later marched forward to usher in a liberal regime of religious freedom for manifestation of basic human rights. Two international covenants—one on Civil and Political rights (ICCPR) and the other on Economic, social and cultural rights (ICESCR) were adopted by the world body one after the other in 1966. The two covenants encouraged the world's states to commit to ensuring that the Universal Declaration of Human Rights be fully implemented..

As far as religious protection is concerned, ICCPR elaborated under Article 18 of the international convention on civil and political rights of 1966 the religious freedom for all individuals and at the same time protects individuals against discrimination.

- UN Convention on Rights of the Child, 1989: the principle of religious equality, liberty and non-discrimination laid down in UDHR, 1948 and the two covenants of ICCPR and ICESCR of 1966 were later incorporated in the UN Convention of Rights of Child.
- Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981. After twenty years of debate, great struggle, and hard work, the United Nations General Assembly took a step forward in 1981, adopting (without a vote) the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981 Declaration). Despite the absence of any enforcement mechanisms, the 1981 Declaration remains the most important contemporary statement of the principle of religious and belief freedom.

Since, Article 18 of the Universal Declaration of Human Rights was the first to mention freedom of thought, conscience, and religion. Yet, the Declaration on the Elimination of All Forms of Intolerance and Discrimination affirms the “right to freedom of mind, conscience, religion, or belief in whatever form, viz.,

Article 1: Everyone has the right to freedom of thought, conscience, and religion.

Article 2: Everyone has the right to freedom from discrimination. "Intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief.”

Article 3: Discrimination on the basis of religion or belief is a disavowal of the Charter of the United Nations and a violation of the Universal Declaration of Human Rights.\ Article 4: All States should take measures to combat religious intolerance in legislation and all aspects of life including civil, economic, political, social and cultural life.

Article 5: Every child shall be free from discrimination on the basis of religion or belief, and has the right to freedom of education per the wishes of their parents or legal guardian.

Article 6: The right to freedom of thought, conscience, religion or belief includes specific freedoms, beginning with the freedom to worship or assemble.

Article 7: The rights and freedoms in this declaration should be granted through national legislation so that all can benefit from these rights and freedoms.

Article 8: Nothing outlined in this declaration can be construed as restricting or detracting from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

Freedom of religion under Regional Conventions.

Many of the regional documents have recognized the right concerning freedom of religion as a fundamental right. These documents recognised this right either as a group or individual basis.

- *American Convention of human rights, 1969*: American approach to human rights is based on the individual rights rather than the group protection i.e, it protects the religious freedom as right of the individual. Various Latin American countries have also adopted

the same approach in their constitutions. The right to change the religion is also expressly provided and there is no prohibition or restriction on the right.

- *African Charter on Human Rights and People's Rights (Banjul Charter), 1979*: African charter on human rights provided for the right to freedom of religion . Article 8 of the said Chapter expressly provides for freedom of religion . This charter as compared to other regional charters provides religious freedom in a broader sense with one exception or limitation which is law and order requirement of the state.
- *European Convention of Human Rights, 1953* : Freedom of thought , conscience and religion is a fundamental right which is also provided in the European Convention on Human Rights besides in a wide range of national and international texts.

Article 9 of the European Convention on Human Rights states;

“ 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 worship , teaching , practice and observance”.

Article 9 further states; *“Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order , health or morals, or for the protection of the rights and freedom of others.”*

In addition, Article 2 of Protocol No.1 to the Convention concerns one specific aspect of freedom of religion, namely the right of parents to ensure the education of their children in accordance with their religious convictions:

“ No person shall be denied the right to education , in the exercise of any functions which it assumes in relation to education and to teaching , the States shall respect the right of parents to ensure such education and teaching for their children in conformity with their own religious and philosophical convictions. ”

Article 9 is often relied upon in conjunction with Article 14 of the Convention which prohibits discrimination based on, among other things , religion and opinions:

“ The enjoyment of the rights and freedom set forth in [the] Convention shall be secured without discrimination on any ground such as sex , race , colour , language , religion, political or other opinion , national or social origin , association with a national minority , property , birth or other status.”

European Court of Human Rights in one religious discrimination case i.e, Izzettin Dogan and Others v. Turkey held that *“the State had a duty to put in place objective and non-discrimination criteria so that religious communities , which so wished , were given a fair opportunity to apply for status that conferred specific advantage to religious denominations”*.

Restrictions on the Freedom to Manifest a Religion or Belief

The freedom to have or adopt a religion or belief of one's choice is unrestricted by international norms. The right to have or accept a religion or belief without fear or force, as well as the freedom of parents and guardians to provide religious and moral education, cannot be limited. However, according to ICCPR Art. 18, the freedom to express one's religion or belief might be restricted in specific circumstances.

Article 18.3 of the ICCPR permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. Following postulates are to be kept in consideration for prescribing such restrictions:

1. Article 18 paragraph 3 must be construed carefully. That is, limits on reasons not listed in the Covenant are not permitted, even if restrictions on other rights guaranteed by the Covenant, such as national security, would be permitted.
2. That the restrictions must be enacted by law and must not be enforced in a way that violates the rights granted in Article 18.
3. Restrictions may be used only for the purposes for which they were specified, and they must be directly tied to and proportionate to the precise necessity for which they were established. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.
4. The UN Committee on Human Rights observes that the concept of morals derives from

many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.

U.N. Mechanism on Reporting on Religious Freedoms.

In furtherance of the goals of the 1981 Resolution and in support of the general evolution of the freedom of religion as a human right the United Nations Commission on Human Rights resolved to appoint a Special Rapporteur on Religious Intolerance in 1986. In 2000, the Commission on Human Rights changed the mandate title of the position to "Special Rapporteur on Freedom of Religion or Belief". (Currently Ms Nazila Ghanea from Iran is the special Rapporteur) The Rapporteur is tasked with monitoring and reporting on global issues related to religious freedom with the following mandate:

- (a) To examine, analyse, and report the conflict of Government actions vis a vis the object of Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief 1981, and simultaneously provide the mechanism suiting best to resolve the friction between the Government and the Countries.
- (b) In order to report the requisite incidents, it has been mandated that reporting should be done to examine separately the influence of incidents on different genders and address the concerns accordingly.
- (c) Similarly, in recommending the framework for remedial measures, the factors which would be indigenously suiting the resolving of frictions to the States in question should be taken into consideration.
- (d) In order to ensure credibility, effectivity and efficiency in relevance of reporting and redressal, the comments should be sought from the concerned Government without any compromise to report independently and with discretion.

U.S Legislative Endeavour For International Religious Freedom

Being a largest democratic country and a superpower, the United States has enacted a law in 1998 which creates an obligation on the state department to prepare an annual report of all the countries except the US regarding the religious freedom worldwide. It also has allowed the US

government to establish a commission to supervise the state department in achieving the objectivity of the act, identify issues & suggest measures. This in literal terms has turned the US into a self styled watchdog of religious freedom of the other countries.

Conclusion

From an anthropological perspective, religion transcends mere theory; it encompasses culture, identity, and experiential practice. Consequently, freedom of religion protects both spiritual independence and cultural variety, as well as social cohesiveness. Historical evidence indicates that civilisations that reject this right provoke turmoil, whilst those that uphold it promote stability and advancement. However, obstacles persist—government partiality, majority rule, and tensions about gender and minority rights. The anthropological approach must reconcile universal principles of religious freedom with cultural relativism, so preserving plurality while respecting local customs. In a fractured society, safeguarding religious liberty pertains less to favoring religion and more to upholding human dignity.