



THE RIGHT TO RELIGIOUS LIBERTY/FREEDOM: A SOCIO-LEGAL PANORAMA

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ABSTRACT

Religious liberty being one indispensable aspect of human rights, it needs to be understood, researched and we have to hold a common stand what it is from socio-legal perspective. Hence, this article is indebted to critically analyze its meaning, nature, and historical background from the social point of view; and its legal back up from the different international legal instruments. In dealing with religious liberty, this article is confined to clearly state its comprehensive socio-legal notions. That is it is not purported to expound or discuss its all-touching socio-legal issues. However, the article would not wide up its discussion without underlining its decisiveness. This is because from the very start, the author is motivated to depict the clear meaning, nature, historical development, and legal frameworks first, then he would like to conclude in calling every stakeholders concerned to put to the ground.

Key Words: Religious Liberty, Inalienable Human Right, Conviction and Conscience, Religious Tolerance.

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I. INTRODUCTORY REMARKS

Historically, as time went by our world has sustained a great deal of inconveniences, and now the quest for religious freedom has got the priority at this moment. The idea of religious liberty is one of the important findings in global history, yet it needs reaffirmation and re-articulation throughout different times, culture, and society. Nowadays, this activity could not be given more emphasis. In a world of diversified and inter related religion, cultivating and protecting freedom of conscience and belief is an ideal tool of enabling societies to live with religious differences in a peaceful manner. Paradoxically, at the very time that this wisdom is becoming widely recognized, religious freedom is under siege. It is hostage to secular states and theocratic regimes, to inertial bureaucracies and social repression, to academic indifference and elite hostility. Comfortable religious communities take it for granted; dominant have contributed a lot for it in combating the corrupting behavior of the state. Without clarity about the universal human aspiration for meaning and belonging at the heart of religion, there are counterproductive cycles of repression, conflict and violence, and further repression in the arena of religious liberty. For this, here is religious liberty which breaks this problem being a means by itself. Via enhanced thinking and action of politicians, public administrators, religious persons, academicians, and citizens can found self-reinforcing positive gains of greater autonomy of conscience, mutual respect, and peace.¹



II. Historical Perspectives of Religious Freedom and/or Liberty

To begin with religious freedom and liberty is older than the World Council of Churches. The Oxford Conference on *Church State and Community* in 1937 for the first time explained the understanding of the notion, or concept of religious freedom and liberty and has given numerous freedoms that were significant for the church to discharge its obligations to society;² these among other things were:

- the right of public and private worship, preaching and teaching;
- freedom from imposition by the State of religious ceremonies and forms of worship;
- freedom to determine the nature of its government and the qualifications of its ministers and members;
- freedom of the individual to join the church;
- the right to control over the education of ministers and the right to provide religious instruction to youth;
- freedom of Christian service and missionary activity, both at home and abroad;
- freedom to cooperate with other churches; and
- freedom to use public facilities available to all citizens or associations as will make it possible to accomplish these ends.³

This early understanding of religious freedom is all encompassing, or vast in its nature. It comes out of the colonial context of which the missionary enterprise was a principal part. Consequently, however, approach to the time of the drafting of the Universal Declaration, the understanding of the right to religious liberty was started in the wider realm/scope of universal human rights which were the essential basis of a new just and peaceful world order comes to view.⁴

III. Some Tips about Origins of Religious Freedom/Liberty

Even though there are claims that religious liberty is a Western construct, its roots goes their way back to ancient Sumerian, Persia, China, and Africa'. Really, some 2,500 years ago, as recorded source pinpoints in both Hebrew Scriptures and Persian documentation, '*Cyrus the Great established a broad regime of religious tolerance, which included restoring freedom for Jewish exiles and allowing them to return to their homeland.*' In diverse classical sacred texts we understand that homage to the divine cannot be coerced, that, in the words of the Qur'an, 'there is no compulsion in religion'. Religious freedom is a broadly accepted and recognized idea in international law and customary international law widely accepted by the international community as well as the writings of highly qualified publicists.⁵

IV. What is Religious Liberty?

The phrase religious liberty has several connotations and has a broad view held different religious leaders, religious liberty advocates and leaders, the laity/layman under different umbrella of faiths and/or religions, and by many individuals. Out of the many definitions and views, the following saying has got a wide acceptance/recognition and widely agreed by the many. It reads as follows:

"The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right."⁶

Then we can understand the following things:

- Religious liberty is a matter of conviction and conscience of every man;
- Religious liberty is a right of everyman to be exercised freely; and
- Religious liberty as a right of every man, which is inalienable.

V. Religious liberty is a matter of conviction and conscience of every man



The ground root, general, basic and firm stands of religious liberty is the conviction and conscience of every human being. This is a spiritual and psychological permit of thinking, believing, behaving, following, advocating, worshiping, praying, and living with ones' her/his own freely opted faith/religion besides the liberty given from any other body else. So, Religious liberty is deeply rooted with the creation of humankind and highly relied on the conscience and conviction of every created/living being, and in an outweighing inclination to be in liberty. Truly speaking every right of human being, especially basic human rights of man is/are related with the conscience and conviction of human being, but religious liberty is nearly a complete born of the conscience of humankind. And due to this it has a superior power of attracting a mob in the quest for liberty by the voice of the mass throughout the world from time immemorial. Now, it is also a sensitive and an attention-catching issue in the global world. To this end, it needs to respect and protect, promote, advocate, discuss, learn, teach, research, and devise instrumental ways for bringing religious liberty to life. And looking for a sound/ideal solution for mischief happened at and around religious liberty persistently gives a great deal of advantages for religious freedom and tolerance among the multifarious religiously-diversified peoples of the world today and tomorrow.

All this safeguard to religious liberty not only meritorious for religious tolerance and peaceful existence of peoples, but also it has all-inclusive positive impacts for an endeavor to change, or transform the world to a better living environment where sustainable economic growth is achieved and the desired developmental goal obtained. When such scenarios occurred, unity, solidarity, and harmonious life of humankind will be materialized. So, the issue of religious liberty is a very broad and significant factor among the contemporary global agendas, where deeply entrenched, universal, inclusive and integrative core value should be adopted. To do all these things, it needs to frame religious liberty a right of every man.

VI. Religious liberty is an inalienable right of everyman to be exercised freely

Simply stating and denoting religious freedom as a matter of conviction and conscience of every man is a mere play of words and lose of time, resources and endeavor. Rather, it is required to adopt it among the inherent right of every man, and then what is all positive expected gains from religious liberty will be obtained. By the way, religious liberty was not left out from inherent rights of every man, but it is to mean due emphasis and protection for it as a right is needed. The inquiry for emphasis and protection is sought mainly for two reasons: one, religious liberty has a tight relation with the conviction and conscience of humankind and if it is not respected, the life and existence of every man, especially whom it concerns will be at stake. Secondly, religious liberty has a super influential factor in unifying the peoples of the world via religious tolerance and freedom, and then it can make the world a place of peace, development and prosperity.

All about this is that nothing is crucial, but the protection of every man's conscience and of the harmonious atmosphere of the globe at all issues and levels via firm foundational making and protection of religious liberty at a global level is unduly essential. So, the second origin of religious liberty, next to human being's conviction and conscience, is artificial (humanely-made) declaration of the concept (religious liberty) *that it is an inherent right of every man.*

Then, what comes next is free exercise of the right. That is there should not be unlawful and unconditional, or unnecessary limitations and abrogation. For example unconditional statements, vague and ambiguous words and phrases, contradicting meaning of words, phrases, and statements...etc are susceptible to a pretext illegal limitations and abrogation. It is vivid that all rights although the degree differs have certain limitations. But such limitations should not be abused; that is the limitations should be imposed in a way to protect the national interests; the morality of the public, and each and every human beings' inherent rights. All such platforms should be clearly and understandably stated under several international and national human rights instruments. So, in this situation the establishment of firm and sound legal base takes the lion share of efforts in the free exercise of the right to religious liberty.



Generally, why we rush to magnify religious liberty is to basically maintain human dignity, to get rid of prejudices, and to overcome religious intolerance.⁷

To maintain Human Dignity-every human being has its own dignity, honor, and reputations by the mere fact of that she/he is a human being. And such invaluable concept of dignity to be put to ground, religious liberty contributes a lot by imposing a reciprocal duty among individuals to respect each other.

To get ride Prejudices-in a society where religious liberty is in vain, or no religious tolerance; religious liberty apart from being a bone of contention by itself it is a induces other grievances and blames, then it become a root cause of harsh conflicts, unrest and instability. Contrarily, where there is a religious freedom and liberty, past conflicts and riots will be forgot, and even old-aged blames and traumas in a certain society culminated and never come again at another time.

To overcome religious intolerance-in the normal course of events, disputes always happen, cannot be eradicated, but they are mitigated. And religious liberty is an ideal tool to mitigate conflicts, especially conflicts related to religious intolerance. Additionally, what we can understand from this is that religious liberty is not only an end by itself, but also a means to reduce already happened conflicts and combat upcoming ones in advance. So, religious liberty is the best peace-builder factor and reserve for ensuring a continued stability for tomorrow.

VII. Where is the Right of Religious Liberty/Freedom and who guaranteed to be freely exercised?

The blossom notion, religious liberty/freedom, being understood deeply and well entrenched in the minds of many the international, regional, and national human rights instruments have incorporated under separate provisions.

Internationally, the 1948 Universal Declaration of Human Rights under its Article 18, reads as follows:

“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.”⁸

As indicated by this declaration, religious freedom is an indispensable human right that simultaneously contains the freedom of conscience and association, the right to own property, to publicly worship, publish, speak, petition government, and raise children according to family desires.

The 1966 International Covenant on Economic, Social, and Cultural Rights, and the 1966 International covenant on Civil and Political Rights have made it one of the independently readable provisions, the freedom of religion. And the 1981 Declaration on the Elimination of All forms of Intolerance Based on Religion or Belief has also similarly and singularly advocates for freedom of religion.

Regionally, some number of human rights instruments like:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- American Convention on Human Rights (1969);
- Helsinki Final Act (1975);
- African Charter on Human and Peoples’ Rights(1981);
- Concluding Document on the Vienna Meeting of the Commission on Security and cooperation in Europe (1986); and
- Document of the Copenhagen Meeting of the Conference on Human Dimension (1990) have included religious freedom as one of human rights.

As a result of the above instruments, particularly binding ones, any religious freedom/liberty violations can be confronted and challenged. And actions relating to violations can be directed to United Nations, Commission on Human Rights and special reporter on Religious Freedom or Belief, the European Court of Human Rights, the Inter-American Court on Human Rights, and the African Commission on Human Rights.⁹



Nationally, almost all countries' constitutions have adopted a separate provision which succinctly provide religious freedom and liberty up to changing one's own religion by domesticating the international and regional human rights instruments or by their own initiative. Consequently violations are condemned and punishable under their own criminal//penal codes.

VIII. Concluding Remarks

No doubt that promotion and existence of religious freedom/liberty is a marvelous achievement in the endeavor of creating a world of harmonious, peaceful co-existence, and prosperity. If it is so, it requires the hands of the largest stakeholders to effectively and efficiently realize the all-time aspired, intended and expected image of religious freedom/liberty in our crude world. And this is done via taking reciprocal respect to ours each other religious stands and beliefs. This is the primary task that every individual must swear to obey accordingly. And in the part of the governments in the globe to strengthen the already established legal frameworks and implementation tools, policies and strategies and on the part of institutions, they have to conduct positively-responsive and best-suited researches in the quest for true understanding of the concept and projects so as to Carry out practically.

Endnotes

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