

# RELIGIOUS RIGHTS TODAY

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All human beings are born free and equal in dignity and rights.<sup>1</sup> Human Rights are the rights of men and women, aged and young, sick and healthy, rich and poor and without any discrimination these right should reach all human beings. They are no doubt the inherent rights of man.<sup>2</sup> One has these rights simply because he is a human being. Everyone shall enjoy these rights by birth and guaranteed globally irrespective of nationality, religion, sex, race, caste, language, colour, opinion and so on. Without Human Rights, man can not live and develop. These Rights belong to a person and affirms his human dignity. The Right to Religion is now a world wide concept and to be guaranteed by the State.<sup>3</sup>

## GLOBAL SCENARIO

The Universal Declaration of Human Rights was adopted and proclaimed by the United Nations' General Assembly Resolution No.217A(iii) of 10<sup>th</sup> December 1948. It Article No.18 reads like this. "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 it public or private, to manifest his religion or belief in teaching, practice, worship and observance".<sup>4</sup>

From the above Article, the United Nations' Organization is very clear to grant not only religious freedom but also the freedom to change his religion. This can be done by a single man or in community in public or private. It allows everyone to practice, worship and observe his religion.

The International Covenant on Civil and Political Rights was unanimously adopted on 16<sup>th</sup> December 1966 and enforced on 23<sup>rd</sup> March 1976. Its Article No. 18 reads like this:

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 beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or the fundamental rights and freedom 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 convictions.<sup>5</sup>

Its Article 27 states like this. 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, or to use their own language. <sup>6</sup>

## INDIAN CONTEXT

### 1. INDIAN CONSTITUTION

It is a paradox that while almost every religion stands for and preaches the universal brotherhood of man, religion has been a constant source of

conflict in human history. India has been most unfortunate in this respect.<sup>7</sup> Fortunately or unfortunately in the preamble of the Indian Republican Constitution, the noble concept 'secular' was included in the year 1976 after making the 42<sup>nd</sup> amendment to the Indian Constitution.<sup>8</sup>

Article 25(1) enacts that all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. This Article in the Indian Constitution was largely based upon the judicial interpretation of freedom of religion in the United States of America. The framers of the Indian Constitution accepted this idea and made it a part of Article 25(A) by placing three restrictions to the freedom of religion, namely, public order, morality and health.<sup>9</sup> The State is also permitted to regulate economic, financial, political or other secular activities which may be associated with religious practice.<sup>10</sup>

In the above Article 25(2) (b) states that the State may also provide for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.<sup>11</sup>

Article 26, is, in fact, a corollary to Article 25. It guarantees the freedom to manage religious affairs. According to this Article, every religious denomination is given the following rights.

1. to establish and maintain institutions for religious and charitable purpose.
2. to manage its own affairs in matters of religion.
3. to own and acquire movable and immovable property and
4. to administer such property in accordance with law.<sup>12</sup>

Article 27 provides an additional protection to religious activity by exempting funds appropriated towards the promotion or maintenance of any particular religion from the payment of taxes.<sup>13</sup> It is so clear that the freedom of religion is not confined to religious beliefs only, but it extends to religious practices as well. Under Article 26(b) therefore, a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and not outside authority has any jurisdiction to interfere with their decision in such matters.<sup>14</sup>

Article 28 provides that no religious instruction shall be provided in any educational institution wholly maintained of State funds<sup>15</sup> whether such instruction is given by the State or by any other body. But this prohibition will not apply to any educational institution which is established under any endowment or trust which requires that religious instruction should be imparted in such institution, even if it happens to be administered by the State.<sup>16</sup> No person attending such institution can be compelled to take part in any religious instruction without the consent of the person concerned or if the person is a minor, without the consent of his guardian. Here the interest of the religious minorities are accommodated. Although educational institutions run by them may receive State aid, this does not prohibit their imparting religious instruction to those who are willing to attend. Thus while secular character of the State is demonstrated by all State educational institutions, private or denominational institutions, even when they receive State aid, are given freedom to maintain their religious character.<sup>17</sup>

## II. FUNDAMENTAL RIGHTS

Part III of the Indian Constitution contains the list of Fundamental Rights. They are the most elaborate and complex, comparing with many other Constitutions. They are in all 24 Articles which deal with these rights.

These rights embodied are not couched in absolute terms. The Constitution itself enumerate in each case the exception, limitations and qualifications.<sup>18</sup>

It is true that rights are not absolute even if they are expressed in absolute terms. According to the 24<sup>th</sup> amendment, it empowered the parliament to amend any part of the Constitution including the chapter on Fundamental Rights. The Fundamental Rights in India are classified under seven heads.

The fourth Fundamental Right is the right to Freedom of Religion. India is a country where people profess different faiths. Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. This Right to Freedom of Religion is enshrined in the Constitutional Articles 25 to 28.

Religious Right today is a clarion call throughout the world. Eventhough, there are certain countries with exemption to secularism. Secularization refers to the process by sectors of society and culture are removed from the domination of religious institutions and symbols.<sup>19</sup> To ensure Secularism, the endeavours of the U.N.O are praiseworthy in the forms of Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights. In the Indian context, the Constitution Articles 25 to 28 ensure the concept Secularism. Its importance is more realized when the concept 'Secularism' was added to the preamble of the Constitution according to the 42<sup>nd</sup> amendment enacted in 1976. This has been considered one among the Fundamental Rights of Indian citizens.

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## END NOTES

1. Rahul Rai, *Human Rights: UN Initiatives*, New Delhi, 2000, p.1.
2. Sivagami Paramasivam, *Human Rights: A Study*, Salem, 1998, p.1.
3. I bid.
4. Article 18, *Universal Declaration of Human Rights*.
5. Article 18, *International Covenant on Civil and Political Rights*.
6. Article 27, *International Covenant on Civil and Political Rights*.
7. L.M.Pylee, *Constitutional Government in India*, New Delhi, 2003, p.151.
8. J. Kasthuri, *Modern Governments*, Udumalpet, 1998, p.138.
9. L.M. Pylee, *op.cit.*, pp. 153-154.
10. I bid., p.154.
11. Article 25(2), *Indian Constitution*.
12. Article 26, *Indian Constitution*.
13. Article 27, *Indian Constitution*.
14. L.M.Pylee, *op.cit.*, p. 156.
15. Article 28, *Indian Constitution*.
16. L.M.Pylee, *op.cit.*, p.157.
17. I bid.
18. L.M.Pylee, *op.cit.*, pp.95-96.

19. T.N. Madan, 'Secularism in its Place' Religion in India, New Delhi,  
1991, pp.394-395.

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