

THE FREEDOM OF RELIGION AND RIGHTS IN AFRICA ON INTERNATIONAL PERSPECTIVES

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Abstract

The history of human kind was struggle for religious freedom has been ongoing for centuries, and has led to innumerable, tragic conflicts. The right to freedom of religion is an important and effective mechanism regulating the relationship between religion and the state. It therefore comes as no surprise that the right to freedom of religion is recognized in most prominent international human rights instruments, as well as in the bills of rights of many individual countries. The rights guaranteed in the Bill of Rights cover a wide spectrum of human interests and activities and has had a profound impact on the legal system as a whole. Each right protects certain interests and conduct of those persons protected under the Bill of rights. The Bill of Rights applies to all law and binds all legislative, executive, judicial and other organs of state.

The United Nations Organization recognized the importance of freedom of religion or belief in the year 1948, Universal Declaration of Human Rights, in which Article 18 says that "Every one shall have the right to freedom of thought and conscience and religion" The States should take the responsibility to protecting the human rights of the citizens. The attempt of Universal declaration to develop on enforceable human rights instrument related to freedom of religion has been unsuccessful in several countries. The States shall take effective measure to prevent and eliminate discrimination based on religion or belief. The African country is no exception to protecting the rights of freedom of religion like other countries. This article concludes the international declarations in regarding to the freedom of religion, rights and responsibilities of the citizens and state.

Key words: Freedom of Religion, united nation organization, Human rights, Bill of Rights, State, Citizens.

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1. Introduction

Religion is only one source of conflict in contemporary Africa. Where many troubles are caused by other factors such as neo-colonialism, the ambition of war lords, or by a kind of ethnic consciousness (tribalism), which is really a modern invention. In pre-colonial Africa, ethno-linguistic groups were not identical with political units. Colonial governments used 'tribes' as building blocks to understand and govern the complex societies which surrounded them. The post-colonial inheritance of manipulation can be seen in the genocide of a million people in Rwanda. Many of the conflicts in contemporary Africa are rooted in social and economic difficulties, a struggle for a small and ever diminishing cake, a struggle in which underdevelopment is perpetuated through cycles of poverty and violence. Tribe and religion have often been used as rallying cries by politicians or war lords.

The history of humankind is also the history of religious intolerance, discrimination, domination and persecution. It therefore comes as no surprise that the right to freedom of religion is recognized in most prominent international human rights instruments, as well as in the bill of rights of many individual countries. (1) The United Nations recognized the importance of freedom of religion or belief in the year 1948, Universal Declaration of Human Rights in which Article 18 states that "Every one shall have the right to freedom of thought, conscience and religion. (2) This right shall include freedom to have a religion or whatever belief of his or her choice and the term 'religion' meaning to bind fast, originated from the western Latin word *relegare*. It is commonly but not always, associated with traditional majority, minority or new religious beliefs in a transcendent deity or deities. In human rights discourse, however, the use of the term usually also includes support for the right to non-religious beliefs.

In the year 1993 the Human Rights Committee, an independent body, of 18 experts selected through a United Nation process, described religion or belief as "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. Religion and other beliefs bring hope and consolation to billions of people, and hold great potential for peace and reconciliation.

2.The Constitution of South Africa

The Constitution is the supreme law of the Republic of South Africa. And the constitution which enshrines the Bill of Rights is a mile stone in the constitutional history of South Africa. (3) The policy for the role of religion and rights flows directly from the constitutional values of citizenship, human rights, equality freedom from conscience and freedom from discrimination, thought, belief and opinion. The constitution provides the framework for determining the relationship between the State and citizens in a democratic society.

South Africa, as in many other countries such as India, United States of America, and TheUnited Kingdom gives everyone the Right to Freedom of Religion, Rights and responsibilities, belief and opinion.The India was the second largest democratic country in the world. The Constitution of India Article 18 states that “the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.”The constitution of India guaranties to the citizens to enjoy the right of freedom of religion and belief. (4) .In the case of Executive Council of the Western Cape Legislature Vs the President of the RSA, the constitution court emphasized that the Constitution is the supreme law of the land. “It is of crucial importance at this early stage of the development of our new constitutional order, to establish respect for the principle that the Constitution is supreme. (5)

3.The Bill of Rights

The Constitution of South Africa aim was to eliminate the discrimination, inequality and injustice and protection of the human rights was the major focus of the constitution. The Preamble of the constitution of South Africa states that the constitution has been adopted to heal the division of the past and create a society based on the democratic values, social justice and basic human rights. Section 1 says that human dignity, the achievement of equality and the advancement of human rights and freedom is one of the founding values of the Republic. (6) Section 7 states that the Bill of Rights included in chapter 2 of the Constitution is the cornerstone of the democracy in South Africa, it affirms that the democratic values of human dignity, equality and freedom. (7)

The rights guaranteed in the Bill of Rights it covers a wide spectrum of human interests and activities and has had a profound impact on the legal system as a whole. The Bill of Rights applied to all law binds on the legislative, executive, judicial and other organs of state. (8) The Right to Freedom of religion is guaranteed in the Bill of Rights. It has been accepted that the right protects the right and freedom to believe according one's convictions, and the right to manifest those beliefs and convictions understood generally. (9) The Freedom of Religion is a complex issue and it is discussed in the case of S VS Lawrence (10) by the Constitution court of South Africa. Freedom of Religion has been described as 'the right to entertain such religious beliefs as a person chooses the right to declare religious beliefs openly without fear of hindrances and the right to manifest belief by worship and practice or by teaching and dissemination' Kearney expresses that religious freedom means the right to express one's religious belief, both in private and in public, freely in the form of teaching, practice, worship and observance. (11) The people of South Africa are protected from any discriminatory practices based on religion, and are free from any coercion that might be implied by the state. In R Vs Big M Drug Mart Ltd. (12) the court remarked that if a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain or sanction indirect forms of control which determine or limit alternative courses of conduct.. Freedom in a broad sense embraces both the absence of coercion and constraint, and the freedom to manifest beliefs and practices.

4. The South African Charter of Religious Rights and Freedoms

The South African Charter defined the freedoms, rights responsibilities and relationship between the state of South Africa and her citizens of religious belief. The Bill of Rights recognizes that everyone has the right to freedom of religion, while article 234 makes allowance for civil organization to draw up charters of rights, to be drawn up by civil organizations, which may then be enacted by Parliament. The South African Charter of Religious Rights and Freedoms is the first such charter to be developed in South Africa. Apart from addressing the freedoms and rights of religion over and against the state, the Charter is also very useful for organizing the relationship between the different religions of the land. (13)

The Charter consists of a Preamble of eight articles which express the needs for a charter. It comprises of 122 articles with sub-divisions, stating the religious rights and freedoms of religious people and communities in South Africa. The Charter expresses what freedom of religion means to religious believers and religious organizations within a South African context, as well as the specific rights, responsibilities and freedoms that are associated with freedom of religion. These include amongst others. (14)

- The right to gather to observe religious belief (article 1);
- Freedom of expression regarding religion (article 6);
- The right of citizens to change their faith (article 2);
- The right of persons to be educated in their faith (article 7);
- The rights of citizens to educate their children in accordance with their philosophical and religious convictions (article 7);
- The rights of religions to institutional freedom (article 9);

5. International Declarations on Freedom of Religion and Rights

The United Nations recognized the importance of freedom of religion or belief. In the year 1948 Universal Declaration of Human Rights in which Article 18 says that “Every one shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief or his or her choice. In the year 1981 the United Nations Declarations also identifies certain rights related to states, religious institutions, parents, legal guardians, children and groups of persons. The Several international declarations in regarding to the freedom of religion, rights, human rights conventions and declarations as follows;

As per the United Nation charter Article 1, 13, 55, “respect for human rights and fundamental freedom without distinction as to race, sex, language or religion”. According to the Article 26 of Universal Declaration of Human Rights (1948), to “promote understanding, tolerance and friendship among nation’s racial or religious groups”. (15) International Convention on the Elimination of All Forms of Racial discrimination 1965, according to the Article 5, the full compliance with this convention includes the right to freedom of religion or belief for all racial

and ethnic groups, along with other fundamental rights and freedoms. International Covenant on Civil and Political Rights 1966, of Article 26 guarantees every one the right to education for the full development of human personality and respect for human rights by promoting understanding, tolerance and friendship among nations, racial and religious groups. (16) According to the Article 18,

- Every one shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his or her choice, and freedom either individually or in community with others and in public or private, to manifest his or her religion belief in worship, observance, practice and teaching.
- No one shall be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his or her choice.
- 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, moral or the fundamental rights and freedoms of others.
- 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

6. Conclusion

The South African Constitution allows for the freedom of religion, indeed, the freedom of all religions in South Africa. There is no established religion which has certain advantages before the law of the land. The state not promotes the any religion and all religions are equal and must be treated as such. The states should take the responsibility to protecting the rights of freedom of religion and belief. The United Nations shall force the State parties to maintain the freedom of religion or belief, and liberty in protecting the rights of the citizens at any cost.

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