

THE EVOLUTIONARY DEVELOPMENT OF THE CONCEPT OF HUMAN RIGHTS WHICH INFLUENCED BY DIFFERENT RELIGIOUS PERCEPTS AND THEIR CONTRIBUTION TO THE UNIVERSAL RECOGNITION OF THE PRINCIPLES OF EQUITY AND NON-DISCRIMINATION

Dinuthri Amunugama*

This paper discussed about the Historical influence of religion on the development of law and justice. Separation of church and state, the rise of secularism. Religion as influencing the Human Rights movement: positive and negative aspects. Fundamental values of religions versus organized religion in the development of the Human Rights discourse. The relevance of religion in the modern human rights discourse. According to Nazila Ghana on "Religion, Equality and Non-Discrimination" states that they serve social, economic, political and symbolic purposes; and are used as a description of facts or prescription of ideals. Though many have assumed non-discrimination and equality to reflect two sides of the same coin, closer attention suggests that the principles apply differently and sometimes even diverge. They are also construed and applied differently in different jurisdictions. Their bearing on freedom of religion or belief gives rise to particular implications. The rights of non-discrimination and equality. Furthermore since equality and non-discrimination often provide the framework within which religion or belief exemptions are sought, and may be rejected, it is appropriate to revisit the question of religion or belief claims in this context.

Non-discrimination and equality have literary, philosophical, political, legal and other implications. They describe an ideal as well as applying to the day to day. At the same time the research design to be carried out by analyzing existing literature subjective to qualitative analysis. Empirical studies carried out by scholars, International and local organizations, use of articles and facts published by recognized authors have been concerned. Qualitative data would be collected from individuals such as academics and policy makers. The paper focused merely to address non-discrimination and equality in the legal sphere. Within international human rights law one can, in turn, conceive of equality and non-discrimination as rights, as principles and as cross-cutting norms. Moreover, both these concepts constitute rights in themselves and they inform other rights in a cross cutting manner. The paper will limit itself to equality and nondiscrimination as legal rights within international human rights law.

Key Words: Human Rights, Equality, Non-Discrimination, Religion

"All religions, arts and sciences are branches of the same tree. All these

* Apprenticeship year, Sri Lanka Law college, LLB(Hons) General Sir John Kotelawala Defence University

aspirations are directed towards ennobling man's life, lifting it from the sphere of mere physical existence and leading the individual towards freedom".¹ Great religions and beliefs are truly based upon ethics such as the duty to strengthen the bonds of good-neighbourliness and the obligation to achieve human need in the broadest sense. The precept that denotes one should love one's neighbour as one - self without any discrimination was included in the faith of Christianity even before it had been organized as a Church. It is clear that the same idea emphasized in Judaism and Islam, as well as the various concepts in Buddhism, Confucianism and Hinduism, and it may also be found in the teachings of many non-religious beliefs. Modern law and religion are important sociopolitical phenomena that have in common some veiled elements. Both require to create, or at least to frame, human consciousness and behaviour in all spheres of private and public life. It is clearly note that all most all the religions and beliefs are filled with a sense of the oneness of mankind, equality and non-discrimination. History probably highlights more instances of man's inhumanity to man than examples of good-neighbourliness and the desire to satisfy the needs of the less fortunately placed.²

Religions and related social and cultural constructions have played an important part in human history. According to article 18 of

the Universal Declaration of Human Rights, "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."³ At the same time, later this was discussed in the following instruments as follow; International Covenant on Civil and Political Rights and several regional binding human rights instruments,⁴ namely the African Charter on Human and People's Rights (Article 8)⁵ or the European Convention on Human Rights and Fundamental Freedoms (Article 9). The UN Human Rights Committee highlights that this freedom is "far-reaching and profound",⁶ that it "encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether expressed individually or in community with others",⁷ that the freedom for conscience should be equal to that for religion and belief and that protection is for "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. Furthermore, the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (DEROB),⁸ as its very title express, highlights non-discrimination on the basis of religion or belief rather than equality. However, today laws securing freedom of

¹ Albert Einstein

² (Ghanea, 2011)

³The Universal Declaration of Human Rights,1948

⁴ (Rights, 1976)

⁵ (RIGHTS, 1986)

⁶ (Rights, 1953)

⁷ (Ghanea, 2011)

⁸ (Belief, 1981)

religion and belief are no longer focused on the need to maintain the status quo in order not to challenge regional security, but focus a number of issues including non-discrimination, equality and dignity.⁹¹⁰

According to natural religious law a law arise from a faith in God or in divine forces, morality and legality are rooted in religion. Sacred law creates a space for human choices and judicial discretion in the articulation of a celestial divine order. Prominent in the writings of theological thinkers in different religions such as St Augustine, Thomas Aquinas and Maimonides has not only been a normative indicator of a good faith and a virtuous behaviour, but also the absolute criterion for obedience and disobedience to human-made law. However, St Augustine has been a very influential religious thinker over Western thought. His religious concept of “De Civitate Dei” has generated a religious normative model for the perfection of human society and expectations that political power in the ‘City of God’ should be legitimated through a religious faith. During post-medieval science and the rationalization of law as science, natural law, as distinct from what has remained as religious natural law, has been secularized, particularly since the fourteenth century. These genealogical facets of religion in law and law in religion that have been illustrated above are not progressively ordered in a linear historicity of teleological modernity.¹¹¹²

⁹ (Heiner Bielefeldt, 2016)

¹⁰ (CENTRE, n.d.)

¹¹ (Freeman, 2004)

The rights of non-discrimination and equality have long engaged political and legal philosophers, thinkers and practitioners alike. They serve social, economic, political and symbolic purposes; and are used as a description of facts or prescription of ideals. Furthermore since equality and non-discrimination often provide the framework within which religion or belief exemptions are sought, and may be rejected, it is appropriate to revisit the question of religion or belief claims in this context. It is well known fact that, though many have anticipated that non-discrimination and equality to reflect two sides of the same coin, however, closer attention denotes that the principles apply differently and sometimes even diverge. On the other hand as equality and non-discrimination often suggest the framework within which religion or belief exemptions are sought, and may be rejected, it is appropriate to revisit the question of religion or belief claims in this context. It is clear that, within international human rights law one can, in turn, conceive of equality and non-discrimination as rights, as principles and as cross-cutting norms. Earlier they have the capacity of both constitute rights in themselves and they inform other rights in a cross cutting manner.¹³

The attitude embraced by religions towards human rights is today one of the criteria for social relevance or irrelevance, for ethical validation or invalidation, and civic recognition or rejection. Provisions in relations to non-discrimination and equality

¹² (research.vu.nl, n.d.)

¹³ (Heiner Bielefeldt, 2016)

have long been discussed in the sine qua non of all international human rights instruments. The initial movement can on non-discrimination can be seen in the International Bill of Rights; and then in the Convention on the Elimination of All Forms of Racial Discrimination (CERD) that discrimination may be non-formal; the understanding that it often arises in the private sphere and is regularly perpetuated in the name of tradition, as articulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); that it may be extinguished in the name of the illegality of the bearer of rights in the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW); non-discrimination has traversed an amusing investigative platform, that influence for the growing appreciation of where it may still remain and how to counteract it.¹⁴The principle of non-discrimination and equal treatment is also contained in regional instruments, such as Article 2 American Declaration, Article 24 ACHR and Articles 2 and 3 ACHPR.¹⁵

If secularization means the loss of the social significance of religion, then the extent of its influence has been exaggerated. This may be illustrated by the following incident. In 1998, the British parliament discussed the Human Rights Bill, which was to be incorporated into the European Convention on Human Rights (ECHR). The debate itself evidenced the strong presence of the Church in the consciousness of the public, especially the Church's autonomy

¹⁴ International Convention on the Protection of the Rights of All Migrant Workers and Their Families

and integrity. The relationship between religion and human rights has always been troubled. Religions have been, and continue to be, very occupied with the defense of divine rights. Only with great difficulty have they given any attention to human rights. Even when they do this, it is to subordinate human rights or contrast them with divine rights. In cases where the two rights conflict, the absolute rights of God generally predominate over the limited rights of mankind, the Truth of God over people, the Word of God over science, reason and human logic. In Switzerland, the right of the individual to profess the religion of his choice has gradually been recognized by national law. Every canton acquired, under the first peace of Kappel, of 1529, the right to decide for the entire territory subjected to its jurisdiction whether the Reformed or Catholic doctrine was to be the faith of its citizens and subjects. At the same time In France, for many years, concessions granted to religious groups were revoked at will by the State. On the other hand In England, incapacities to which dissenters were subjected were abolished only gradually. The first positive legislation recognizing dissenters was the Toleration Act of 1698, which exempted Protestants who dissented from the Church of England from the penalties of certain laws.¹⁶ The discourse of rights could still draw on Christian, natural-law sources for its legitimacy, but increasingly its practical concerns were secular. In addition to that, increasing knowledge both of classical, Greco-Roman civilization and of non-European cultures

¹⁵ (Discrimination, 1965)

¹⁶ Toleration Act of 1698,

provided alternatives to Christianity. Furthermore, the nineteenth century provide the persistent progress of science and technology in the West in the face of a defensive reaction by Christianity. The rise of industrial capitalism produced workers and socialist movements that claimed various economic, social and political rights. Although these demands were sometimes given a Christian justification, these movements were predominantly secular, and left behind the philosophy of natural law. However, by the end of the Second World War, religion still played a role in public life in the Western democracies, but politics had become predominantly pragmatic and secular. The United Nations was established with the primary goal of preventing war.¹⁷¹⁸¹⁹²⁰

Moreover, MacNaughton argues against the collapsing of status-based non-discrimination and positive equality precisely because the former is often used to reject and extinguish claims towards the latter. She further argues that “Positive and negative forms of equality are very different. When positive equality is the norm, any inequality must be justified. When negative equality is the norm, most inequalities are accepted; only inequalities based upon one of the prohibited grounds, for example, race, sex, language or religion, must be justified. By (International law)equating the two forms of equality in international human rights law and calling them “non-discrimination,” On the other

hand, McCrudden gives four meanings to equality in EC Law, clarifications which are in fact of wider application and will be used in our discussion. He distinguishes between the following: 1. equality as ‘rationality’, 2. equality as ‘rights protecting’, 3. equality as preventing ‘status harms’ arising from discrimination on particular grounds, and 4. equality as proactive promotion of equality of opportunity between particular groups. It is important to note that MacNaughton uses Article 2 of the ICCPR to identify these blocs: race, colour, sex, language, religion, political or other option, national or social origin, property, birth or other status” (Article 2, ICCPR), and notes that bloc equality is regularly known as non-discrimination.²¹²²

Examining equality in relation to freedom of religion or belief requires taking on board a range of terrains. These three levels of concern relate to the need to distinguish between: (1) religion as formal set truth claims, and religion as practiced by (2) individuals or (3) groups of individuals. At the level of practice, this distinction between the individual and the group of individuals then requires additional consideration. The first level is that of the formal truth claims of religion or belief. The second level is that of the individual and freedom of religion or belief. The third and final level is that of the group of individuals or community of religion or belief. This entails concern for equal

¹⁷ (Freeman, 2004)

¹⁸ (Ghanea, 2011)

¹⁹ (Commission, 1998)

²⁰ (Europe, 2015)

²¹ (PDHRE, n.d.)

²² (Rights, 1976)

treatment for the group, that communities of religion or belief enjoy appropriate external and internal protections²³

Most human rights violations related to freedom of religion and belief are also related to freedom from discrimination. Discrimination on the grounds of religion and belief is contrary to human rights but it is nonetheless experienced daily by many people across Europe. The fact that religion and belief are often confused with culture, nationality and ethnicity makes it more complicated but also more painful on an individual level: you may be discriminated against on the grounds of religious affiliation even if you happen not to believe in the religion you are associated with. Discrimination and intolerance impact negatively on society as a whole, and particularly on young people who experience it. Such effects include: Low self-esteem, Self-segregation, Internalized oppression and etc.²⁴

Broadly speaking elements of human rights are incorporated in most of the religions around the world. Notion of right is very much there in Buddhism as well. The elements incorporated in social message of Lord Buddha are part and parcel of modern day principles that comes as international conventions, treaties, covenants, protocols and constitution of most of the countries. Lord Buddha started his mission in rebuilding the unjust social order under the pillars of love, compassion, maithree, karuna, character, equality and

brotherhood. Thus the foundation is purely based on human values, natural justice and equality. Even Lord Buddha discussed women's right to education and socio political engagement like slavery. Therefore it is clear that Buddhism has influenced tremendously upon the thinking of civilization even before the birth of Universal Declaration of Human Rights, where those human values were present in a way of a message for the development of Human rights in modern day world. 25

Within Hinduism, a different point of view can be seen with regard to human rights. In Hinduism, like Judaism, there is no word for 'rights'. Closest word to 'rights' is adhikara that highlights the idea of 'just claim. The social structures and underlying social visions of human dignity, equality and non-discrimination in traditional India does not lie upon human rights but on social duties. As, Hindu thought places Article 29 of the UDHR prior to any other Article.²⁶ This is the main difference between Western rights talk and principles within the Hindu tradition. The approach that international human rights law has taken places the fundamental idea of dignity in a rights based context. It is submitted that this founding principle can be better recognized in a rights and duty based system. In this regard, a better recognition and interpretation should be given to the concept of duties as found in Article 29 of the UDHR²⁷ for the development of human rights. Hinduism is the religion of bliss. It considers the Right of Happiness to be the

²³ (FORTMAN, 2011)

²⁴ (research.vu.nl, n.d.)

²⁵ (Bagde, 2014)

²⁶ The Universal Declaration of Human Rights,1948

²⁷ The Universal Declaration of Human Rights,1948

highest fundamental right of all humans. The ultimate goal for Hinduism is material and spiritual well-being of the mankind without any discrimination.²⁸

Religion embodies institutionalized connections with transcendental bases for morally justified behaviour. In the human rights mission, religion has played its part right from the start in two ways. First, freedom of worship (or non-worship) is one of the fundamental human freedoms. Strikingly, realization of this freedom is particularly problematic in a multi-religious context as absolutism easily permeates organized Faith. Secondly, religion, with all that belongs to it, they are beliefs as well as institutions, also falls under the universal norms of the UDHR. People determined to discriminate or even kill others for religious reasons, collide with human rights. Moreover it is clear that, No matter how well rooted in people's life worlds, religion needs human rights as a global justice discourse that puts the human being above ideology and the dignity of the individual person above the organization. Religion's importance to globalization lies in the fact that individuals and groups, experiencing disorientation as a result of the invasion of their micro-cosmic domain by macro-cosmic forces, tend to appropriate spiritual values of their long-held traditions as part of their attempt to resolve the resulting conflicts^{29,30}

Religion needs human rights including the fundamental freedom to critique power. Reciprocally, human rights needs a firm rooting in people's transcendental beliefs the real challenge remains, however, to get

the global faith in a dignified and well-protected existence for everyone, rooted in all hearts and mind. Many of the most important and intractable human rights challenges facing the world today are closely interlinked with religion and belief. Failure to protect freedom of conscience, the enduring problem of religious intolerance and incitement to religious hatred, as well as widespread misunderstandings about the nature of the relationship between religion and universal freedoms, all act as a major break on achieving progress towards the full realization of human rights. The state is required to act in a neutral fashion as between religions and as between religious and non-religious forms of belief. The fostering of pluralism and tolerance is seen as a goal in its own right as a means of preserving democracy; it requires religious adherents to accept a fairly high degree of challenge to their belief systems in the pursuit of this goal. Human rights law has also established the principle of respect for the right of others to believe that is the duty of the state to create a 'level playing field' between different parties, with one side being free to present its point of view, and the other to reject it. This principle might also be expressed as respecting the 'believer' rather than the 'belief'. To conclude, it may be said, without any fear of contradiction that all religions promise to save only their own adherents. The positive point in all revealed religions is that they enjoin peace and preach non-violence. It is their votaries who violate the injunctions of their religions and bring disaster upon mankind. If the believers could practice

²⁸ (hodhganga.inflibnet.ac, n.d.)

²⁹ (Barzilai, 2007)

³⁰ (Europe, 2015)

their several religion in their pristine spirit, there would no need to spell out the basic human rights or to enforce them though declarations at various levels.³¹

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³¹ (Ghanea, 2011)

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