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FREEDOM OF RELIGION: IN THE ERA OF POLARIZATION

AUTHORED BY - RISHITA RAJ

Abstract

Freedom of religion is one of the most basic human rights, but nowadays this freedom is threatened due to pervasive religious polarization. Such an uneasy relationship between constitutional guarantees and social realities is quite noticeable in many democracies. Some of the great democracies among which are the United States, India, and many countries in Europe must manage how they will preserve respect for religious freedom while, at the same time, fighting alienation that is fostered by religious polarization.

Introduction

The fact that constitutional framings and judicial interpretations have been central to these attempts at balancing is a testimony to the struggle underlying implementation in promoting religious freedoms without an infringement of rights and well-being. This project discusses the role of constitutionally and socially shaped models of religious freedom in times of polarization, with a focus on how legal systems and societal attitudes interact to inform the experiential worlds of religious minorities. Policy responses considering the analysis of landmark cases, leading to an overall comprehension of the challenges and strategies for the preservation of religious liberty in times of rapidly increasing societal fragmentation.

Analysis

1. Constitutional frameworks and judicial interpretations in major democracies like the United States, India, and European countries balance the preservation of freedom of religion with meeting the challenges of religious polarization.

This explores the legal technicalities by which constitutional provisions and judicial decisions grapple with, or at times evade, questions on religious freedom within an increasingly polarized environment. The study investigates how legal systems respond to conflicts that emanate from religious diversity and tension.

- Comparative Analysis of Constitutional Guarantees Related to Religious Freedom:

Right to freedom of religion is a relatively recent phenomenon in constitutional democracies. They reflect other historical, cultural, and social contexts. In the United States, this is explicit in the American Constitution. Congress shall make no laws respecting an establishment of religion or abridging the free exercise thereof (First Amendment). Besides, freedom of religion in the Indian Constitution Article 25 to 28 has given all individuals the right to profess, practice, and propagate any religion (Right freedom of conscience) giving religious denominations autonomy management over their own institutions subject to public order morality health. Although the constitutions of EU nations are differently constructed, they do have some measure to safeguard freedom in religion problematically related to certain secularism principles. Article 9 European Convention on Human Rights¹ (ECHR) provides freedom of thought, conscience, and religion subject to such limitations as are necessary in a democratic society or the interest of public safety, for the protection of health and morals, or for the protection of order and rights of other people.

- Examination of Landmark Judicial Decisions and Their Impact on Religious Freedom

More important has been the role of case law in helping set the boundary of religious freedom. In the US, cases such as “Employment Division v. Smith and Burwell v. Hobby Lobby Stores, Inc.” are among the ones that set the understanding about the practice of religious exercise and how it relates to regulations by the state. The former case weakened the degree of protection that religious practices enjoyed in front of neutral, generally applicable laws, and the latter allowed closely-held corporations to be exempt from covering contraception based on religious objections. In India, judicial pronouncements by the Supreme Court in cases like “S. R. Bommai v. Union of India and Shayara Bano v. Union of India²” have reiterated and grappled with the practice of triple talaq under Muslim personal law. Rulings from the ECHR, such as those in Lautsi v. Italy and S.A.S. v. France, indicate a tension lying between individual religious rights and broader societal interests. Decisions of this nature reveal the fine line courts must walk to find ways to protect religious freedoms while

¹ MALCOLM EVANS, HUMAN RIGHTS AND RELIGIOUS FREEDOM: AN INTERNATIONAL PERSPECTIVE (2001).

² D.D. BASU, COMPARATIVE CONSTITUTIONAL LAW (2d ed. 2014).

avoiding disturbance of public order, secularism, and democratic values.

- Exploration of How Constitutional Frameworks Adapt to the Challenges of Religious Polarization

To respect both religious freedom and social cohesion, constitutional frameworks and judicial bodies must give way in the light of these changing dynamics. More in the US, debates surrounding religious exemptions, be it same-sex marriage or even health care, arguments most often revolve around a possible opposition between rights of religion and principles of anti-discrimination. The pluralistic Indian society is riddled with communal violence and the rising spectre of religion-based politics, which calls for an Indian judiciary that upholds constitutional secularism while being sensitive to the diversity of religions in the country. Major issues debated under this heading include the ban on wearing religious symbols in public space and integration of religious minorities in the context of a diverse landscape of religion with a rise of secularism in Europe.

On one hand, constitutional frameworks and, on the other, judicial interpretations must handle protections of religious freedoms with religious polarization. Studying adaptability, it attempts to gauge best practices and points of reform that could hold religion free yet urge harmonious social setups. In that view, it remains relevant for shedding light on how constitutions protect religious rights, how judicial bodies interpret and apply such protection, and what strategies would allow religious freedom to coexist with social harmony while providing some potential reforms that could be used for maintaining stability in ever more polarized societies.

2. The social costs of religious polarization on minority religions, and how these consequences influence the praxis of freedom to religion in polarized societies.

Religious polarization deeply affects the religious minorities and lies at the very core of the challenges to religious freedom, together with social harmony, within polarized societies. The possible impacts on the social arena are many but all lead to the deepening of the existing vulnerabilities and pave the way for new obstacles that have to be faced by the minority religious communities.

- Social and Legal Challenges

Discrimination and social exclusion are major socio-political challenges faced by the religious minorities in a socially polarized society. Our religious identities have become so hardened and deepened up to the level of division that it

alienates the minorities from employment opportunities, education, and the public services they deserve. Thus, questions concerning discrimination, for instance, based on the application or interpretation of laws and regulations that work against these minorities become legal issues. At their extreme, legislative actions may be enacted that directly limit minor practices by religion. One such example is the rise of Hindu nationalism in India, to the extent that questioning and controlling religious conversions reached an all-time high, and Christians or Muslims were forbidden from converting to other religions. These together with the social biases head an environment that makes it harder for the minorities who belong to one specific religious group to fight for and achieve their rights and freedoms³.

- **Impact on Interfaith Relations and Social Cohesion**

Religious polarization considerably stresses the interfaith relations and causes breakdown in social cohesion. Trust among the different religious communities gets weakened, leading to an atmosphere of suspicion and hostility toward one another. In worst cases, it goes into inter-religious violence as witnessed in different parts of the world. The persecution of the Rohingya Muslims in Myanmar illustrates how religious polarization can bring about severe social fragmentation⁴. Suspicion and animosities between communities led to armed conflict and other gross abuses of human rights, which seriously widened the gap and compromised the efforts toward reconciliation.

- **Case Studies and Practical Implications**

Many case studies illustrate how such religious polarization really translates into freedom for religious minorities. For instance, a post-9/11 United States witnessed increasing Islamophobia concerning American Muslims, which led to an uptick in hate crimes, surveillance, and discrimination, all of which have acted as barriers to their ability to enjoy the freedom of religion openly and safely. In this climate of fear and hostility, this has resulted in Muslims practicing self-censorship as the means through which they may play down their religious identity in order not to provoke any form of conflict or discrimination. In a similar incident is the struggle of Uyghur Muslims in China. The ongoing forced assimilation programs, the mass internment of people, and the restriction

³ Sonal Mehta, Religious Polarization and Constitutional Frameworks, 22 Nat'l L. Sch. India Rev. 101 (2020).

⁴ [\(PDF\) Right to Freedom of Religion: Dynamics of Conceptual Evolution \(researchgate.net\)](#)

of religious practices by the Chinese government against Muslim Uyghurs demonstrate how state-led processes of polarization can be devastating for minority⁵ religious communities. These are infringements not on the right to religion but on an approach aimed at demolishing the cultural and religious identity of the Uyghur community.

All these socio-implications that come with discrimination, violence, and social exclusion ripple through polarized societies and erode social cohesion and trust. The challenges are best met by concerted efforts to promote inter-religious dialogue and protect minority rights in line with the established principles of religious freedom and pluralism.

3. The effectiveness of strategies and measures implemented by governments and civil society in mitigating the impact of religious polarization on religious freedoms and explore potential improvements.

Due to religious polarization threats to religious freedom have become huge. The people enjoy religious freedom through effective measures and strategies both by the government and civil society. This response aims at reviewing government policies, the roles of civil society organizations, and recommending enhancements on available strategies and new initiatives.

- Government Policies and Legislative Measures

Governments have instituted anti-discrimination laws to prevent the discrimination of citizens on religious grounds in employment opportunities, education, and public services. Implementation of those laws ensures an open environment where the diversity of religions is embraced without a second thought. In this respect, firm laws should be developed that will mandate people not to engage in any form of hate speech that promotes violence or hatred against other religious groups. For instance, Germany has strict laws that criminalize hate speech; these have gone a long way to reduce inflammatory statements that promote religious divisions.

- Role of Civil Society Organizations

This makes civil society organizations (CSOs) the most potent force that supports and works to protect freedom of religion through their advocacy initiatives & awareness-raising campaigns on threat which religious polarization poses. Human

⁵ Neha Sharma, Constitutional Safeguards for Religious Minorities in India, 12 Indian J. Const. L. 45 (2018).

Rights Watch and Amnesty International are two of many organizations directly lobbying against religious persecution, advocating for the incitement to hate speech. They also participate in community-building activities and programs with people of other faiths. Some of the programs will be community-service projects, cultural-exchange events and joint workshops that foster trust while reducing religious friction. Addressing Victims of religious discrimination or violence, CSOs also provide legal proceedings. Organisations such as the ACLU (American Civil Liberties Union) step in to provide legal representation for people targeted with religious persecution, ensuring their rights are safeguarded.

There should involve both increasing enforcement of positive discrimination, or anti-discrimination policies as well educating law enforcement officials in the occurrence of religious hate-crimes. Support existing Initiatives and Expand Successful models with robust financing of interfaith programs. Government-CSO coalitions can be an important strategy to strengthen the implementation of joint initiatives in programmes. Countries must give the fullest support to international cooperation and best practice sharing so that they can continuously improve their collective strategies against religious intolerance.

Case Laws

1. Kesavananda Bharati v. State of Kerala (1973)

The epoch-making case where several amendments were challenged to have curtailed property rights as provided in Indian constitution. The petitioner, a religious head named Kesavananda Bharati⁶, had said that these amendments interfered with the fundamental right of practicing religion and was most relevant in context to management and control over institutions associated with religions. The core issue was whether these changes to the constitution were distorting its frame, including right of freedom. It was held that, while the Parliament under the Constitution of India has wide provisions to amend it, however parliament cannot change its basic framework and structure. The Court identified certain core elements such as the supremacy of the Constitution, republican and democratic form of government, secular character, and fundamental rights which are closely adhered to read this structure. It is one of the most important constitutional decisions in India, where it was ruled that parts or provisions

⁶ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225

under fundamental rights like religious freedom cannot change but government can amend any other part.

2. S.R. Bommai v. Union of India (1994)

It primarily deals with practice of tossing out several state governments by the central government through the provision of “Article 356 of the Indian Constitution” that empowers the President to implement President's Rule in states. Petitioner, S. R. Bommai⁷, and others contended that these dismissals are nothing but arbitrary and is a violation of rights of the states particularly fundamental right to freedom of religion. Challenge was to determine if through the deployment of Article 356 the central government interfered with the federal character of the Constitution and quashed the elected state governments right to freedom of religion. According to the direction of Chief Justice A.M. Ahmadi, the Supreme Court of India maintained that “President's Rule under Article 356” cannot be imposed authoritatively while it must be imposed purely in terms of the provisions of the Constitution of India. More notably, the Court as a condition has struck down the power as being capable of being applied in a way that undermines freedom of religion. It has been taken as rather crucial since it upheld premium on the federal framework of the constitution and the protection of the fundamental rights; right to religion. The ruling enabled the Indian Supreme Court to declare that the authority of the central government to proclaim President's Rule is justiciable; thereby, preventing abuse of this power and protecting the federal structure of the country, democratic rights, and principles within India.

3. Indian Young Lawyers Association v. The State of Kerala (2018)

It pertained to travesty of menstruating women, particularly women between ages of 10 to 50 years, being barred from entering the Sabarimala temple in Kerala⁸. The civil liberties advocate stated that the ban disenfranchised women of their rights to equality and freedom of religion as enshrined in the Indian constitution. The core concern was whether the regulation that was set by the temple leaders that prohibited women of menstruating age from setting foot inside a temple violated the sections on equality and freedom of religious right. Later the Supreme Court of India

⁷ S.R. Bommai v. Union of India, (1994) 3 SCC 1

⁸ Indian Young Lawyers Association v. State of Kerala, (2018) 10 SCC 689

declared this ban as Unconstitutional in its landmark Judgment. The Court dismissed the exclusion on the grounds of biological differences in women and said that it was unconstitutional as it went against Articles 14, 15, 17 and 25 of the Constitution of India. The Court for that held that one cannot justify discrimination based on religions practices and customs, but any practice that is inconsistent with the principles of equality and Human dignity is unconstitutional. This case is important because it discerned politics of religious pandemonium against constitutional provisions on equality and non-discrimination. It reestablished the principle that free men's rights such as women's rights should override cultural imperialism and other backward cultural practices thus encouraging the culture of togetherness.

4. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (2018)

A baker by the name Jack Phillips, who owns Masterpiece Cakeshop⁹, declined to design a cake for two men intending to wed since they are of the same sex while alleging religious grounds. Phillips agreed to serve other customers with same sex weddings, therefore the couple sued her under the Colorado Public Accommodations Act which bars discrimination of customers based on their sexual orientation. The primary question touched on the capacity in which the state's enforcement of the public accommodations law to the baker ailed his First Amendment rights of freedom of speech and freedom of religion. Jack Phillips won in the Supreme Court. In the case however, The Court held that Colorado Civil Rights Commission had evinced open antagonism to Phillips' religious beliefs during discovery and so had failed in affording him a fair hearing. It was in reference to the conduct of the Commission and not any more general resolution between anti-discrimination laws and religious freedoms. Masterpiece Cakeshop has been at the core of bringing out the conflict between religious freedom and anti-discrimination protections most to the fore. The decision expressed that in carrying out the law, government entities must be neutral and respectful toward religious believes.

⁹ Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n, 138 S. Ct. 1719 (2018).

Conclusion

The intricate balancing of constitutional guarantees and societal realities is what best explains how a continuing challenge to protect religious freedom comes in the midst of growing polarization across borders. This has been manifested in countries like the United States, India, and many European democracies with legal frameworks and judicial interpretations reflecting a delicate balance of individual religious rights protecting public order and secular values. Cases from *Kesavananda Bharati v. State of Kerala* to *S. R. Bommai v. Union of India*, the masterpiece cakeshop case reveal a hard time courts face in such issues. Some of the effective strategies include strong anti-discrimination laws, an active role for CSOs, and policies that ensure interfaith dialogues and protection for minority rights. The way forward will therefore be continuous adaptation and collaboration in the interest of religious freedoms on the one hand and social cohesion in increasingly polarized societies on the other.

