

## Religion – State Relations in India

---

TAHIR MAHMOOD\*

*ABTRACT: The author discusses India's laws on religion and religious freedom. After offering a deep look at the religion-state relations in India, he introduces its experiences in respect to the impact of religion on society's development and stability. In conclusion, he notes that protecting secularism without unnecessarily curtailing the essential religious freedom of individuals and groups in the society is a duty that the judiciary and the other organs of the State have to play in all the professed democratic societies subscribing to the theory of internationally recognized human rights.*

### 1. Introduction

The spiritual treasure that the Indians had missed is today fortunately cherished in this great nation. And, in the name of that great spiritual faith, and of all the other faith traditions of the human world, which together must indeed be seen as mankind's common heritage that has great potentials for enriching the human society with stability and development.

Undoubtedly, religion and law together remain the two most powerful social control mechanisms all over the world, even in this 21<sup>st</sup> century. Attempts made in the past by individuals, nations and ideologies to curb religion have never achieved any long-term success. Of course, the mutual relationship of religion and law has been changing, and has to change with the changing times. There was a time when religion fully controlled the law, but in our times it is the law – national and international – that determines the scope of religion and religious activity almost everywhere in the world. Religion now has to operate under the Rule of Law paradigm as adopted by the nations of the world jointly

---

\* **Tahir Mahmood** is Chairman of Amity University Institute of Advanced Legal Studies in New Delhi and also serves on the National Commission for Religious & Linguistic Minorities in the government of India. He is a member of the National Commission for Religious and Linguistic Minorities and the Chairman of the Law Panel for the National Council for Promotion of Urdu in India. A specialist in the laws relating to religion, minorities and family relations, Professor Mahmood received an LLM and Ph.D. and has authored numerous books frequently quoted by the higher courts of India.

through world documents on human rights, and severally through their respective domestic laws on civil liberties.

## **2. Human Rights Instrument and Indian Laws**

India had awakened to a new dawn of democracy, secularism and civil liberties just about a year after the nations of the world had joined hands to promulgate a Universal Declaration of Human Rights proclaiming that “all human beings are born free and equal in dignity and rights” (Article 1) and that :

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*(Universal Declaration of Human Rights 1948, Article 2)*

The Constitution which we Indians ‘enacted, adopted and gave to ourselves’ in January 1950 eminently reflected the spirit of the Universal Declaration of Human Rights. Since then international law has marched forward to usher in a liberal regime of religious freedom for individuals and groups and equality of all religions and of their adherents, as manifestations of basic human rights. The two major documents proclaimed by the United Nations in this regard in later years were the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The first of these Declarations proclaimed that:

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights and as an obstacle to friendly and peaceful relations between nations.

*(UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Rights, Article 3)*

It mandated all States to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.” [Article 4].

The second UN Declaration proclaimed that :

Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination”,

*(UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992, Article 2.1)*

While recognising the rights of minorities to participate in decision-making processes and to establish and maintain their own associations, this Declaration – notably – also made it clear that:

“Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across national frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.”

*(UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992, Article 2.5)*

The Declaration made it obligatory for all the states to protect the existence and identity of their minorities and “to create favourable conditions by adopting appropriate legislative and other measures to ensure that they effectively exercise all the rights specified in the text of this Declaration as also all other human rights and fundamental freedoms.”

Since the promulgation of these two supplementary human rights documents, one after the other in the decade of 1981-92, India did make several sincere attempts to instill their spirit too, like that of the UDHR, into its legal framework through Constitutional amendments, legislation and judicial proclamations.

India now offers an ideal regime to be emulated by the rest of the world. There remains much indeed to be desired in India too, especially in respect of the day-to-day implementation of legal provisions relating to religious freedom and minority rights. Yet, I would like to introduce what progress the Indians have made up to date in respect of these ideals and where the Indian society today stands in the context of the impact of religion on society’s development and stability.

### 3. Religion – State Relations in India

The Indians live in a region of the world where each of our neighbors legally treats one or another religion as the official religion of the state – Nepal till recently giving this status to Hinduism, Bhutan and Sri Lanka to Buddhism, and Pakistan, Bangladesh and Maldives to Islam. Contrary to all this, India – although a predominant majority among its inhabitants do follow a particular religion – has never assigned an exclusive status to any religion. And yet the Indians are a deeply religious nation having great regard for divinity and spirituality and never shying away from seeking light from religious teachings even in temporal matters. This nature of the Indian nationhood finds due reflection in the country's Constitution and laws, as they stand today, and is also duly kept in mind by the custodians of State authority in their day-to-day functioning.

Religious pluralism as the quintessence of Indian polity has been so emphasized by the apex court of the country in a leading decision on minority rights:

India is the most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on Indian polity and India today represents a synthesis of them all. Despite the diversity of religion and language, there runs through the fabric of the Nation the golden thread of a basic innate unity.

*(HR Khanna, J, in St Xavier's College case, Supreme Court of India, 1974)*

This authoritative description of India as a mosaic representing a synthesis of different religions and cultures only put a seal of solemn judicial affirmation on what indeed has always been the ground reality. Religio-cultural pluralism is India's past, present and future; indeed her heart and soul. No religion is foreign to India; nor is India a foreign land for any religion. India's great religious figures – Rama and Krishna, Buddha and Mahavira – were all very well known to the human world when the two global religions of today, Christianity and Islam, appeared on the world scene one after the other. Neither of them denied India's spirituality – both treated India as their own land and India too hailed them with open arms. Two thousand and fifteen hundreds of continued existence in India have made Christianity and Islam part and parcel of the Indian religio-cultural traditions.

In the present-day India, followers of the Hindu religion constitute the predominant majority at the national level. But, India is a vast federal nation comprising thirty-five constituent units, six of which are numerically dominated by one or another non-Hindu

religion – three of them by the Christians, two by the Muslims and one by the Sikhs. 140 million Muslim citizens in India constitute the second largest Muslim population in the world, next only to Indonesia; and there are nearly 25 million Christian citizens belonging to various denominations and churches. Among the other smaller religious minorities of India are the Buddhists, Sikhs, Jains, Jews and Bahais.

A major factor responsible for religion-based discrimination in various parts of world is to be found in the attitudes arbitrarily treating one or another chosen religion as the only true or the most superior spiritual system, and in the popular perceptions which see particular religions as the natural religions of particular nation-states of our times. The origin of each of our religions is attributed to particular nation-states, while all of them were in fact born before the birth of the concept of such states. This indeed is the crux of the problem. True spokesmen of all religions, and indeed of true humanity, must awaken to its potential of perpetuating discrimination and injustice. They have to realize and accept that all religions together are the common heritage of mankind as a whole. Their founders might have taken birth in distant history in particular towns; but no religion in itself was meant for any particular geographical area or political entity of the past or the present. The real remedy lies in de-linking religions from the places of birth of their respective founders and accepting their universal character. In India, too, particular politico-religious ideologies sometimes try to differentiate between indigenous and imported religions, but this distinction has found absolutely no recognition in Indian law.

Religious minorities indeed exist wherever there is a religious majority – and protection of minorities indeed means protection of human rights. The degree of a nation being civilized, it has been said, is to be measured by its treatment of the minorities -- since 'minority' and 'majority' are merely arithmetical terms showing the relative numerical position of various groups within a particular political entity and have nothing to do with their legal rights. International law defines 'minority' as 'a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics differing from the rest of the population'. The function of the Rule of Law indeed is to ensure that this 'numerical inferiority' is not turned into social and political inferiority and that the numerically 'non-dominant position' does not get translated into the hegemony of the predominant group.

As declared at the very outset by the Constitution, India is a democratic, socialist and secular republic [*Preamble*, as amended in 1976]. Indeed a true democracy anywhere has to be necessarily secular in order to fairly ensure equal opportunities for all to share the national resources – natural and material. Where citizens do not equally enjoy human rights or cannot freely participate in the governance of the country without any discrimination, where there is religion-based exclusion or preference of particular groups of citizens in temporal matters and community-specific discrimination in the extent of

religious liberty, there the professed democracy cannot but be political hypocrisy and a clear negation of the doctrine of democracy being a 'government of the people, by the people, for the people'.

By the dictates of the Constitution the Indian State cannot discriminate between the citizens on the grounds of their religious persuasions [Articles 15-16]. All citizens are equal in the eyes of the State, and all are entitled to equal protection of the laws [Articles 14-15]. Religious liberty is guaranteed to individuals, groups, denominations and communities – there is for the people freedom of conscience and of professing, practising and propagating religion; while for the religious denominations there are rights to manage their own affairs in religion; establish and maintain religious and charitable institutions; and acquire, own and administer property [Articles 25-26]. Of course religious liberty is enjoyable within the parameters of public order, morality, health and general Constitutional provisions. It is further made clear by the Constitution that religious liberty shall not inhibit the State in providing measures of 'social welfare and reform' and in 'regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice' [Article 25:2].

To every 'section of citizens' having its own distinct culture, language or script the Constitution assures the right to conserve the same [Article 29]. Realizing that life in a democracy is a game of numbers in which minorities may in respect of educational development be easily eclipsed by the dominant majority, the Constitution established an educational autonomy regime for the minorities clothing them with the right to establish and run their own educational institutions at all levels [Article 30]. To enforce equality of religions the Constitution bans religious instruction in educational institutions wholly maintained out of State funds but permits State-recognized and aided private institutions to impart religious education and conduct religious worship – of course, with a rider that the pupils shall not be required to take part in these programs without their consent or of their guardians if they be minor [Article 27]. These provisions of the Constitution can today be seen in action in millions of private educational institutions established and run by all religious denominations and groups.

While lavishly conferring these Fundamental Rights on the citizens, the Constitution also binds them to certain Fundamental Duties – among these being also the duty to 'promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities' and to 'value and preserve the rich heritage of our composite culture' [Article 51-A]. In so striking a reasonable balance between citizen's rights and duties, and between people's religious leanings and the responsibilities of the State, the Indian Constitution seems to be enforcing the dictum 'Unto God that belongs to Him and to Caesar what is his'.

Notably, the kind of secularism that India has adopted does not mean abdication of or

abhorrence for religion. There is no Constitutionally erected ‘wall of separation’ there between religion and the State – the former can, and does, play its legally permissible role in the affairs of the latter, and *vice versa*. What the Indian Constitution and law insist on, unequivocally, is the equality of all religions in the eyes of the State and State’s neutrality to all of them so as not to extend any preferential or discriminatory treatment to any chosen faith. The State cannot collect taxes from the citizens specifically for the furtherance of a particular religion [Article 28], while there is no ban on spending from the State exchequer on the upkeep of religious places without community-specific discrimination.

The national flag of India with its saffron, green and white colors and the Buddhist wheel of *dhamma* (faith) is seen by many Indians as religious symbolism, though legal texts do not specify this implication. In any case, India’s national anthem is more conspicuously religious. Drawn from a Bengali-language song, it invokes God: *Jan gan man adhinayak jaya hey Bharat bhagya vidhata* – ‘Victory to thee: Master of the minds of the masses, Dispenser of India’s destiny’. Though seemingly not repugnant to monotheism, the law of India as settled by the country’s apex court does not force anyone to sing it should this be objected on religious grounds [*Jehovas’ Witnesses* case, Supreme Court of India, 1987]. This has been possible because Indian secularism accommodates religious sensitivities of all and without any discrimination.

It is also because of this unique nature of India’s secularism that the Indian State has been organizing inland religious celebrations of various communities and subsidizing foreign pilgrimages, has hosted Eucharistic Congresses and honored church dignitaries, provides funds for the upkeep of certain places of worship and exercises administrative and financial control over shrines of various religions.

#### **4. Religion and Society’s Development and Stability**

A legal culture based on secularism, equality, non-discrimination and reasonable religious liberty for all envelopes in its fold a great potential for social development and stability. Depending on how religion is looked at and used, it can have a positive or negative impact, arrest or promote social development, and cause or destroy social stability. In India religion has been officially used for obtaining the desired goals in the field of education, health and family relations.

Promotion of literacy has been strengthened by reminding the people about the teachings of various religions in respect of education – Hinduism’s doctrine of *vidyadan* [gift of learning], Islam’s directive to its followers that must ‘acquire knowledge even if it be found in China’ [meaning thereby travel to distant lands], and so on.

In the health sector religious teachings and the services of religious scholars and preachers have been used for ensuring protection of new-born children from polio and other similar diseases and for the prevention of aids. While the Indian Penal Code declares attempt to commit suicide to be an offence, religious prescriptions against suicide have been found to be an effective tool enabling the people to keep away from this vice. Religious texts exalting the virtues of smaller families and permitting the use of contraceptives have been used to promote birth control. The potential of religious teachings has also been used, albeit cautiously, to encourage organ transplant.

Realizing that religious sanctity of marriage strongly promotes family stability, India has adopted a dual regime of family law. People have an option to marry and form a family either under community-specific laws partly drawn from religious precepts or under the civil law not linked with religious beliefs. While persons desiring to marry within their own religious community have this option, the law fully facilitates also inter-religious marriages. A pre-existing marriage can be converted into a civil marriage, but not *vice versa*.

## 5. Conclusion

In accepting secularism and equality of religions and incorporating these ideals into the domestic law India is in a respectable company of many major nation states of the contemporary human world. Exact parallels of the Indian Constitutional provisions relating to religious liberty and non-discrimination are found in many other national constitutions. What is reprehensible is that votaries of these legal propositions sometimes tend to overlook their basic condition-precedent – viz, an unconditional acceptance, in theory and practice, of an absolute equality of all religions and of their respective followers in the eyes of the State and its law. This is a contradiction that tends to convert secularism into theocracy.

In India the judiciary has generally played its assigned role to enforce the dictates of secularism and thwart attempts to mingle it with theocracy. In an old case the Supreme Court had warned people that they had to learn to differentiate between religion on one hand and superstitious beliefs and unessential accretions on the other [*Ajmer Dargah* case, Supreme Court of India, 1961]. In a recent case, objections were raised in the communist-ruled Indian state of Kerala to the nomination of members of a temple-committee by Hindu legislators on the ground that they had taken official oath in the name of God, not *Ishwar* [vernacular name for God], and also did not actually practise the Hindu faith like the masses. The State High Court dismissed the objections saying that they found no difference between ‘God’ and ‘*Ishwar*’ and that practising rituals was not necessary for remaining within the fold of a religion.



Protecting secularism without unnecessarily curtailing the essential religious freedom of individuals and groups in the society – especially those belonging to minorities – is a duty that the judiciary and the other organs of the State have to necessarily play in all the professedly democratic societies subscribing to the theory of internationally recognized human rights, especially those to equality and religious liberty.

Religious polemics are bitter relics of the past. We cannot afford to revive them in the 21<sup>st</sup> century with its magnificent scientific advancement and technological excellence. If we go on searching each other's religious texts to find isolated passages which may not appear *prima facie* palatable to us, it is not going to lead us anywhere. Such passages are things of the past. No one is acting on these now; no one indeed needs to. There is a lot more in all religious texts which can bring us together. We have to concentrate on those refreshingly humane texts and try to come closer – bring all our people closer.

Concepts like 'cultural nationalism', 'one-culture polity' and 'cultural assimilation of minorities' militate against the international norms rejecting religious intolerance and discrimination. We have to shun these concepts and accept the ideals of composite culture and religious pluralism. Continuing social importance and impact of religion is a ground reality prevailing world-wide. Even the United States with its Constitutional 'wall of separation' between religion and State has not been oblivious of this reality – as is evident from the popular response to a recent case in which singing of the national Oath of Allegiance in the schools with its phrase "one nation under God" was objected to by some ultra-secularist elements.

The cool breeze coming from the two biggest democracies of the world – India and the US – is refreshing and deserves attention of the world inhabitants elsewhere.