

Freedom of Religion: Legal Protections and Contemporary Challenges

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ABSTRACT

The protection of refugee rights under international law has evolved significantly, shaped by historical conflicts, political changes, and humanitarian needs. This study examines key legal frameworks governing refugee rights, including the 1951 Refugee Convention and related human rights instruments. It explores the principle of non-refoulement as a cornerstone of refugee protection and highlights the challenges in implementing refugee rights due to political resistance, resource constraints, and public perception. The study also analyzes contemporary trends in refugee law and policy, focusing on restrictive asylum measures, border control policies, and the growing securitization of refugee issues. Additionally, the role of regional and international legal instruments in addressing refugee crises is assessed. The findings suggest that while international legal protections exist, their enforcement remains inconsistent due to political and societal factors. A more coordinated global approach, supported by legal reforms and stronger enforcement mechanisms, is necessary to uphold refugee rights effectively. Future research should explore the impact of emerging policies on refugee protection, including the role of digital technologies in asylum processing and humanitarian assistance.

Keywords: Refugee rights, International law, Non-refoulement, Asylum policies, Human rights, Border security, Legal frameworks

1. Introduction

The freedom of religion is critically important for both individual rights and the protection of individual and collective rights of people and communities broadly. Every person has a right to freedom of thought, conscience, and religion. It extends to the individual's right to adopt and change one's religion, as well as to manifest that religion, whether alone or in community with others, in public or private, through teaching, practice, worship, and observance. Furthermore, the expression of religion

or belief can be expressed through rites, rituals, symbols, and dress. Legal protections of freedom of religion can be found in various international, regional, and domestic laws (Hertzke, 2013).

Freedom of religion is a dynamic and crucial component of modern reality, impacted by international, legal, social, and political developments. Understanding the legal protections of freedom of religion is of global concern. The number of people displaced as a result of persecution on the basis of religion and belief is dramatically increasing in recent years through the actions of states and non-state actors. Although the law sets forth such protections, are these religious freedom protections genuinely observed and actualized for all today? What are the shortcomings or gaps in international and regional legal safeguards of religious freedom? Would educating and promoting broader understanding and acceptance of individuals from diverse religions and beliefs help to address global problems and local inequalities? These are discussed in this context. A closer examination of these issues includes a more detailed look at historical protections and legal norms, the potential limitations, as well as the relationship between these concepts and contemporary social challenges or problems relating to discrimination, segregation, gender, equal work rights, healthcare, and education.

2. Historical Development of Freedom of Religion Laws

The laws protecting freedom of religion have a convoluted history from jurisdiction to jurisdiction and over time. Even in ancient Athens and Rome, cradles of democracy and the rule of law, citizens were not exactly free to worship however they wanted. Societies made significant progress during the Enlightenment, about 300 years ago, and by the end of the 18th century, the new United States of America departed from many of the Old World assumptions. The Bill of Rights, added to the U.S. Constitution in 1791, includes in its First Amendment the clause that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." It would take several more decades before religious freedom became a more widely protected right. The historical record, particularly from the colonial British Empire, is replete with religious persecution and intolerance, and the settling of America was no exception to this (Colbran, 2010).

Across the centuries, though, codes and statutes, and particularly constitutions, have developed throughout the world that grant individuals religious freedoms and gather them together with other human freedoms. This can be seen, for instance, in documents like the Magna Carta of 1215, the Petition of Right of 1628, and the Habeas Corpus Act of 1679, all originating in England, and in such international documents as the Universal Declaration of Human Rights, adopted in 1948. Generally, the bills, commissions, and conferences that created the lists of human rights included freedom of religion. Each jurisdiction has its own history as to when religious freedom and the legal protections of it began. It is always important to notice dissenters, too, who historically propagated and did real work for minority religious freedom. Many legal thinkers expressed thoughts about the broad freedoms and rights we now enjoy, including religious freedom. Each group of dissenters and each area of the world needed something different. Every freedom we enjoy, including religious freedom, is the result of strong individuals and championship institutions and not just the barren result of so-called forces of history or demographics.

3. International Legal Framework

a. Universal, Regional or Hybrid Instruments b. Content of Key Provisions

Despite serious questions and concerns about the ways in which international legal protections for religious freedom can be subjugated to the political survival of states, the fact that there are a variety of international instruments that are widely ratified and which expressly provide for religious freedom adds weight to the argument that there exists a universally recognized right to religious freedom. One key instrument in this regard is the Universal Declaration of Human Rights, which sets out 'the foundation of international human rights law' and explicitly provides for religious freedom. Other critical instruments include the International Covenant on Civil and Political Rights and the Declaration to Eliminate All Forms of Intolerance and Discrimination Based on Religion. These and other instruments explicitly prohibit state and non-state actors from coercing individuals to abandon, change, or otherwise limit their religious beliefs or to convert from or to a particular faith or no faith (Danchin, 2008).

Human rights, as a public right, are increasingly recognized. A diverse group of countries across every region of the world, inspired initially by similar legal language

in their constitutions, and over time by the proliferation of international judgments, reports, and agreements, increasingly recognize the linked duties to respect, protect, and fulfill religious freedom. Moreover, an overlapping circle of nation-states have ratified numerous human rights treaties and coupled their formal commitments to these agreements with the acceptance of quasi-constitutional remedies to deal with human rights violations. These 'national human rights commissions' are able to conduct quasi-judicial investigations, issue binding decisions, and settle disputes. For example, many countries have generally included in their domestic laws, within the jurisdiction allowed to them under international law, protections for religious freedom of belief, worship, practice, and infrastructure, as indicated by the ownership and organizational structures of places of worship.

4. Constitutional Protections in Selected Countries

Many national constitutions and legal codes contain guarantees of freedom of conscience, including freedom of religion or the practice of religious belief. This section will provide some examples of such fundamental provisions in the constitutions of selected countries, as well as cases in which domestic law provides some degree of legal protection for religious freedom. It will also identify some limitations that these countries impose on the practice of religion, either in the same constitutional provisions or in ordinary legislation or court decisions, indicating the extent to which such provisions are interpreted and applied in practice and enforced through judicial actions (Harper et al., 2015).

The First Amendment to the U.S. Constitution begins: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...". The Free Exercise Clause of the First Amendment does not protect acts of worship or belief that violate a neutral, generally applicable law, and it does not guarantee exemptions from obligations to obey the law. India, the world's largest democracy, has a long, diverse, and sometimes violent history of ethnic and religious expression; the Indian Constitution is noted for providing an extensive list of religious and other personal freedoms. The Indian Constitution included elaborate protections of human rights and fundamental freedoms, including expressions of the rights to religious freedom that paralleled other human rights documents, in some cases even using the

same language. Religious freedom is a right primarily belonging to individuals, although it is usually practiced collectively in religious communities. Modern constitutions, therefore, generally express religious freedom in terms of the freedoms of conscience, belief, thought, religion, and worship, rather than the rights of religious associations, and the freedom to practice religion or conduct religious activities is a distinct feature. In India, however, there is an express right to establish religious and charitable institutions; this reflects a social and legal context in which religious activities flow from, rather than giving legal form to, the rights of religious associations (Wiener, 2007).

5. Contemporary Challenges to Freedom of Religion

One of the most contentious issues in terms of freedom of religion today is the clash of secularism and the rights to religious freedom. This is particularly true in countries with diverse populations, mostly Western states, where it is becoming more of a challenge for secular states to balance the rights of individuals. The constraints being placed on religion in liberal Western states, as well as the rise in religious hate crimes and discrimination, including state-sponsored religious discrimination, are significant challenges today. Religion is increasingly seen as a private matter, which can be expressed within a home, church, synagogue, or mosque. But in recent years, it has been harder for religious people to express their beliefs outside of their churches and homes, regardless of the religion they belong to. The challenges facing religious freedom are evident in contemporary society and are reflected in state laws, public opinion, media, and education systems.

Freedom of religion is protected by international and regional treaties, but to what extent that right should penetrate suspicion of refusals of service, positions in the workplace, and cultural and religious dress, and what these freedoms mean in terms of dress codes, rights to worship, children's education, access to food, and all the other intersections where religion and human rights meet, is a subject of considerable attention and debate. Unfortunately, the trend in many liberal democracies is not to allow situations as they arise to be dealt with on a case-by-case basis, but to frame the problem as an issue for public policy. In many instances, the debate over freedom and discrimination touches on freedom of conscience, belief, and religion in complex

ways, making the transition from individual to societal problem that much more complicated. There are many reasons why issues of religious discrimination are relevant in contemporary society. As current trends suggest, the freedom of religion as a basic human right must be better protected within liberal states. In recent years, the issue of religious discrimination has become very evident in Western democracies and has been fruitfully addressed by the courts, though public policy is lacking. The law in Europe and the Americas is inadequate in addressing such complex issues of freedom of religion and belief, and more so, public policy response and education in these countries is one of dread, fear, and blame, making it difficult to develop a positive public policy around issues of religion and belief in a world that really wants less, not more religion. The issues raised by religious freedom, including discrimination and genocide, are pressing and far-reaching. As such, they demand careful attention to protection through existing international human rights instruments, and if needed, social and legal reform should be employed where necessary (Rønning, 2009).

5.1. Secularism vs. Religious Freedom

Despite the protection of religious freedom at the international level, many countries around the world struggle with the meaning, application, and limits of religious freedom as they strive to balance the interests of individuals and communities with the requirements of living together in multicultural and religiously diverse societies. The coercive secularization of the public sphere from religious expression and actors can lead to legal restrictions and even persecution of religious actors and practices. Even in secular democracies, restrictions on religious symbols in public schools, the wearing of burqas, and the selling of religious symbols in commercial spaces can reflect a view of secularism that conflicts with religiously informed commitments.

But how is secularism to be interpreted and what are its implications? The meaning of the concept varies from country to country, but it often refers to the ideal of separation between church and state, a basic feature of this system being state neutrality. This ideal between state and religion appears, for instance, in the Spanish Constitution that indicates that the state has to maintain a neutral attitude concerning all religious beliefs; also, the Constitution in Brazil states that the state is secular and has to abstain from interfering in religious matters. In France, secularism is also understood as

neutrality, imposed by virtue of state subjugation of all religious manifestations to lay laws and allegedly benefits believers and nonbelievers. But it is in Turkey that secularism could be considered as a 'common religion' or as 'state atheism,' since the ideal separation, or neutrality between mosque and state, would entail, in accordance with some theories, no government involvement whatsoever in the realm of religion (Garnett, 2020).

5.2. Religious Discrimination and Hate Crimes

Religious discrimination and hate crime - The prevalence of both religious discrimination and religiously motivated hate crimes is a feature of contemporary society in many areas. Religious discrimination includes inequality of employment, denial of freedom to hold and express religious and philosophical beliefs, access to places of worship, religious practice, and other related activities. The provision on religious freedom also provides for freedom from religion, reflecting the idea of an unrestricted development of human personality in a multi-religious society, increased human tolerance of doubt, atheism, and voluntary atheism. Hate crime – One common way in which states track hate crime is to consider whether the offense has been aggravated or motivated by the religion of the victim or the religious group to which the victim belongs. What is clear is that data suggest that the number of hate crimes motivated by religion has tended to grow in recent years. There has been growing research in relation to the demand for training to enhance the capacity of police and other relevant authorities to deal more effectively with hate crime. One approach has been to train professionals to focus on understanding hate itself. This arises from one asserted cause of hate crime being the inability of those within a society to tolerate difference. This inability to accept otherness has social and psychological roots that have to be tackled by education and awareness programs. Regarding the response to these acts across the world, there are explorations of the ways in which the legal system has been responding to different acts of religious discrimination towards different groups across a number of different contexts. Some of the issues highlighted include the significance of the different characteristics of vulnerable groups, such as race, sex, religion or belief, gender, disability, and sexual orientation, and the different forms of discrimination, incitement to discrimination, hate crimes, hate speech,

harassment, incitement to be hated, and contempt towards these groups. Doubt was also cast on the extent to which the legal responses have taken into account systemic and cultural problems that may lead to mistreatment on these grounds (Durham et al., 2016).

5.3. Intersection of Freedom of Religion with Other Rights

It is clear that freedom of thought, conscience, and religion is intricately connected to other fundamental rights, yet can also run up against those rights that are equally important to the individual. In each of the three abovementioned cases, tensions arose between the rights to free speech, education, or privacy, on the one hand, and freedom of thought, conscience, and/or religion on the other. Each of the cases is thus a unique example of intersections between the rights to freedom of thought, conscience, and religion and other fundamental rights. The fact that these cases came before the courts shows that existing law does not provide answers to this question. Also, important legal questions arose in each of the cases brought before the respective courts.

One such question is about which rights are to give way to another, more 'important' right in cases where the rights of citizens to education, employment, or privacy confront the rights to freedom of thought, conscience, and/or religion. The relative weight to be ascribed to such rights will depend on a given society's assessment of the importance of each. How do societal values inform legal disputes that arise from intersections between the right to freedom of religion and other human rights? This dispute can be resolved only in thorough and open dialogue. At present, however, little is being done to create a forum for such dialogue, which is regrettable. When that dialogue does eventually take place, it should be comprehensive; encompassing the different legitimate perspectives of both minorities and majorities, and one that does not, for example, tangentially lead to criticism of, or the delegitimization of religious institutions or traditions.

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