CHAPTER - VII

RELIGIOUS RIGHTS : A COMPARATIVE STUDY

Many constitutions of the world guarantee a right to religious freedom, but subject to public order, morality and health etc. Nevertheless many constitutions give a special status to one religion or the other, and subject adherents of other faiths to some disability. Some of the countries' religious laws are being summarized as under:-

FREEDOM OF RELIGION UNDER THE CONSTITUTION CHINA AND OTHER LAWS

In the Constitution of the People's Republic of China (adopted on 4th December, 1982) freedom of religious belief is a fundamental right enjoyed by all citizens. Article 36 of the Constitution under Chapter two titled “The Fundamental Rights and the Duties of the Citizens” stipulates, “(i) Citizens of the People’s Republic of China enjoy freedom of religious belief.” It also goes on to say, (ii) “No State organ, public organization or individual may compel citizens to belief in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.” (iii) “the State protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. (iv) “Religious bodies and religious affairs are not subject to any foreign domination1.”

China is home to 100 million religious faithful – largely Buddhists, Taoists, Christians, Catholics and Islamists.\(^2\) China’s Law on National regional Autonomy, General Principles of the Civil Law, Education Law, Labor Law, Compulsory Education Law, Electoral Law of the People’s Congresses, Organic Law of the Villagers’ Committees, Advertisement Law, and other laws stipulate that all citizens, regardless of their religious beliefs, have the right to vote and stand for election; the legitimate property of religious bodies is subject to legal protection; education is separate from religion, and all citizens, regardless of their religious

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1 Pylee, M.V., Constitution of World PP.349-350.
2 Hindu, Delhi, October 22, 2007
beliefs, enjoy equal educational opportunities in accordance with the law; the people of all ethnic groups should respect each other's languages, customs and habits, and religious beliefs; citizens shall not be discriminated against in terms of employment because of different religious beliefs; and no advertisements of trade marks shall include discriminatory contents against any ethnic group or religion.

The Chinese government has promulgated the Regulations on Administration of Sites for Religious Activities so as to protect the lawful rights and interests of such sites. The Regulations specify: Sites for religious activities shall be run independently by the administrative organizations thereof, whose lawful rights and interests and normal religious activities at the sites shall be protected by law. No organization or individual may violate or interfere with such rights, interests or activities. Anyone who encroaches on the lawful rights and interests of the sites for religious activities shall bear legal responsibilities. Religious activities conducted at the sites, however, must conform to laws and regulations.

The Chinese government has promulgated the Provisions on the Administration of Religious Activities of Aliens Within the Territory of the People's Republic of China. China respects the freedom of religious belief of aliens within Chinese territory and protects their friendly contacts and cultural and academic exchanges with Chinese religious circles with respect to religion. Aliens may participate in religious activities at recognized sites for religious activities within Chinese territory. They may also preach at the invitation of Chinese religious bodies at or above the provincial level. Aliens may hold religious activities attended by aliens at sites approved by people's governments at or above the county level. They may invite Chinese clerical personnel to conduct such religious rituals as baptisms, weddings, funerals and prayer meetings, and may bring with them printed religious matter, audio-visual religious material and other religious articles for personal use while entering Chinese territory. Aliens who conduct religious activities within Chinese territory shall abide by Chinese laws and regulations.

The legal protection of citizen’s right to the freedom of religious belief in China is basically in accordance with the main contents of the concerned international documents and conventions in this respect. The following stipulations in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Vienna Declaration and Action Program are all included in China’s laws and legislation in explicit terms and are being put into practice: that freedom of religion or belief is a basic human right; people should enjoy freedom of religion or belief; no one should be discriminated against because of religious affiliation or belief, people should enjoy freedom of religious service and assembly, and the freedom to set up and maintain places of worship; they should have the freedom to compile and distribute printed materials pertaining to religion or belief; they should have the freedom to celebrate religious festivals and hold religious rites based on their faith and morals; and they should have the right to promote and protect the rights pertaining to only a small number of people ethnically, racially, religiously and linguistically. According to Chinese law, while all citizens enjoy the right to freedom of religious belief they must also carry out duties prescribed by law. In China, all individuals and organizations, including all religions, must safeguard the people’s interests, the sanctity of the law, ethnic unity and unification of the nation.

Each country has its own history, culture and national conditions, which decide that each country’s protection of freedom of religious belief has its own characteristics. While stressing the protection of freedom of religious belief China pays equal attention to the protection of the freedom not to believe in religion, thus ensuring freedom of religious belief in a complete sense. This is a more complete and more comprehensive protection of citizen’s basic rights.

The Chinese government maintains that religious belief is a citizen’s personal affair. However, the construction of a prosperous powerful, democratic modern socialist country with advanced culture, and the safeguarding of the

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country’s sovereignty and national dignity are the common goals and in the fundamental interest of Chinese people of all ethnic groups, including those who believe in a religion and those who do not. Therefore, the people who believe in a religion and those who do not can unite and cooperate politically, and respect each other’s beliefs.

Religion should be adapted to the society in which it is prevalent. This is a universal law for the existence and development of religion. Now the Chinese people are building China into a modern socialist country with Chinese characteristics. The Chinese government advocates that religion should adapt to this reality. However, such adaptation does not require citizens to give up religious belief, nor does it require any religion to change its basic doctrines. Instead, it requires religions to conduct their activities within the sphere prescribed by law and adapt to social and cultural progress. This conforms to the fundamental interests of religious believers as well as to those of the various religions themselves.

Nevertheless, since the 1980s some pernicious organizations have sprung up in certain areas of China, which engage in illegal and even criminal activities under the signboard of religion. Some of the heads of these pseudo-religions distort religious doctrines, create heresies, deceive the masses, refuse to obey the State’s laws and decrees, and incite people to overthrow the government. Some pretend to be supernatural beings, and have killed or injured people; others organize promiscuity, or defraud people of money or property. They are a serious danger to the normal life and productive activities of the people. The broad masses of the people and personages of the religious circles detest this phenomenon, and so, in order to safeguard the public interest and the sanctity of the law, and to better protect the people’s right to freedom of religious belief and normal religious activities, China’s judicial organs punish law-breakers and criminals who severely endanger the society and the public interest in accordance with the law. The punishment of criminals by China’s judicial organs in accordance with the law has nothing to do with religious belief. No one in China is punished because of his or her religious belief. But no country that practices the rule of law in the world today would tolerate illegal and criminal activities being carried out under the banner of religion.
With respect to judicial guarantee, China stipulates clearly the penalties for the infringement of citizens’ right to freedom of religious belief. For instance, Article 251 of the Criminal Law states: “State personnel who unlawfully deprive citizens of their freedom of religious belief and infringe upon the customs and habits of minority ethnic groups, when the circumstances are serious, are to be sentenced to not more than two years of fixed-term imprisonment or criminal detention.” In the Decisions on the Standards for Filing Directly Received Cases of infringement Upon Citizens’ Democratic and Personal Rights and Those of Malfeasance, it is stipulated that a people’s procuratorate shall place on file a case in which a State functionary illegally deprives anyone of his or her legitimate freedom of religious belief – such as by interfering in normal religious activities, forcing a believer to give up his/her membership of a religion or compelling a citizen to profess a certain religion or adherence to a certain religious sect - and in which the offense is of an abominable nature and has brought about serious consequences and undesirable effects. A people’s procuratorate shall also put on record cases of illegally closing or destroying lawful religious sites and other religious facilities. In recent years the Chinese judiciary, in accordance with the law, has tried several cases of infringing upon relevant laws of the State and seriously hurting the religious feelings of certain believers, and has meted out punishments to persons responsible for the offenses.

With respect to administrative guarantee, governments at different levels have set up religious affairs departments to administer and supervise the implementation of the laws and statues pertaining to religion and to put the policy ensuring the freedom of religious belief into effect. These departments shall not interfere in the internal affairs of religious organizations and sites.

In China religious organizations and sites for religious activities must register with the government in accordance with the law, which is the case in some other countries as well. Applications for such registration must meet the following basic requirements: a permanent site and name; regular attendance; a management organization composed of adherents to the relevant religion, clerical personnel for officiating religious activities or personnel with qualifications stipulated in regulations of various religions; management regulations and lawful income. Government departments shall not permit the registration of, for example, sites for

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religious activities which illegally occupy land or violate the statutes of city planning, which have been set up without authorization or which promote superstitious activities, such as exorcising evil spirits under the pretext of religious activities. Once a site for religious activities is registered according to law it has legal status and its lawful rights and interests shall be protected. If its rights and interests are infringed upon the organization in charge of the site is entitled to seek administrative and legal protection by appealing to the relevant government organ or taking the case to a people's court. There is no registration requirement for, to quote from Chinese Christians, "house services", which are mainly attended by relatives and friends for religious activities such as praying and Bible reading.1

RELIGIOUS RIGHTS IN UNITED KINGDOM

There is no written constitution or comprehensive Bill of Rights. Britain's Constitution is to be found partly on conventions and customs and partly in statutes. The Act known as the Bill of Rights, 1689 deals with the exercise of the royal prerogative and succession to the Crown. Parliament, however, has power to enact any law and change any previous law. The relevant law on the issue of equality (religion) reads as under:-

4. Equality
Everyone is equally entitled to all rights and freedom without distinction of any kind, such as race, colour, sex, language, religion, political on other opinion, national or social origin, property, birth or other status2.

The United Kingdom has one of the most religiously diverse populations in the European Union. Each religion has a considerable internal diversity of traditions, movements, cultures and languages.

Religious practice cuts across ethnic groups and ethnic groups are multi-religious. Indian for example may be Sikhs, Hindus, Muslims, Christians or other faith. The largest religious minority in the United Kingdom are the Muslims. It is

estimated that there are over two millions Muslims in the United Kingdom today. Jews, Hindus and Sikhs are also large religious minorities in the United Kingdom.

Northern Ireland is the only country in the United Kingdom to have direct legal protection from religious discrimination (The Fair Employment Act, 1989). The European Convention on Human Rights and its incorporation into domestic law through the Human Rights Act, 1998 is the key international standard for legal protection against religious discrimination in the United Kingdom.

**EXTENT OF RIGHT TO FREEDOM OF RELIGION IN AUSTRALIA**

In Australia, freedom of religion or belief receives little protection. Religions specific to ethnic groups effectively enjoy and advantage in this regard in that their freedom of religion is protected under the indirect discrimination prohibition of the Race Discrimination Act 1975. Thus, a Sikh who wished to wear a turban would probably be protected against employment discrimination, whereas a catholic who wished to wear religious dress would not.

In 1992 and 1994, the High court of Australia found that the Constitution contained an “implied right” to freedom of political communication, in a series of cases including the Australian Capital Television case and the Theophanous case. This was seen as a necessary part of the democratic system created by the Constitution. The application of this “implied right” has, however, been restricted in later cases. It is in no way equivalent to a freedom of speech, and only protects individuals against the government trying to limit their political communication: it offers no protection against other individuals.

The following laws deal with various religious matters in Australia:

- The role of international instruments in Australia.
- Racial Discrimination Act.


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State and Territory anti-discrimination laws.

**The role of international instruments in Australia**

The ICCPR, the Religion Declaration, CROC, and ILO are not directly implemented in Australia. They do not form part of Australian law. However, with the exception of the Religion Declaration they are all treaties that have been ratified by Australia and so are legally binding on Australian in international law.

However, they also affect domestic law even if not fully incorporated. In *Ah Hin Teoh*\(^1\) the High Court held the ratification by Australia of an international treaty gave rise to a legitimate expectation that decision-makers would not violate its provisions. A Bill before the Parliament at the date of publication seeks to override the effect of the High Court’s decision.

Where legislation permits a discretion, that discretion should be exercised in conformity with Australia’s international treaty obligations. It is also now accepted ‘that a statute is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in conflict with the established rules of international law’ and that ‘an international convention may play a part in the development by the courts of the common law’ (Chief Justice Mason and Justice Deane in *Ah Hin Teoh*).

These considerations do not apply to the Religion Declaration as it is not a treaty, although it has considerable persuasive value and is a valuable tool for interpreting the scope of ICCPR article 18.


The ICCPR, the Religion Declaration, CROC and ILO are all either scheduled or declared instruments under the Human Rights and Equal Opportunity Commission Act. This gives HREOC power to investigate complaints that these instruments have been violated by or on behalf of the Commonwealth or a Commonwealth agency but only in the exercise of a discretion or an abuse of power. Where legislation requires rights protected by these instruments to be set

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1 (1995) 128 ALR 353
aside, HREOC can only advise the Parliament that the legislation should be amended. HREOC can also advise Parliament on action that should be taken to promote compliance with these instruments. Human rights complaints which cannot be resolved by conciliation do not proceed to a hearing and determination but may, after appropriate inquiry, be made the subject of a report to the Attorney-General for tabling in Parliament HREOC has no authority over the courts.

The definition of ‘discrimination’ in the HREOC Act excludes distinctions made in connection with the beliefs of that religion where the distinction is made in good faith to avoid injury to the religious susceptibilities of its adherents.

**Racial Discrimination Act 1975 (Cth) (RDA)**

The RDA provides some limited protection against discrimination on the basis of religion. If a religious group can also be classified as an ‘ethnic’ group, the RDA may cover direct and indirect discrimination and vilification under the racial hatred provisions of the Act. Even if a religious group cannot be classified in that way, the RDA arguably covers discrimination on the basis of religion in certain circumstances such as indirect race discrimination.¹

**State and Territory anti-discrimination laws**

Victoria, Queensland, Western Australia, the Northern Territory and the ACT have made discrimination on the ground of religion unlawful. In New South Wales the Anti-Discrimination Act 1977 (NSW) prohibits discrimination on many grounds but not on the ground of religion. However, the definition of ‘race’ in the New South Wales Act includes ethno-religious background.

The anti-discrimination laws of the States and Territories that cover religious belief prohibit both direct and indirect discrimination in

- Employment and work (including partnerships, professional trade or business organisations, qualifying bodies and employment agencies)
- Education
- Provision of goods and services

Accommodation

Club membership.

The Victorian Act prohibits members of local government councils from discriminating against other members on the basis of, among other things, their religious beliefs or practices. The Queensland Act has very wide coverage and applies to superannuation, insurance and the administration of State laws and programs in addition to other areas.

There are a number of exemptions in each Act that allow discrimination on the grounds of religious beliefs and activities in certain circumstances. Most of them are for the benefit of religious organizations in areas like employment (as described in the section of this brief dealing with discrimination)\(^1\).

**Right to express Religion and Belief in New Zealand**

The New Zealand Bill of Rights Act' 1990 (BoRA) provides as under:-

- Affirms the right to freedom of thought, conscience, religion and belief; this includes the right to hold and embrace views without interference.
- Protects the right to express religion and belief in worship, observance, teaching and practice
- Affirms the right of minorities to be free from discrimination.

**Human Rights Act 1993**

The Human Rights Act (HRA) prohibits discrimination based on religious and ethical belief (which the HRA defines as lack of a religious belief, whether in respect of a particular religion or religions or all religions) in employment, in partnerships, in access to place, vehicles and facilities, in the provision of goods and services and in the provision of land, housing and accommodation. The Act does provide, however, for specific exceptions for purposes of religion; for example, in relation to the employment of a principal or teacher in an integrated or private school, or of a social worker by an organization whose members are
adherents of a particular belief (s.28(2)). It also allows for educational establishments maintained wholly or principally for students of one religious belief (s.58(1)).

The exceptions in the Human Rights Act are designed to respect the religious beliefs of adherents. The international human rights standards give protection to the expression of religion and belief regardless of whether a particular religion or belief embraces doctrines or theology that contradict those human rights standards. Within their own communities, for example, religious groups are not legally constrained from breaching human rights standards relating to freedom from discrimination. In some churches, for example, the office of minister can be held only by men. Religious groups are also able to exclude people in same sex-relationships from official positions.

The Act requires employers to accommodate the religious or ethical belief practices of an employee as long as any adjustment required ‘does not unreasonably disrupt the employer’s activities’ (s.28(3)).

When ratifying the ICCPR in 1978, one of New Zealand’s four reservations related to any further specific legislation against advocacy of religious hatred that constitutes incitement. The reservation reads:

The Government of New Zealand, having legislated in the areas of advocacy of national and racial hatred and the exciting of hostility or ill will against any group or persons, and having regard to the right to freedom of speech, reserves the right not to introduce further legislation with regard to Article 20 (Ministry of Foreign Affairs & Trade NZ, 2003, p.163)1.

RELIGIOUS FREEDOM IN THE UNITED STATES

Freedom of religion is one of the key civil rights enshrined within the First Amendment to the Constitution of the United States. The early European settlers in America were often fleeing from religious persecution. This made tolerance of different religious essential for a new beginning and suspicion of state involvement

1 http://www.hrc.co.nz/report/chapters/chapter_09/religion_01.html. Dated 27.6.2007
in religious affairs virtually inevitable. The American liberal perspective on religion, which is enshrined in the American Constitution, can be seen in the views of James Madison and Thomas Jefferson. Madison claimed in 1785 that our religious sensibilities must be left to our own conscience, and that we must have the right to live and believe according to its dictates. This was described as an 'unalienable right'. Given that we require this freedom, it was also important that 'we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us'. Any abuse of this right was seen as an offence against God. Jefferson likewise argued that any attempt to suppress faiths other than our own 'on supposition of their ill tendency' would destroy religious freedom. He claimed that 'it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg'. Jefferson believed that there needed to be a 'wall of separation' between the state and the church. No person should be coerced into believing or not believing a particular faith, nor punished for expressing such views.

The First Amendment's position on religion is two-fold; Congress should not establish a religion nor prohibit the free exercise of religion. These have become known as the 'establishment' and 'free-exercise' clauses. The 'establishment' clause was defined in greater detail in *Everson v Board of Education* (1947). This case arose because the New York State Board of Regents, who oversee education, composed a non-denominational prayer for use in New York schools. Some parents were outraged by this and took the Board of Education to court. The United States Supreme Court concluded that the setting of a prayer was unconstitutional. Justice Black argued that the First Amendment ensures that 'in this country it is no part of the business of governments to compose official prayers for any group of the American people to recite as part of a religious program carried on by government'. Justice Black stated that the government did not and should not have the power to establish a church, give assistance to one religion over another, coerce people to attend or not attend church, coerce people to express a particular religious view or punish those who dissent from this view, use taxes to support religious activities, or participate in religious organizations. It was important, he claimed to maintain a firm separation between the state and religious organizations. This is thought to assist in the general cause of religious toleration.
Justice Douglas claimed in *Zurich v Clauson* (1952) that it was important that the state allows room for spiritual beliefs and for people to be able to invest as much of themselves as they wish in the pursuit of their religions. It was wrong for the government to force a particular religion upon its citizens. It does, however, make religion a non-go area for the American courts.¹

**Amendment 1 - Freedom of Religion, Press, Expression. Ratified 12/15/1791.**

Note

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The first Amendment to the United States Constitution is a part of the United States Bill of Rights. It prohibits the federal legislature from making laws that establish religion (the “Establishment Clause”) or prohibit free exercise of religion (the “Free exercise clause”), laws that infringe the freedom of speech, infringe the freedom of the Press, limit the right to assemble peaceably, or limit the right to petition the government for a redress of grievances.

Although the First Amendment only explicitly prohibits the named rights from being abridged by laws made by Congress, the courts have interpreted it as applying more broadly. As the first sentence in the body of the Constitution reserves all law-making (“legislative”) authority to Congress, the courts have held that the First Amendment’s terms also extend to the executive and judicial branches. Additionally, in the 20th century the Supreme Court has held that the Due Process clause of the 1868 Fourteen Amendment “incorporates” the limitations of the First Amendment to also restrict the states².

In its first 150 years the Supreme Court decided but one important case which dealt with freedom of religion. In 1879 the case of Reynolds v. United States reached the conclusion that the religious liberty protected by the First Amendment does not include the right to commit immoral or criminal acts, even though these are

¹ [http://findarticles.com/p/articles/mi-m2242/is-1649-282/ai-104/3669 dated 18.6.2007](http://findarticles.com/p/articles/mi-m2242/is-1649-282/ai-104/3669)

² [http://en.wikipedia.org/wiki/First_Amendment](http://en.wikipedia.org/wiki/First_Amendment)
sanctioned by religious doctrine. Thus Reynolds, a Mormon in the Territory of Utah, was held properly convicted of the crime of polygamy in spite of the fact that the Mormon religion held polygamy to be proper and desirable. In *Cleveland v. United States* (1946) Cleveland, a polygamist, had transported his plural wife across state lines; he was convicted of violating the Mann Act, which forbids the interstate transportation of "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose." Supreme Court cases involving religious liberty were rare because the First Amendment, which protects freedom of religion, applies only to Congress and not to the states; see *Barron v. Baltimore* (1833). Congress had little opportunity and less inclination to violate the First Amendment, and what the states did by way of dealing with religious matters was their own business so far as the federal Constitution was concerned.

By the 1930's this situation had begun to change. As we have seen in *Near v. Minnesota* (1931), the Court had by this time held that certain of the civil liberties (freedom of speech and press) which are protected by the First Amendment against invasion by the federal government are also part of the liberty which the due process clause of the Fourteenth Amendment forbids the states to abridge. This suggested that state action dealing with religious matters could also be attacked on constitutional grounds in the Supreme Court. Thus in 1934 the Court passed upon the question whether a student who had religious scruples against bearing arms could be compelled, under penalty of expulsion, to take military drill in the University of California. It held in *Hamilton v. Regents of University of California* (1934) that while the religious beliefs of Hamilton were protected by due process of law, he was not being compelled to attend the university and could assert no constitutional right to do so without complying with the state's requirement of military training.

In the early 1930's a religious group called Jehovah's Witness began a militant nationwide campaign to spread their religious doctrines. In this enterprise every Witness regards himself as a minister of the gospel. The doctrines themselves are grounded on calculations as to the second coming of Christ and the battle of Armageddon, but they also include virulent condemnation of all organized religion and churches, especially the Roman Catholic Church. These are denounced as the works of Satan. The Jehovah's witnesses spread their teachings
by personal appeals, by the sale or free distribution of literature, and by canvassing house to house asking permission to play phonograph records, one of which, called "Enemies," is a bitter attack on religious organizations. Community resentment against the Witnesses and their methods was often intense; it expressed itself at first in a good deal of mob violence, and later in resort to a variety of legal measures designed to discourage the Witnesses and curb their more unpopular activities. With fanatical zeal the Witnesses fought every legal attempt to restrict their freedom of action. As a result they have brought to the Supreme Court since 1938 some 30 major cases involving religious liberty issues. In a majority of these they have been successful. These decisions have done much to clarify our constitutional law relating to freedom of religion.

The first of these cases was *Lovell v. Griffin* (1938), which held that a municipal ordinance forbidding the distribution within the city of all literature, including circulars and handbills, without the written consent of the city manager established "a censorship of the press" and was therefore a denial of due process of law. "Liberty of the press is not confined to newspapers and periodicals.....[It] comprehends every sort of publication which affords a vehicle of information and opinion." This constitutional right to distribute literature without prior permission was held to exist in a company-owned town (see *Marsh v. Alabama*, 1946), and also in a town established by a federal housing authority (see *Tucker v. Texas*, 1946.) In *Martin v. Struthers* (1943) the Court decided that freedom of speech and press was violated by a city ordinance which made it unlawful to knock on doors or ring doorbells to summon the occupant of a residence in order to give him handbills, circulars, or other literature. In *Cantwell v. Connecticut* (1940) a state statute was held void which made it a crime for any person to solicit or canvass from house to house for any religious, charitable, or philanthropic cause without securing the prior approval of the secretary of the public welfare council, who was authorized to determine whether the cause was a religious one, was bona fide, and conformed to reasonable standards of efficiency and integrity. The Court found that, as applied to Jehovah's Witnesses or other religious groups, this requirement constituted a "censorship of religion as a means of determining its right to survive" and denied due process of law. The same case held that Cantwell could not be punished for a breach of the peace for playing phonograph records on the street,
even though they were offensive to those who heard them. The right to do so is part of the religious liberty protected by the Constitution.

The most serious threat to the Jehovah’s Witnesses was the widespread attempt of towns and cities to collect from them the usual license taxes or fees imposed on those who peddle, sell, or canvass. There was no discrimination against those religious pamphlets or books; the tax was the same regardless of what was sold. Some of the taxes were, however, substantial; and since in many parts of the country the Jehovah’s Witnesses traveled from town to town in their religious crusade, the sum total of the taxes collected in all the towns visited might well be prohibitive. The Supreme Court found great difficulty in deciding whether such taxes could validly be collected on the sale of religious literature. In *Jones v. Opelika* (1942) it held, by a five-to-four vote, that since the taxes were non-discriminatory and placed no special burdens on those who sold religious literature, they did not invalidly restrict freedom of religion. In the following year the Court, in Murdock v. Pennsylvania, printed below, reversed the Opelika decision, again by a vote of five to four. The new majority on the Court declared that the activities of the Witnesses in selling their literature constitute an exercise of religion, not a commercial enterprise. It is not enough that religious activities are not taxed higher than other activities. They may not be taxed at all. This complete immunity from taxation was later sustained in *Follett v. McCormick* (1944), in which a Jehovah’s Witness was shown to make his entire living from the sale of religious literature.

The opinion in the Murdock case strongly indicates that religious speech and press enjoy a protection against restraint and regulation which may be denied to secular or commercial speech and press. This doctrine finds support in *Bread v. Alexandria* (1951), in which the Supreme Court held valid a city ordinance which forbade door-to-door solicitations (without the prior consent of those solicited) as applied to subscriptions to nationally known magazines. The Court distinguished this from *Martin v. Struthers* (1943) on the ground that in the earlier case “no element of the commercial entered into this free solicitation and the opinion was narrowly limited to the precise fact of the free distribution of an invitation to religious services…..” Secular books enjoy a broad range of freedom of the press;
but it is not as broad as that enjoyed by religious literature.¹

Large areas of dispute exist, and litigation is constantly in progress over such issues as government assistance to religiously sponsored schools, devotional practices in public schools, and the treatment of sectarians whose religious convictions are not easily accommodated by local law.

In education, the Supreme Court has held that state reimbursement to parents for money spent to transport their children to parochial schools on the public bus system does not constitute an establishment of religion (Everson v. Board of Education, 1947). Public school boards may furnish secular textbooks for the use of children in religious school (Cochran v. Louisiana State Board of Education, 1930). Public schools may cooperate administratively with churches concerned for the religious education of children, but public property may not be used, public funds may not be directly appropriated, and religion itself may not be promoted (McCollum v. Board of Education, 1948, and Zorach v. Clauson, 1952). In public schools a period of silence may be observed in which children may pray if they wish, but the schools may not conduct devotional exercises, compose prayers, read the Bible, or otherwise enter the field of religious instruction (Engel v. Vitale, 1962). In 1980, for example, the Court struck down a Kentucky law requiring the posting of the Ten Commandments in all classrooms (Stone v. Graham). The “equal access” law of 1984, however, gives students the right to hold religious meetings in public high schools outside of class hours.

In 1970 the Supreme Court reaffirmed the traditional exclusion of religious property from taxation (Walz v. Tax Commission, 1970). In other rulings it has held that government may extend the benefit of public loans to religious schools, provided the purpose of the buildings thus financed is secular.²

Some important cases decided by United States Courts are as under:-


In the first case (McGowan), six members of the Court joined in an opinion by the Chief Justice holding that a Maryland statute requiring Sunday closings,
with specified exemptions, did not violate the equal protection clause or the first Amendment and that it was designed not to further religious practices but to enforce Sunday as a day for rest and recreation. Justices Frankfurter and Harlau concurred. Justice Douglas dissented on the ground that the statute violated the first Amendment.

The essence of appellants "establishment" argument is that Sunday is the Sabbath day of Predominant Christian sects; that the purpose of enforced stoppage of labor on that day is to facilitate and encourage church attendance; that the purpose of setting Sunday as a day of universal rest is to induce people with no religion or people with marginal religions beliefs to join the predominant Christian sects; that the purpose of the atmosphere of tranquility created by Sunday closing is to aid the conduct of Church services and religious observance of the sacred day...... There is no dispute that the original laws which deal with Sunday labor were motivated by religious forms.

In the middle 1700's, Blackstone wrote "(T) by keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state considered merely as a civil institution. In humanizes by the help of conversation and society, the manners of the lower classes, which would degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with wealth and cheerfulness.

The will of a majority of the community, reflected in the legislative process during scores of years, presumably prefers to take its leave on Sunday..... At all events, Maryland, Massachusetts and Pennsylvania, like thirty are other states with similar regulations, could reasonably so find....

In his dissent, Justice Douglas said:

The question is not whether Sunday can be free of custom and habit be retained as a day of rest. The question is whether a state can impose criminal sanction on those who, unlike the Christian majority that makes up our society, worship on a different day or do not share the religion scruples of the majority.

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It seems to me plain that by these laws, the states compel one, under sanction of law, to refrain from work or recreation on Sunday because of the majority's religious views about that day. The state by law makes Sunday a symbol of respect or adherence...... By what authority can government compel it?

The state can, of course, require one day of rest a week; one day when every shop or factory is closed..... The "day of rest" becomes purely and simply a health measure. But the Sunday laws operate differently. They force minorities to obey the majority's religions feelings of what is due and proper for a Christian community.

When the state uses its coercive powers..... to compel minorities to observe a second Sabbath, not their own, the state undertakes to aid and "prefer one religion over another" – contrary to the command of the Constitution.

Jackson, Dissent in the Supreme Court, a chronology, University of Oklahoma Pres. Page 450-51-52.

Griswold v. Connecticut 381 US 479 (1965)

Worthy of mention is the Griswold decision that unnecessarily struck down the obsolete and repealed statute that made its a criminal offense for married persons to use contraceptives.

Justice Douglas wrote:

We deal with a right of Privacy older than the Bill of Rights – older than our political parties – older than our school systems, marriage is a coming together for better or for worse, hopefully enduring and intimate is the degree of being sacred. It is an association that promotes a way of life, not causes, a harmony in living, not political faith; a bilateral loyalty, not commercial or social project, yet it is an association for as a noble a purpose as any involved in our prior decisions. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of Privacy in marriage may be infringed because that right is guaranteed in so many words by the first eight amendments to the constitution is to ignore the Ninth Amendment and to give it no effect whatsoever.

The entire fabric of the Constitution and the purposes that clearly underline
its specific guarantees demonstrate that the right to marital Privacy and to marry and raise family are of similar order and magnitude as the fundamental right specifically protected.

**FREEDOM OF RELIGION AS HUMAN RIGHT UNDER INTERNATIONAL CONVENTIONS**

Article 2 of the Universal Declaration of Human Rights provides that —

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

Article 7 of the Universal declaration provides that:

> All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The International Covenant on Civil and Political Rights is particularly strong on religious discrimination. Article 26 of the Covenant provides that:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons, equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It is intended that Article 14 will ultimately be replaced by protocol 12, which states:

> The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2 of the International Covenant on Economic, Social and Cultural Rights and Convention 111 of the International Labour Organisation make similar provisions, as do Article 4 of the UN Declaration on the Elimination of All Forms of intolerance and of Discrimination Based on Religion or Belief and the Final Declaration of the UN World Conference Against Racism in Durban in 2001.

Article 14 of the European Convention on Human Rights provides that:

The enjoyment of the right and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

On 10th December, 1948, the General Assembly of the United Nations adopted, without a dissenting vote, the Universal Declaration of Human Rights. Article 18 of the Declaration provides that:

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.

Article 18 of the International Covenant on Civil and Political Rights, 1966 to which the United Kingdom is a signatory, provides:

Everyone 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 choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief. Freedom to manifest one’s
religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 9 of the European Convention on Human Rights, incorporated into United Kingdom law by the Human Rights Act, 1998, provides:

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 worship, teaching, practice and observance.

Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

In December, 2000 the Nice European Council Summit approved the Charter of Fundamental Rights for the European Union. Article 10 provides that:

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest his religion or belief, in worship, teaching, practice and observance.

In Everson v. Board of Education1, on prohibiting the free exercise of religion was interpreted to provide the following:

Neither a State nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another..... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to

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1 330 U.S. 11 at 15-16(1946)
teach or practise religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a wall of separation between Church and State.

END NOTE:

It is seen that most of the countries have right to religious freedom in their constitutions or other statutes. Moreover, most of the countries are signatory of International Conventions and other documents like. The United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, social and cultural Rights and the International Covenant on Civil and Political Rights etc. These documents also provide freedom of religious belief among the all human beings without any discrimination based on religion. They also provide basic human rights of the people.

Thus a cardinal feature of modern liberal democracies is the virtue of according equal status under the law to all human beings. Laws purporting to apply only to certain religious groups will result in greater social fragmentation.