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THE ENLIGHTENMENT OF FUNDAMENTAL RIGHTS IN SRI LANKA: BRINGING LAW AND RELIGION TO ONE PLATFORM.

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Abstract—Human rights are the basic rules that give effect to the idea of fundamental rights. Chapter three of the 1978 Constitution of Democratic Socialist Republic of Sri Lanka specifies the fundamental Rights that are entitled for every person in Sri Lanka. On the other hand, Sri Lanka is a multi-religious nation which possesses a population of all four main religions. In general, human rights are identified to be evolved from religious concepts from the very ancient times. It is in question whether all citizens of Sri Lanka enjoy the true freedom of the existing Fundamental Rights Chapter as members of different religious groups. This study intends to explore the contribution of the four main religions to the development of the regime of human rights. Qualitative data analysis was used in the means of legal research methodology by making reference to primary and secondary data. This research is on the argument that as long as the human rights have evolved from religious beliefs, the Fundamental Rights Chapter of any country should respect all the main and established religions in that country. The author also intends to evaluate some key judicial decisions in this regard. Major objectives of this research would be to examine the two facts: if the law enforces these rights and the practicality of such enforced rights. The conclusion of this research contains few recommendations to the existing fundamental rights regime.

Key words: Human Rights, Religions, Fundamental rights in Sri Lanka

I. INTRODUCTION

Human rights are a major concern in the latest times. Human rights can be simply understood as the group of rights that are entitled for humans for the sole reason of

being human beings by their birth. In fact, they are the rights and duties to which every human being is entitled (Oxford Dictionary of Law). They are distinct from civil liberties, which are freedoms established by the law of a particular state and applied by that state in its own jurisdiction. Thus, human rights are universal in nature as they are recognized and applied equally around the world. These cannot be applied in the interest of animals or environment but exclusively and strictly for human beings. The interests on human rights have made a drastic improvement among the people to claim their rights when they are breached. But it is in question whether the basic body of legal rules of any country -the Constitution, does enough justice in this matter.

The Constitution plays a major role in relation to human rights and fundamental rights as it is the body of rules that determine the powers of a government while regulating the relationship between the individuals and the State. Every State in the modern world holds a separate and a unique body of fundamental rights applicable for the citizens in their jurisdiction. It is this part of the Constitution that recognises fundamental rights and provides an enforcement mechanism to such. It was stated in the decided case *Golak Nath v. State of Punjab* (SC) in India that “fundamental rights are the modern name for what have been traditionally known as natural rights”.

Human rights are studied to be evaluated from the different religious views. Different aspects of human rights are linked with different theories of different religions. In other words it's the religions that provide the basement for human rights. It is quite difficult to provide a static definition for what a religion is. An interpretation could be given as, “a religion may be said to consist in a system of moral and ethical principles describing a code of conduct” (Cooray, 1995).

With this presumption, fundamental rights do hold an obvious link with the religious views. It is in question whether the fundamental rights chapter of Sri Lanka respect and ensure the rights of all religious groups in its' jurisdiction equally.

II. INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

A. UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

This document, through 30 initial Articles, elaborates the most basic rights to be ensured in the interest of all human beings. This has been adopted on 10th December 1948 by the United Nations General Assembly to declare the civil, political, economic, social and cultural rights entitled for all people irrespective of any consideration. This insists that no one or no authority can deprive them from enjoying these rights.

The Preamble of the UDHR states the purpose of it. It intends to recognise the human rights, to promote the development of friendly relations between nations and to make a common understanding of the rights and freedoms recognized in it.

B. International Covenant on Civil and Political Rights (ICCPR)

This instrument was taken as a part of this research because most of the fundamental rights of Sri Lankan Constitution are extracted from the ICCPR. Out of them, the religious right fall within the black letters of the ICCPR as a Civil right. This covenant embodies the civil and political rights of all human beings. The binding force of this instrument is graver than the UDHR because the covenant is enforceable on all its signatories while the latter is a mere declaration

III. RELIGIOUS OVERVIEW OF HUMAN RIGHTS

A. Buddhism: Journey to Enlightenment

Buddhism is a philosophy and a 'way of life' rather than a religion. But in the practical world it is being observed as a religion. This basically depends upon the teachings of the Lord Buddha. Buddhism presents the enlightenment as its ultimate achievement, and there are principles and concepts that are to be adhered to in the journey to enlightenment. In fact, Buddhist view of human rights evolved from philosophical and ethical assumptions.

A major teaching of Buddhism is to compare yourself to others when treating them. A saying in the *Dhammapadha*, the handbook of Buddhists, *Atthanan Upaman Kathwa* indicates to compare yourself to the way you treat someone and if you don't prefer to be treated that way,

do not treat another in that way. This can simply be considered as a basis for human rights conceptions. If you don't like your human rights being violated, do not violate such of another's.

It is stated that one is one's own master. Also, it was said that anyone with the dedication and the discipline can attain the supreme enlightenment. This is a fine example for equality within the religion.

Buddhism goes beyond the concept of brotherhood which is set out in the UDHR. Instead it talks about universal kindness or *Metta*. It is a broader concept than brotherhood. The philosophy of *Avihinsa* is the key to non-violence (Religion and Culture in the development of Human Rights in Sri Lanka, 1982). Further, Buddhism compels a living of *Bahujanahithaya* and *bahujanasukhaya*, which means for the interest of all mankind.

Article 10 of the Constitution and Article 18 of the UDHR ensure the freedom of thought, conscience and religion. Buddhism, since the very beginning recognises these freedoms. It is insisted that one should accept a teaching of anything only after examining its' truth and validity by himself. The *Dhammapada* also states at one point *ehi passiko* which means 'come and see it for oneself'. This is certainly the freedom of thought. It sets everyone free to search the truth by themselves. If it is not found at one place, search another place. Secondly it states *paccattam weitabbo winnuhiti* which means 'it is to be understood individually by the wise'. For this to be practical the freedom of thought is a requisite.

Conscience is the moral sense of right and wrong. In the Buddhist context the moral sense of any act is looked at in terms of its' consequences. There are instances in which the Lord Buddha advised certain people that they should evaluate carefully any religious or philosophical claim by an appeal to their conscience.

Freedom to religion is also given space in the scope of Buddhism. The Buddhist canon refers to a large number of 'heretical schools'. This is evidence that freedom of religion existed since the very old time. Lord Buddha always let go of the people who blamed his teaching and also welcomed the other religious people when they came finding the truth.

B. Christianity: The path to heaven

The Book of 'Genesis God' is considered as the main text in relation to Christianity. This text states that 'Let us make man in our own image and after our own likeness' (Genesis 1:26-28) and thereafter he created male and female. Beliefs say the he created Adam and Eve and the descendants were their children. The concept of equality

is developed in here by meaning that all are sons and daughters of God.

God set them free afterwards by only forbidding to eat the forbidden fruit which they did and created sin and evil.

Jesus rises as the son of God. He disseminates the teachings of the God and shows the followers the kingdom they wish to reach. This kingdom is meant to be a place of brotherhood, righteousness, peace and justice. Every person is created to play a role in building this great kingdom and so they should perform their contributions (Isaiah, Chapter 60).

C. *Hinduism: The Guru’s guide*

Hinduism is based on the Doctrine of Kinship which means that human beings are all kith and kin of one family (Vadkar, 2000). ‘All men are born equal’ states the *Thirukkural* (1972). Equality is recognised as a common phenomenon to all humans. True that there are differences in mental and physical activities they do as a choice of vocation. The Brahma Sutra states that ‘there is inequality in creation because the God has regard for merits and demerits of individuals’ (Brahma Sutra 2:1:34). And also the society needs different talents and skills. The functions undertaken vary from one to another and belong to one or another of the Varnas (casts). But still, the concept of basic equality of all human being is been maintained. *Sretasvastara Upanishad* (2:5) declare that all humans have a right to immortality.

Considerable reference is found in the Hindu literature to the concept of Brotherhood. A service to a fellow human is considered as a service to the God.

The *Bagawath Geetha* emphasizes that man attains perfection by worshipping with acts of service (Bagawath geetha 18:46).

Hinduism never stated that one should follow this path and none else. In fact it always left it for the free will of the listeners to accept or reject as they judge. Hindu literature gives constant evidence to this. In the *Sivajana Bhotham* which contains twelve verses and in many of those the author uses the phrase ‘...so the wise say’. By this he leaves the text to the reader to accept or otherwise.

Hinduism sees the value of all religions. It observes religion as a search of the truth. A major concept of Hinduism is that there is only one god and in whatever you prefer you may worship him.

D. *Islam: Let his lordship guide you*

The *Holy Quran* insists the equality of all human beings as deriving from unity of God. They consider the God as their common creator and that all are created from a common source. All people owe allegiance and obedience. Islam concedes no privileges on birth, nationality, race or any other barrier set up by man. In fact, nobility lies in righteousness.

IV. FUNDAMENTAL RIGHTS CHAPTER OF THE 1978 CONSTITUTION OF SRI LANKA

The very first instance of recognizing a group of fundamental rights in the political history of Sri Lanka was in 1972, by the first republican Constitution. This was a major topic of discussion in the subsequent six years mainly because the fundamental rights chapter of 1972 Constitution contained no enforcement procedure for the violations of rights of the very same document. To address many of such gaps, the second republican constitution was enacted in 1978. One of the pillars of this study is the Chapter III of this Constitution.

As the second attempt of enforcing human rights within the local jurisdiction, Chapter III of the 1978 Constitution stands at a satisfactory point. However, in the wider scope there is an issue as to whether it is adequate enough.

Sri Lanka is a well-known multi religious country. It is the home for communities of all four main religions in the world. All the religions have their own concept to support the entitlement of basic human rights. It is very obvious that not all the human rights declared by the UDHR are in the eight Articles of the Fundamental Rights Chapter in Sri Lanka. Therefore, it seems important to inquire if the said fundamental rights chapter need any new inclusions.

V. PARALLEL ARTICLES OF THE 1978 CONSTITUTION AND THE UDHR

	Constitution	UDHR	ICCPR
Freedom of thought, Conscience and religion	Art. 10	Art 18	18
Freedom from torture	Art 11	Art 5	7
Right to equality before the law	Art 12 (1)	Art 7	26
Non discrimination	Art 12 (2)	Art 2	2
Freedom from arbitrary arrest, detention and punishment,	Art 13	Art 9	9 (1)

Right to be heard and fair trial	Art 13 (5)	Art 10	14
Prohibition of retrospective penal legislations	Art 13 (6)	Art 11 (2)	-
Freedom of speech and expression	Art 14 (a)	Art 19	19 (2)
Freedom of peaceful assembly	Art 14 (b)	Art 20	21
Freedom of association	Art 14 (c)	Art 20	22 (1)
Freedom to form and join a trade union	Art 14 (d)	Art 23 (4)	22 (1)
Freedom to manifest one's religion	Art 14 (e)	Art 18	18 (1)
Freedom to enjoy and promote one's culture	Art 14 (f)	Art 27 (1)	27
Freedom to engage in any lawful occupation, profession, trade, business or enterprise	Art 14 (g)	Art 23 (1)	-
Freedom of movement and place of residence	Art 14 (h)	Art 13 (1)	12(1)
Freedom to leave and return the country	Art 14 (i)	Art 13 (2)	12 2 12 4

relation to human rights. The Sri Lankan legal framework does not identify right to life as a fundamental right. This can be looked upon as a major need of today. Right to one's own life is a common concept recognised in all the religious philosophies.

Out of the Fundamental rights in Sri Lanka, the general rights, for example right not to be tortured or equality before the law or freedom from arbitrary arrest, it is clear that all persons are protected irrespective of their religion. But in referring to the religious rights specifically, mainly the rights to observe a religion of one's choice and related rights are quite controversial. Because in practicality the plural society of Sri Lanka has a lot to argue about.

VII. ANALYSIS OF THE CONTEXT OF SRI LANKA IN THE PROTECTION OF FUNDAMENTAL RIGHTS OF THE PEOPLE

It was widely discussed how the plural societal factor affect the protection of fundamental rights in whole. It was also noted that the issue is being detected not in protecting the general rights but in ensuring the religious related rights.

Sri Lanka is a well-known Buddhist country. It has been more than 2550 years since Buddhism came to this land. It is therefore of no doubt that it has exclusive right over Sri Lankan persons.

One of the major issues that has been brought up by religious communities is the freedom to convert one's original religion to another. This has been discussed in relation to the freedom of conscience. One major incident in which this aspect has been widely discussed in Sri Lanka was the debate of making provisions for teaching sisters of the Holy cross.

If we move towards the Indian constitution the right of this exact title is quite less restrictive. Article 25 of the Indian Constitution protects the right to profess, practice and propagate religion. Article 14 (1) (e) or Article 10 of the Sri Lankan constitution does not refer to the word 'propagate'. The Indian provision does not directly allow conversion but one is entitled to transmit or spread his religion by an exposition of its tenets. In fact, every person can decide as to his conscience to purposely undertake to convert religion. The Supreme Court of Sri Lanka has made a determination in relation to this.

"Article 14 (i) (e) gives right to manifest, worship, observe and practice one's religion or teaching and not to propagate" (Supreme Court determination No 2/2001)

Article 10 and 14 can be differed from their degree of application. Former one refers to 'every person' which

In examining the above list it's of clear understanding that the Sri Lankan Constitution gives rise to many of the Human rights identified by the UDHR in substantial means.

VI. DISCUSSION

In the very first glance the legal framework seems to be ensuring the rights of all religious groups. But such can be assumed only upon the Fundamental rights of Sri Lanka. In fact there are few other Articles of the UDHR which are not enforced in the Sri Lankan jurisdiction but also of very much importance.

For example the Article 03 of the UDHR stresses on the right to life. Right to life is a very basic requirement in

makes it an absolute right applicable to both citizens and aliens. The latter refers to 'every citizen' which is subjected to restrictions because it must not be affecting the national security, public order, protection of public health and morality.

On the other hand Article 09 of the Sri Lankan constitution makes a strong statement.

"The Republic of Sri Lanka give the Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster Buddha *sasana*, while assuring all the religions the rights granted by the Article 10 and 14 (i) (e) (The Constitution of Sri Lanka, Article 09).

As to this Article people of other religions are given the freedom to exercise their religious rights only as long as it has no concern with the Buddha *sasana*. This indirectly means that the other religions are a bit more restricted than Buddhism on the Sri Lankan soil.

Moving further to the judicial status of these matters, it can be observed that few claims have been made in some instances.

There are few many instances which are still in the very first stages in court proceeding in which the claims are made that their religious rights are being violated in practice. The issue relating to the Hijab of Muslim women has been one crucial and a recurring claim recently.

One other instance in which the Hindu religious rights were discussed was in the Munneswaran Hindu temple for conducting an animal sacrifice ritual.

The Penal code of Sri Lanka, in Section 291 prohibits disturbing religious assembly. This appears more like a general protection. But in depth, the question arises if the equal protection could be provided to all religious communities because this appears to be quite contradicting with Article 9 of the Sri Lankan Constitution. If a minority religious group disturb a Buddhist assembly, it is very certain that this is sufficient to take actions. But if it occurs the other way around, it is of doubt whether the Penal Code would override the argument that the particular minority assembly was affecting the duty of the state to protect and foster Buddha *sasana* as to the Constitution.

VIII. CONCLUSION AND RECOMMENDATIONS

It was discussed previously that the statutory law of Sri Lanka incorporates many of the rights declared in the Universal Declaration of Human Rights in their Constitution. By the latter discussion it was made clear that the practicality of ensuring such rights equally is a bit

unsteady. It is of no argument that Sri Lanka is providing the best protection for Buddhism. But it is also clear that the rights of other religious communities are affected in some extent.

One pathetic situation nowadays is the use of religious masks to promote political and other non-religious propaganda and misusing and misinterpreting the statutory laws.

In making recommendations it would be of very much importance if some bi-laws can be enacted for the purpose of ensuring equality through this plural society. In fact a legal mechanism is required to prevent people from using religious ideologies to promote personal and political agendas.

Most of all, an attitudinal transformation is mandatory since the early childhood upon the equality among all religions. For an example United States is too a plural country in many diversities. But it has overcome the conflicts among all such communities by eliminating inequality through their primary education system itself.

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