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# Freedom of Religion Or Belief and Freedom of Expression: New Challenges to Human Rights

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## **Introduction**

Freedom of religion and belief has been a constant theme of Human Rights regime.

In view of sensitivity of the subject and its overarching relevance in societies, the UN Human Rights Council has been regularly monitoring and reflecting on it as an inalienable Human Right of an individual. The Council, recognizing the complexities of human behavior and taking note of changing political strategies which at times assume dubious forms, adopted by groups of people including states around the world, rightly has laid great emphasis on the relationship between the Right to Freedom of religion or belief and the Right to freedom of opinion and expression. In fact, it is this relationship which is a major cause of concern for the individuals and groups of people in most parts of the present day world. The empirical evidence supports the contention that non recognition and/

or non observance of this intricate relationship lies at the root of many a violent turmoil in different societies. The crisis in West Asia and parts of South Asia may be traced to the problem.

It is well recognized that the Special Rapporteurs and experts of the UN Human Rights Council have contributed enormously in elucidating the legal principles and doctrines relating to the Right of Freedom of religion or belief and its relationship with the Freedom of opinion and expression from the Human Rights perspective. However, the varied interpretations of religious texts which have created new followers and sects who are seeking their freedom of opinion and expression, has raised a new challenge, for Human Rights regime.

The Special Rapporteurs of the Council have been undertaking county visits from time to time to monitor the situations on the ground relating to the Right of Freedom of

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religion and Freedom of speech. However, their reports indicate that the new challenge relating to these rights has remained by and large out of their focus. Moreover, devising a new strategy to deal with it remains a formidable challenge.

### **The Latest Report**

The latest Report of the Special Rapporteur on freedom of religion or belief of the Human Rights Council ( Document A/HRC/31/18) by Heiner Bielefeldt is another valuable report elucidating and elaborating the close relationship between right to freedom of religion or belief and freedom of opinion and expression. Special Rapporteur examines the “ interplay of the two rights in the implementation of Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping, stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief...” Special Rapporteur is aware of the common perception relating to reconcilability of these two rights and observes that “ when people wonder how it might be possible to reconcile freedom of religion or belief and freedom of expression, such wording displays a perception that the two rights stand essentially in opposition to each

other.” In this regard, Special Rapporteur refers to an earlier report (2006) of the UN Council (Document A/ HRC/2/3, para 37) which stressed that freedom of religion primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion *itself protected from all adverse comment* [emphasis added].”

### **Council Resolution and the Covenant**

In the analysis and elaboration of human rights legal framework and the principles relating to these two rights, Special Rapporteur has invoked the UN Human Rights Council Resolution 16/18 and Articles 18 and 19 of the International Covenant on Civil and Political Rights.

The preamble of the Council resolution 16/18 lays down the intimate relationship between the right of freedom of religion or belief and the right of freedom of opinion and expression. It stresses “that the International Covenant on Civil and Political Rights provides, inter alia, that everyone shall have the right to freedom of thought, conscience and religion or belief, which shall include freedom to have or to 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." The preamble further elaborates that "the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy and combating religious intolerance."

Special Rapporteur stresses that 'explicit reference to the rights of religion or belief and to freedom of opinion and expression is no coincidence, as the Council Resolution 16/18, attaches great importance to *communicative interaction* (emphasis added), which has a key function in building trust between different religious or belief communities as well as in society at large. This includes a broad range of measures in the areas of education, awareness-building, outreach strategy, interreligious communication and public discourse.' He refers to Council Resolution (para 4) which recognizes " that the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels can be among the best protection against religious intolerance."

### **The Threats**

The Human Rights Council Resolution aptly deals with the threats which undermine the freedom of religion or belief as well as freedom of opinion and expression. The Resolution condemns a) any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence; b) calls for measures to criminalize incitement to imminent violence based on religion or belief; c) recommends to putting an end to the practice of religious profiling, which inevitably leads to stigmatization and providing effective protection for places of worship and religious sites, including in conflict situations. These concerns have assumed the form of stark realities today in different parts of the world. Advocacy of religious hatred leading to incitement to hostility and violence is being carried out with impunity and there is appalling proliferation of incidents in this regard in different parts of the world. In some cases the perpetrators enjoy overt or covert protection and even sanction of the state. The destruction of places of worship and religious sites, which in some cases have great historical significance and even cultural heritage sites have been specifically targeted during present day violent conflicts.

## **Rights Holders**

Special Rapporteur has specifically and critically examined the entitlement of human persons to hold their religious beliefs or to have no beliefs and their right to freedom of expression. He stresses that both these rights qualitatively are rights to freedom which play an indispensable role in shaping free and democratic societies, "in which the diversity of, inter alia, thoughts, ideas, opinions, interests, convictions, conscientious positions, religions and beliefs can be manifested and defended freely, including by getting together with others and by establishing adequate institutions and infrastructures with that purpose." However, the report has touched upon and mentioned in clear terms that freedom of religion or belief should not be construed as a human right pertaining to a particular religion, hence *protecting religions or belief systems in themselves* (emphasis added). This clarification needs to be sharply underlined in any discourse or analysis of human right of freedom of religion or belief. It may be mentioned that many an individual, group and even a state hedge behind this misperception in their activities which grossly violate human rights of individuals or groups of people. Special Rapporteur stresses in clear terms that "*freedom of*

*religion or belief protects believers rather than religions or belief (emphasis added)*. This message has to go quite effectively across the states and societies. Empirical evidence from social situations indicate that it is not so. That forms the first challenge to the Council of Human Rights as it is directly dealing with states on human rights issues. It needs to be recognized that in case the Council does not assert itself in this task, the hapless victimized people and societies would be caught in a vortex of violence and conflict.

## **The New Challenge**

Articles 18 and 19 of the International Covenant on Civil and Political Rights provide a concrete legal framework on the right of freedom of religion or belief and right of freedom of expression. Special Rapporteur, in view of the language used in both the articles and the clarifications provided by Human Rights Committee, rightly holds that the right to freedom of thought, conscience and religion does not permit any limitations whatsoever, and these freedoms are protected unconditionally. According to him "such unconditional guarantees are rare in international human rights law."

The Special Rapporteur's report

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provides an insightful and scholarly discussion on *forum internum* (a person's inner realm of thinking) and *forum externum* (criteria for drawing limitations with regard to their external manifestations) dimensions of the rights under discussion and concludes that:

"There is a good reason to conclude that the rights to freedom of religion or belief and to freedom of expression do not stand in opposition to each other, but are quite close in spirit and formulation. *Yet this positive interrelatedness does not preclude concrete conflicts, as controversial issues may at times emerge at the intersection of both rights.*" (emphasis added).

It is in this connection that the Special Rapporteur has devoted his expertise on some of the concerns relating to controversial issues and made clarifications from the human rights perspective. It is an elaborate commentary touching upon academic aspect of the right as well as addressing pragmatic realities. The analysis underlines the religious and philosophical pluralism and stresses the freedom to believe and pursue a particular faith. It equally underscores the right to not holding a religion or belief. Both these right holders have complete freedom in terms of *forum internum* and *forum*

*externum* to hold, pursue and follow their belief. They equally have a right to express themselves through varied devices and media on their beliefs. Thus, both these guarantees uphold the principles of interfaith and interreligious coexistence of human beings leading to a peaceful and democratic social and political order.

It is well established that human minds as well as human societies have evolved toward new and creative directions over a period of time. Religions, faiths and belief systems have not remained immune from this process. Individuals and groups of people, while remaining tethered to their religions and beliefs, have expanded and through creative interpretations projected an alternative vision of their religions. Gradually, with the following of adherents, new sub-religious groups or sects came into existence. It is these groups and/or opinion holders which are at the receiving end of groups-extremist or fanatical religious adherents. *This formidable challenge has not received adequate attention of Human Rights Council and its experts* (emphasis added). The continuing violence in which thousands of people are perishing should prod the Council to take note of this menace.

Articles 18 and 19 of the Covenant

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provide unconditional freedom of religion or belief and freedom of expression. However, the articles lay down the principles of restrictions on these very freedoms. These restrictions include “public safety, order or health or morals or fundamental rights and freedom of others”. The articles underline that restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Human Rights Committee (Comment No.34 para 35) mentions that “States must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionately of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” before imposing the restriction.

The approach adopted by the Human Rights Council and the experts does not take into account the legal and political framework based on religion and belief of states. This framework does not accommodate the sectarian differences or new approaches adopted by the individuals or groups of people. The authority to impose limitations in the name of “protection of national security or public order” gives unbridled powers to states which are

run on their view of religion to not only exclude the other sects but even discriminate and persecute them. This contradiction has encouraged the extremist groups to eliminate the minority sects and in West Asia thousands of people are being killed in this violence. Millions have been forced to abandon their homes and hearths.

This situation, sociologically evolved over a long period of time in history. By and large the authority arrogated or entrusted to religious clerks with no accountability provided them the unbridled power of interpretation. They became the sole authorities of deciding on inclusion and exclusion. Recently Saudi Arabia had to withdraw the power enjoyed by religious police known as *Muttawa* to arrest a person accused of committing a sin or vice. Now such a person has to be referred to police station.

Human Rights Council needs to broaden the mandate relating to freedom of religion or belief and freedom of expression. The dimension as mentioned above may be closely studied and appropriate recommendation may be made in this behalf. It may be noted that merely a legalistic perspective is not sufficient to address the problem. ■