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Religion in Contemporary Legal Systems

KEYNOTE

by

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I am beholden to the US authorities for selecting me for this year's Distinguished Service Award – especially since, I understand, I am the first non-American to receive it. It is indeed a great honour for me and for my country.

The place of religion in the contemporary legal systems across the globe has for long been one of my major interest areas. America's deep interest in promoting religious freedom worldwide is praiseworthy. I too have been playing my own humble role in this noble mission which, I know, my friends here appreciate. It is the third time I am participating in BYU's annual symposia on the subject. The first time I came I spoke at one of the concurrent regional sessions, the next year at a plenary, and now it is at the inaugural session. Thanking the organizers for this gradual upgrading of my job, I am sharing a few thoughts with the co-participants of the conference.

Religion and law have been two intertwined social-control mechanisms in all phases of human history and remain so, everywhere on the globe, also in the present third millennium. Anti-religion ideologies periodically emerging in certain parts of the world having miserably failed, religiosity continues to be the order of the day in some form or the other in all parts of the world. The paradigms of inter-relation between religion, law and State have of course been constantly changing. Centuries have intervened between the old times when religion fully controlled the law and the present new age where the two social-control mechanisms have exchanged their positions. Religion now has to operate everywhere in the world within the parameters set by international human-rights documents, national constitutions, domestic laws and judicial interpretation of these various legal sources.

The place of religion in the contemporary legal systems differs from region to region and country to country, ranging from the French doctrine of *laïcité* to the US Constitution's non-establishment clause, on to the proclamation of one or another religion as the State or otherwise privileged religion in numerous countries of Asia and Africa. A study of the wide varieties of relations between and interaction of religion and law is indeed no less fascinating than complicated.

International human rights instruments pouring down since 1948 mention religious freedom as an essential ingredient of the code of human rights. The Universal Declaration of Human Rights and its two attending International Covenants of 1966 outlaw religious discrimination of all sorts in the enjoyment of human rights. Religious non-discrimination clauses also find a place in the special UN Conventions of women and children's rights proclaimed in the decade intervening 1979 and 1989. The 1981 UN Declaration against Religious Discrimination and Intolerance and the 1992 Declaration on the Rights of

Minorities specifically enjoin nations of the world to protect and facilitate religious freedom of their respective citizens.

The response of the nation-states to these calls of international human rights instruments has been diverse. Among the two so-called super-power nations of recent the time the Soviet Union had adopted a unique concept of secularism promoting banishment of religion from all walks of public life. On the other hand the US Constitution, along with its Non-establishment Clause, ensured state-neutrality to religion and non-interference in people's religious affairs and rights. I am reminded here how my late father used to denounce the Soviet Union for the irreligion demonstrated by its Moon-walking cosmonauts proclaiming they did not find God anywhere there or on the way, and praising the US for its space-travellers stepping on the Moon thanking God for their achievement. His reaction was representative of the pro-religion attitude of billions of inhabitants of Earth. Expectedly, human history soon watched wiping out of the anti-religion political ideology and revival of religious freedom in the erstwhile communist regimes. Among these are all the Muslim-majority republics of Central Asia separated from the erstwhile Soviet Union and the Muslim-dominated European nation of Albania where a former President Anwar Hoxa had once boasted of his being the only atheist country of the world claiming "we have conducted God out of our borders thanking him for His provisional services." China and Vietnam too have, in recent years, enacted new laws on religious freedom mitigating the rigidities of their past laws on the subject. Seeing all this Comrade Lenin, Chairman Mao and the likes of them must be turning in their graves.

Coming to the practice of State-allegiance to particular faith-traditions, the one accorded the status of State religion in the largest number of modern-day nations is Islam. In as many as sixty nation-states situate on the continents of Asia, Africa and Europe followers of Islam are in a majority. Constitutional documents in twenty-four of these countries scattered from North and West Africa to South and Southeast Asia proclaim Islam to be their State religion, some of them including the epithet "Islamic" in the name or prefatory description of the country in the local legal instruments. Additionally, most Arab countries as also some non-Arab Muslim-majority states proclaim Shari'ah – the traditional law of Islam – to be their "principal source of legislation." In Saudi Arabia and Pakistan – the two most typically Islamic nations of our times – national constitutions are jam-packed with religious provisions. Six of the so-called Islamic states have retained the traditional criminal law of Islam – original or moderately reformed ; and the Islamic family and succession laws, classical or revisited, are in force in almost all Muslim-majority countries, as also in numerous Muslim-minority countries having large Muslim populations. Notably, Indonesia – the largest Muslim country in the world – neither proclaims Islam as the State religion nor makes any reference to Shari'ah – and the classical Islamic family law is not in force there in its puritan form. The same is also true of Turkey where Islamic laws had been replaced long ago with adaptations of the Italian Penal Code and the Swiss Civil Code. Indonesia has, however, enacted a blasphemy law which has abundant scope for misuse by unscrupulous elements; and in Pakistan the 1973 blasphemy laws have actually been misused to promote communal hatred and even to settle personal scores.

Travelling beyond the Muslim world one finds that the mountain state of Nepal in Asia hitherto proclaimed Hinduism to be its official religion and still assures its hegemony by banning conversion to other religions. There are special provisions relating to the majority Hindu faith also in the constitution of secular India. Some Indian states have enacted laws to control religious conversions which, though generic in their text, have been

applied only to conversion from Hinduism to Christianity or Islam. Several Buddhist-dominated countries on the Asian continent – Thailand, Sri Lanka and Bhutan among them – accord an official status to Buddhism. The special legal position of the Jewish faith in the State of Israel is well known, and there are special references to one or another form of Christianity in the legal instruments of some Christian-majority countries of the East. Several European nations including the United Kingdom, Greece, Denmark, Malta and Cyprus have State Churches, and abortive efforts have been repeatedly made to mention Christianity in the constitution of the European Union.

Constitutional documents in all countries of the world – both those who accord a special status to one or another faith-tradition and those who do not – give legal guarantees to all their citizens for freedom of religion to varying extents. Those giving a special place to a particular faith seemingly do not find any conflict between official adherence to particular religious ideology and religious freedom for all; and those swearing by secularism make compromises with religious aspirations in general or of particular communities. In the Christian-dominated secular Philippines the US-type non-establishment clause of the constitution has been generally subjected by the judiciary to a pro-religion interpretation, and Islamic family and succession laws applicable to Muslim citizens to a massive State-codification. In secular India the dimensions of pro-religion interpretation of secularism have been much more extensive. A 60-year old court case regarding ownership of a disputed land in a holy North Indian city a 500-year old mosque standing on which was demolished in 1992 in a mob frenzy has just been decided, remarkably, by a Muslim judge by way of a partition decree tilting in favour of the majority community.

What is indeed disturbing is that despite such reconciliations, concessions and compromises religious conflicts and tensions exist in all countries of the world. Legal assurances for the State's neutrality in religious matters and statutory guarantees of equality of all citizens in respect of religious rights are generally not reflected in the ground realities. Adoption or non-adoption of an officially sponsored religion seems to be making no big difference in this matter – almost everywhere the majority religion silently attains a privileged position. International-law documents say that “minority” is “a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members possess ethnic, religious or linguistic characteristics differing from the rest of the population.” Statutory professions apart, in the case of religious minorities this “numerical inferiority” often turns everywhere into social and political inferiority and their numerically “non-dominant position” gets translated into the hegemony of the religious majority resulting into denial of civil rights to religious minorities in an open violation of the international human rights instruments and domestic constitutions.

The discrepancies between theory and practice in the matter of religious freedom result from the fact that whatever the law may be saying about it in any part of the world, the local majorities fail to reconcile with it. Owing allegiance to their own faith only, they regard minority faiths as alien or even false. According to a recent global survey an overwhelming majority of the over six billion inhabitants of Earth are exclusive in their regard for religion. Going by the countries, the survey puts two Asian nations on the top in this respect – the Christian-dominated Philippines and the Hindu-dominated India. Notably, both these countries are secular by the dictates of their respective constitutions, and this bears ample evidence to the fact that official assumption of secularism does not change people's mindset.

Public stereotyping of religions minorities is a leading source of religious tensions everywhere. People are unable, often unwilling, to obtain accurate information required to make fair judgments. Established stereotypes allow them to fill in the blanks; and the society goes on perpetuating this state of affairs. The roots of stereotype-formation are embedded in what people read in books and magazines, see in movies or television, or hear from friends and families. Prejudice is thus passed on from generation to generation and this process results into the majority's hidden dislike for the religious minorities. Prejudice is spread by the use of propaganda and inflamed by demagogues. Slang is freely used to dehumanize members of minority groups. In a vicious circle the minorities also develop stereotypes for the local majorities. Indulgence in misgivings thus becomes a two-way traffic and acts as the precursor of identity-conflicts, hegemony-claims, discrimination, isolation and violence. Unfortunately, globalization of the human world is now globalizing the stereotypes too.

Religious stereotypes are created by the trend to regard a chosen faith as the only true, or at least the most superior, religion and looking down upon all other faith traditions. Patriotism is identified everywhere with the religion and culture of the majority. Jesus was born in the Middle East, not in Europe or America, and yet the Middle East looks at Christianity as a foreign religion. On the other hand, neither Christianity nor Islam had their origin in the West but the West regards Christianity as its natural religion and Islam as alien to its culture. In my country India 2000 and 1400 hundred years of existence of Christianity and Islam respectively have not changed the Hindu perception of these faiths being foreign to India's religio-social ethos.

All the world religions have a lot in common and teach respect for individual differences. Followers of Judaism, Christianity and Islam are more alike than different in their mythologies and religious beliefs, and yet they are at war with each other. Since Moses and Christ stand on a high pedestal in Islamic theology, the Muslims cannot have the audacity ridicule them. But as for historical reasons Muhammad is not and could not have been mentioned in Judo-Christian mythology, the Jews and Christians have no hesitation in subjecting him to all sorts of denigration. In my country, India, all religious communities are more similar than different in religio-cultural practices and equally share the nation's social ethos; but they stress the differences rather than focusing on the similarities. For the Muslims, on the other hand, the favourite way to stereotyping other faith communities is to regard them as *kafir* or *mushrik* in total disregard of the historical context in which the Islamic scripture had used these Arabic expressions 1400 years ago. Prophet Muhammad had struggled hard to include and assimilate non-believing communities into Islam; the modern-day Muslims struggle to exclude and dissimilate believers from the fold of Islam – their attitude to the Baha'i and Qadiyani faiths amply demonstrating this reality. All this insensitivity to commonness and witch-hunting going on in all parts of the world leads to social unrest and often erupts into religious violence.

Religious conflicts, hate speeches and crimes, and even open persecution of religious minorities have yet not been thrown by the modern man into the dustbin of history. Even today religion appears to be a terrible Satan in its decadent status when people plunge into spiritual illiteracy, miss the divine essence of the lessons of the sages, prophets and seers and kiss the holy nonsense of "my religion right or wrong" and "my religionists alone to me belong." In this vulgar barbarous degeneracy humanism dies and values of tolerance and compassion perish. In the perverse reversal of higher meanings the man on earth becomes the blind ammunition of divine rivals in the skies. No more confined

to the so-called transitional and developing societies, the canker has now spread also to the fully developed nations.

There is one and the only way to resolve this imbroglio, and that is an unconditional acceptance of all religious faiths of the world as the common heritage of mankind the protection of which should be the solemn obligation, joint and several, of all nations and all inhabitants of the human world. Whatever our faith may be, what we think of religions other our own and how we behave with their followers cannot be attributed to the teachings of our respective faiths. Islam adopted the Arabic word for “peace” for its name, tells its adherents that God is “Most Compassionate and Most Merciful” and teaches them to greet fellow human beings with “peace be upon you.” Christianity asks its followers to tell themselves “I as a guilty sinner have been pardoned by a loving God and I in turn need to forgive others”. Hinduism speaks of “*sarva dharma sambhava*” [commonality of all faiths], and Buddhism teaches the principle of absolute *ahinsa* [non-violence]. But is the behaviour of present-day followers of any of these faiths in accord with its teachings? Unless these noble teachings are practised in the day to day behaviour by the followers of the respective religions, any number of laws meant to regulate religious conduct and enforce religious tolerance, equality and non-discrimination will not succeed in their purpose in any part of the world. Neither official allegiance to particular religions nor proclamation of State-neutrality to religions, nor legal guarantees of religious equalities and non-discrimination can obliterate inequalities, injustices and inhumanities from the human society. Required for this purpose is change of hearts, of minds and attitudes. Common teachings of all our great religions provide a basis for attaining such change.

Modern world’s legal theory guaranteeing to all inhabitants of the Earth social equality and religious tolerance and non-discrimination is indeed superb in its text. In actual practice, however, it is being persistently hit by naked violations and monumental aberrations. Why is it so ? What has gone wrong, and where ? Why in this 21st century civilized nations of the world are openly negating by their action the universal human rights to which they had committed themselves over six decades ago ? To check this reverse gear trend is indeed the most crucial and pressing need of the hour. Be that as it may, diversity of religions cannot be wished away or wiped out. Every plural society having religious diversity must be humanized and weaned from cannibalistic habits. Comity of denominations, not a zoo of savage faiths, must be the governing code of religious pluralism in the human world. The ways and means of how our international human right instruments, national constitutions and domestic laws can help in this noble mission will, let us hope, be explored by the participants of this conference.