

**RELIGIOUS FREEDOM IN THE CONTEXT OF ASIA**

by

**FABC Office Of Theological Concerns****CONTENTS****PART I. The Asian Context of Religious Freedom****A. The Asian Political Scene**

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## **PART I. THE ASIAN CONTEXT OF RELIGIOUS FREEDOM**

### **A. The Asian Political Scene**

#### **INTRODUCTION**

Asia, the earth's largest continent, is the cradle of the great religions of the world and the birthplace of varied spiritual traditions. The Asian population (3,456,280,000) comprises 60% of the world population (5,687,344,000). As heirs to ancient cultures, religions and traditions, the peoples of Asia live in a context where religious freedom is urgently needed to sustain efforts of promoting justice, peace, harmony and communion. The Asian situation today manifests certain common features but also great diversity.

#### **HISTORICAL BACKGROUND**

The complex reality of Asia includes, besides a rich diversity of cultures and religious traditions, a history of struggle for independence associated with the people's striving for national and collective identity and concern for the preservation and flourishing of their cherished religious and cultural traditions.

The development of Asian societies was both stunted and accelerated by Western influences. Some positive contributions of the West were: the benefits of modern education, Christian principles and values, health care, technology, and the development of international relations. Paradoxically, these benefits awakened the aspirations of Asians for fuller development and political sovereignty. These aspirations were strengthened by their experience of exploitation by the colonial powers and reactions to the perceived imposition of Christian religious beliefs and practices. Movements for political independence manifested the Asian peoples' desire to shape their own political destiny based on their religious and cultural heritage.

The Asian struggle for independence was helped by the changing political climate in the West and other factors that favor democracy such as the creation of the United Nations. Upon

gaining independence, Asian countries joined the family of the United Nations committed to international cooperation, peace and harmony. The commitment to peace and harmony in Asian nations is often, if not always, associated with upholding religious principles and values.

As democracy spread into the Asian scene, it was adopted into the political systems of Asian countries. In some cases, however, this was done together with the recognition of a state religion which most frequently was the religion of the majority. This situation caused apprehension on the part of minority groups. As time went on religious freedom was further threatened by military rule, religious extremism, and ignorance.

## **THE POLITICAL SCENE**

Opening up to the international community meant for Asian peoples accepting principles and practices that meet the challenges of international relations. In many countries, democratic principles and practices, including the freedom of religion, are guaranteed by the constitutions.

### **a. Constitutional Guarantees**

The constitutions of many Asian democracies provide for the freedom of religion.

Every person enjoys full liberty to profess any religion, any religious denomination or religious tenet, and to exercise a form of worship in accordance with his belief, provided that it is not contrary to his civic duties or public order or good morals.

In exercising the liberty referred to in the first paragraph, every person shall be protected from any act by the State, which is derogatory to his rights or detrimental to his due benefits on the ground of professing a religion, or a religious denomination or religious tenet, or exercising a form of worship in accordance with his belief which is different from that of others. (1978 Constitution of Thailand, §25.)



All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the ground of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted. (1997 Constitution of Thailand, §30.)

Many constitutions affirm the freedom of citizens to profess any religion, to adhere to any religious tenets and to worship according to their beliefs. Religious freedom also includes the right to be protected by the State from any harassment because of the profession of religion or exercise of worship. Religious objects, places and assemblies are to be respected. The constitutions also seek to insure that religion will not be a cause of discrimination in society.

Even countries which have adopted a state religion (Malaysia, Sri Lanka, Bangladesh, Pakistan) provide for freedom of religion in their constitutions but with clear limitations and restrictions to insure that the state religion is given priority. The Constitution of Malaysia has the following provisions:

Islam is the religion of the Federation...other religions may be practiced in peace and harmony in any part of the Federation. (§3[1].)

Every person has the right to profess, practice and propagate his religion. (§11[1].)

Every religious group has the right to manage its own religious affairs; to establish and maintain institutions for religious or charitable purposes; and to acquire and own property and hold and administer it. (§11 [3].)

Every religious group has the right to establish and maintain institutions for the education of children in its own religion, except that in the case of Islam, public funds may be used for this end. (§12[2].)

The same constitution provides for freedom against discrimination on the grounds of religion and race in the administration



of education in the country and the application of public funds allocated for education (§12[1]) and against coercion to receive instruction or to take part in any ceremony or act of worship of a religion other than one's own (§12[3].)

The constitution of Sri Lanka guarantees religious freedom but priority is given to Buddhism. The 1972 Constitution of Bangladesh affirmed equality for all religions, that is, legal equality and freedom. With the military takeover, Islam was declared the state religion. Islam remains the state religion even after the return of civilian rule. The 1945 Constitution of Indonesia declares Indonesia to be a Pancasila State, that is to say, it is founded on five principles: (1) belief in the One, Supreme God, (2) nationalism or the unity of Indonesia, (3) social justice, (4) humanity and (5) democracy.

The Objectives Resolution of 1949 of Pakistan states that:

Pakistan will be a state wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed; wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam, as set out in the Holy Quran and the sunna; adequate provision shall be made for the minorities freely to profess and practice their religions and develop their culture.

The right to religious freedom is provided for in §18:

Subject to law, public order and morality, (a) every citizen shall have the right to profess, practice and propagate his religion, and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

## **b. Amendments and Laws**

Changes in the ruling parties or form of government led to some changes in the constitutional provisions guaranteeing religious freedom as well as to laws that tend to be protective of the state religion.

With the Islamization of Pakistan in all areas of political and social life, article 2A was introduced into the Constitution which reiterated the original statement except for the deletion of the word "freely". It reads thus: An adequate provision shall be made for the minorities to profess and practice their religion and develop their culture. The Islamic Republic of Pakistan requires that the head of State be a Muslim and that no laws aversive to the injunctions of Islam be passed by the legislature.

The 1991 Constitution of Nepal established a British style Parliamentary Democracy with the King of Nepal as Head of State. Nepal remains a Hindu State and the King must be a Hindu. One has full freedom to practice and support one's traditional religion, provided that no one may cause another to change his or her religion. The General Law of the Land (Muluki Ain) provides that:

No one may cause disturbance to the religion of Hindus in Nepal by preaching Christianity, Islam, etc. or converting someone to these religions. If anyone does so he is liable to three years in prison. If this action has resulted in conversion he is liable to six years in prison and if the person is a foreigner expulsion from the country. If any Hindu changes his religion as described above and changes to any religion he is liable to one year in prison. If he is a foreigner he is to be expelled from the country. Furthermore, anyone so changing his religion will be fined one hundred Rupees and he will still be considered to be a Hindu.

In India the constitutional guarantee for freedom of religion has been hindered or impeded by subsequent state laws. Anti-conversion laws, despite the rejection of the anti-conversion Bill in 1954 by the Union Parliament, did enter into the Freedom of Religion Acts which became operational in Orissa (1967), Madhya Pradesh (1968) and Arunachal Pradesh (1978). These acts were designed to curb propagation of religion: no person shall convert or attempt to convert any person from indigenous faith. The 1999 Gujarat Freedom of Religion Bill requires District Magistrates to report details of persons involved in conversion. Conversion to Christianity is considered an offence. In Orissa permission should be obtained for conversion.



The constitutional provisions give one a view of the scope and extent of religious freedom generally accepted in principle by the Asian peoples. Concern for public order and the acknowledged norms of morality set the broader limits of religious freedom in civil society. In countries where politics and religion are closely linked, the understanding of public order varies. In this regard, concern for political sovereignty, national identity and the preservation of cherished religious and cultural traditions affect the environment of religious freedom in Asia.

To understand the problems that have arisen in the practice of religious freedom in the Asian context, it is worthwhile to take a broader perspective and also look at other factors which impinge on the Asian scene: globalization with its attendant values and principles, the ease of communication and the rapid advance of information technology, the continuing struggle for a decent human life among marginalized groups, the yearning for spiritual experience and meaning found in contemporary society, fundamentalist reactions to the disintegration of social values and norms.

### **c. The Gap between Vision and Reality**

In most Asian countries, there is no lack of fundamental laws for the protection of religious freedom. The political dominance, however, of a religious group in a country has given rise to control of and discrimination toward minority religious groups.

The limit to religious freedom in many constitutions is expressed in the clause "provided it is not contrary to civic duties or public order or good morals." Common good and public order are, however, defined by the ruling clique and in some cases, the phrase "subject to law, public order or morality" has been used to deny religious de facto freedom to certain groups.

Restrictions of religious freedom are experienced in reality when laws make conversion out of the state religion an offence, when construction of places of worship is stopped or delayed, when religious materials are confiscated, and believers are denied access to such materials and even to instruction about their religion.



Political instability produces another constraint when multiple political parties and the constant infighting among politicians within the various parties themselves produce an inherently unstable government that is unable to defend the rights of the weak. This causes insecurity and anxiety among people of the minority religions.

Religious extremism has produced a situation of discrimination and even downright persecution of religious minorities. From time to time, this has flared up in communal conflicts and atrocities visited on the minorities. Christians and other religious minorities suffer at the hands of militant and religious fundamentalists. Virulent propaganda is hurled against them. In the name of nationalism and patriotism, violent acts are committed against minorities, including Christians, who are accused of anti-national activities. Sometimes, even the government approves and protects organizations that seek to destroy places of worship of minority religions.

In certain countries, though the constitutions may give religious freedom, it is interpreted to mean that there is freedom only if the religion agrees to be controlled by the state. In the Philippines where Christians remain the majority, the continuing challenge is to go beyond prejudice and to dialogue with other religions so that peace and harmony can be attained.

## **B. Socio-Economic and Cultural Realities**

The debate on religious freedom has gained new importance. Karl Marx predicted the total disappearance of religion as the productive forces in society develop and reach their apex bringing changes even to capitalist and socialist regimes and finally resulting in a total communist regime. The establishment of a totalitarian government on the communist model in Russia and in China, and among their allies, resulted in the rejection and denial of the rights, dignity and freedom of the human person, especially the right of religious freedom. Marxist socio-economic principles have failed the people and Communist regimes in the east and the west have fallen or have lagged far behind democratic countries. Chinese communism has totally changed in nature due to internal struggles and a resurgence of de facto capitalism.

The world has not forgotten the cruelties of Nazi totalitarianism and its sweeping attack on all manner of religion. The genocide that emerged in the name of the Aryan race is today showing its ugly face in several atrocities often referred to as "ethnic cleansing" (Serbs and Croats in Eastern Europe, Nagas and Kuchis in Northeast India, communal conflicts in Indonesia today, etc.) Often the religious affiliation of the people affected is a factor in such persecution. In such circumstances the question of religious freedom cannot be ignored.

In the 1950s and 1960s people spoke of secularization as a continuing process that would lead to the gradual decline and disappearance of religion. This is not what has happened. Today we are living in an age where the spiritual plays a vital role in the lives of people. Religious sects and movements multiply and increase. In this connection it is useful to remember what Harvey Cox wrote:

In 1965, much under the influence of Bonhoeffer's theology and greatly concerned about what the expected decline of traditional religion might do to the relevance of Christianity, I wrote a book called *The Secular City*. The world of declining religion to which my earlier book was addressed has begun to change in ways that few people anticipated. A new age that some called the post-modern has begun to appear. Rather than an era of rampant secularization and religious decline, it appears to be more of an era of religious revival and the return of the sacred. (*Religion in the Secular City* [Simon & Schuster, New York: 1984] p. 19-20)

Western thinking dichotomized the world separating the sacred from the profane. Whatever could not be manipulated or controlled by humankind was termed sacred and the rest was profane. Religion fell in the realm of the sacred, science in the realm of the profane. As science pushed back the frontiers of knowledge, the realm of the sacred continually shrank. This was the premise behind Karl Marx's prediction that one day religion would disappear.

The Asian world view does not dichotomize the world but



hierarchizes it from the least sacred to the most sacred with everything falling between those two extremes. The most essential would be at the top of hierarchy and from there one comes down in degrees to the least essential at the bottom of the hierarchy. Hence whatever exists has the potentiality of becoming more or growing. This comes about with time and is not a project that men and women have to execute or fulfill. Hence the Asian mind proceeds along a continuum and does not have to jump from one watertight compartment to another or from one pole to the other. It is this process of symbiosis that helps a human being to progress from the existing reality (one pole) to the potential (the other pole of fulfillment). A quotation from Brihad Aranyaka Upanishad 1.3.28 shows this clearly:

Lead me from the unreal to the real.  
Lead me from the darkness to light  
Lead me from death to immortality.

It is this symbiosis which can unite the two extremes into one reality in a hierarchy. Therefore certain dichotomies that one finds in western thinking, i.e. idealism versus materialism, the sacred versus the profane, science versus faith and religion do not exist for Asians. Both extremes combine together in a continuum and intermingle from the very start by virtue of a person's experience of immanence and transcendence. This is a holistic approach to reality, which in fact, in gaining more and more acceptance in the West.

Here we may refer to the Asian approach to truth as conjunctive that says "both and" in contrast to the disjunctive Western approach that affirms "either or". The former is flexible, tolerant and open to dialogue whereas the latter is prone to intolerance and resistant to dialogue. In our discussion of the right to religious freedom, the above remarks on the different approaches to truth are not irrelevant. Though we do not enter into the truth claims of different religions, we affirm that imposition of truth does violence to the right to religious freedom. If we want to promote a milieu supportive of the right to religious freedom, we need to foster the virtues of respect, listening and dialogue which the Asian approach is likely to foster. The great lesson Christianity can learn from Asia is that besides "either or



" approach to truth , there is another approach to truth " both and " that is likely to foster dialogue

We may add a note to the Asian worldview on the ideas of religious freedom in Indian tradition and history. We presume similar traditions are present in the religious traditions of other countries. In Rig Veda, we have the well-known saying: "Ekam sat, viprah bahuda vadanti" meaning: Reality is one; the wise speak of it in different ways. This means that people accept the many ways the reality is seen. Hence there is respect for the plural ways of religious following. The six darsanas (ways of seeing reality) of Hinduism point to pluralism and its acceptance. The doctrine of anekantata of Jains echoes the Rig Vedic idea mentioned above. There is basically openness and acceptance of many ways of reaching the Absolute. The three margas of bhakti (the way of devotion and love), karma (the way of action) and jnana (the way of knowledge) also point to the plural ways of reaching God or the Absolute. This means recognition that each one has his/her own adhikara (marga), and that is each one is spiritually endowed for one or other marga of salvation.

The emperor Asoka in 3rd century BC after the famous war of Kalinga renounced ways of war and adopted non-violence and became a Buddhist. The Edict of Asoka advocates practice of ahimsa that includes tolerance towards all religions.

Later the Moghul emperor Akbar wanted to bring all religions together and wanted to create a new religion for all (Din Illahi). He meant respect for different religions . It was a way of coping with religious pluralism. In India , there have been religious wars between Jainism and Hinduism. But on the whole there has been openness in the tradition to welcome and accept different and new approaches and views in India . In Tamil literature , Tirukural says that true wisdom is to see or discover the truth from whosoever it comes ( this is roughly the meaning of the text , not a translation) Another saying goes like this : " all villages and towns are my home towns and all people are my kinsfolk " a motto of the state of Tamilnadu in India. The present Constitution of India that guarantees religious freedom for all citizens reflects this heritage together with influences of the modern democratic traditions and movements. This is being dis-

turbed recently by the Hindu fundamentalist groups and attempts to legislate people's mobility from one religion to another through anti-conversion laws against the spirit of the constitutional right of religious freedom.

When one comes to reflect on religious freedom in this context, one sees freedom not as a freedom to accept an abstract truth but freedom to search for the fulfillment of one's self in life. The Asian does not seek abstract truth or conceptual knowledge but a concrete realization of the divine at the level of experience of God. The significance of religious freedom changes in the Asian context and hence the theologian is challenged to develop an understanding of freedom that is congruent with the Asian way of thinking.

In recent years the question of religious freedom has assumed a new sense of urgency. One reason for this is certainly that religion is re-emerging as a major force on the global scene. What could be the reasons? Could it be that the process of westernization accompanying modernization has forced on us a mode of rational thinking in religion? This in turn has created a spiritual vacuum in which there is no room for the spiritual or a spiritual vision. There is nothing to ground a sense of community and mutual involvement in the solution of common problems.

In this connection it is interesting to note the observations of the World Council of Churches in 1981.

In many parts of the third world, there is taking place a religious renaissance with a strong socio-political component which challenges the modernist and secularist ideologies of the North, both East and West. The fact is that a large number of communities consider religion as an important focus both in the struggle for liberation from oppression and the struggle for critical self-identity and development in terms of their own historical ethos. In an increasing number of "periphery" countries, such perceptions have begun to conflict with "modernization" models as propagated or imposed by "center" countries, since these models are seen not as promoting true development, but on the contrary, as distorting development and perpetuating underdevelopment. And since such "mis-development" has been associated with



secularization, disenchantment with the former has gone hand in hand with disenchantment with the latter. And because Christian theology has been able to accept and even legitimize this secular development, Christianity itself tends increasingly to become a target, along with secularism, of religious reaction. (Ninan Koshy, *Religious Freedom In A Changing World*, [Risk Book Series # 54, WCC Publications, Geneva: 1982] p. 59-60.

Sometimes ethnicity or the thrust for a national identity has been linked to a particular religion. One can think of the case of a Singala Buddhist country or in the case of the Serbs & Croats. Often this connection has been reinforced by the influential leaders of the countries. In such a case religious freedom becomes a key issue. A critique of this attitude cannot come from without but must come from within the society. This is further complicated by the fact that within such societies the religious leaders often become supporters of the policy rather than critics. This is the tragedy of today when the protectors of religion have become predators. How can Christianity raise its prophetic voice amidst this scenario in Asia? If we find such a situation within the Catholic community, how do we face this contradiction? These are crucial questions.

In certain countries, religious convictions have been the main stimuli to give direction to the democratic transformation of societies and a defense and promotion of human rights. The Church's influence in the Philippines during the attempts to overthrow Marcos in 1986 and Estrada in 2000 and the Buddhist influence on the 1992 non-violent uprising in Thailand are examples from within Asia. In Latin America religious forces demanding human rights and a basic living for the poor, have been an influence on the overthrow of dictatorships in the past three or four decades (Brazil, Uruguay, Argentina, Chile, Bolivia, Mexico, El Salvador, Guatemala, and Colombia). In the words of Nina Koshy:

Sacred texts from the Bible or the Quran have proved to be more powerful than United Nations declarations and National Constitutions both as motives and as a basis for political action... Resurgence in other religions has sometimes had political implications as well. Within Christianity this has ranged from fundamentalist Chris-



tians rallying support for a conservative stance on national and international political issues to liberation theologies inspiring political action for justice and human dignity by the marginalized. The Church has sometimes been thrust into a position of political opposition, especially in situations in which all opposition movements and groups have been banned and the Church has become the only space for dissent and defense of human rights. In many places in the developing world, religion has become the only vehicle for the articulation of popular grievances. (Op. Cit, p. 62)

What are the implications of this potential political power of religion? Any power becomes brutal if not guided by authentic human values for liberation. Theologians have an important role to play here to show how such political action is truly based on Gospel values and leads to authentic human liberation.

Yet, we do not work alone. Today the main forces that support religious freedom in the world are the communication means: instant communication via satellite, the Internet. The increased vigilance of the global human rights movement, and the press give worldwide publicity if there are instances of religious persecution. There are international human rights organizations like U.N. that can exert pressure on governments to provide the legal and political requirements of constitutional democracy and to ensure religious freedom.

### **C. Fundamentalism**

One of the most characteristic notes of modern society is the current process of globalisation which brings rapid and unsettling change into traditional societies. The rapid change bewilders people and produces a sense of confusion. It produces a breakdown of the cultural fabric and begets, as one possible response, the fundamentalist who advocates a return to the old stable way of life and, in the process, becomes intolerant of others. Though the immediate causes of fundamentalism differ from culture to culture, the anthropologist sees a common pattern.

A culture is a complexus of symbols, myths and ritual, which protect people from what human nature fears most: chaos and confusion. A culture creates a protected area of meaning in the midst of vast meaninglessness, a small clearing in the jungle where one can feel at home and secure, an ordered society, where one may at times feel persecuted and marginalized-but whose rules and values one knows. One knows how the system works and learns how to manipulate it to provide for oneself and one's family a measure of security and the good things of life.

A culture provides a sense of security which is fed by the symbols of one's culture, but, even more, by the meanings they point to, the values they embody. These are enshrined in the stories or myths which enshrine these values and are constantly retold. These meanings and values are constantly reinforced by ritual, i. e. repeated, stylised and symbolic use of bodily movement and gesture within a social context, used to express and articulate meaning.

Yet, a culture is not static; it is a living entity ever changing and developing. The most conservative and static culture is still a restless, changing organism. In a stable society, cultural changes take place gradually with little disruption to the life and sense of security of people. Today, however, we live in an age of constant and rapid social change where there is often a massive breakdown of culture. One of the possible reactions to this phenomenon is a retreat into fundamentalism.

Whenever there is a massive breakdown of culture, a certain percentage of the people take refuge in fundamentalism. Terrified by the chaos and meaninglessness which they experience encroaching upon their lives, they retreat into fundamentalist secular or religious cults or sects which give them a sense of belonging and self-worth. Such movements always romanticize an imagined former golden age and seek to restore that age with its symbols and values in tact.

Psychologists describe the typical fundamentalists as "authoritarian personalities", persons who feel threatened in a world of conspiring forces. They think in simplistic and stereotypical terms, and are attracted to authoritarian and moralistic answers.



This flight into the past, of course, solves nothing, and at some stage these people must face the changed world out there. In the meantime, they become a divisive influence in society, but they also continue to suffer, and those who strive to bring about a reconciliation within society ensure the failure of their endeavours, if they fail to address the pain.

Fundamentalism is a reactionary emotional movement that develops within cultures which are experiencing rapid disintegration. Uncritical and insensitive radical-liberal changes in the 1960s and 1970s plus the rapid technological advances of the same period, created the conditions for a world-wide retreat into fundamentalism. The information revolution of the 1990s, the Global Market and the growing influence of such international organizations as the IMF, the World Bank and the various agencies of the United Nations, have served to accelerate the rate of change. There was a time when the man or woman in the village lived in a secure world that had clear boundaries and was sufficiently explained by the village myths. The boundaries were first extended to encompass a whole nation, often made up of people of different traditions. Now there are no boundaries. The young draw their mythology from the global TV, the middle-aged absorb the values of the global village, and the old are bewildered.

The rise of religious fundamentalism is of concern to people all over Asia today and Christianity is not immune to the virus. Christian fundamentalists often engage in aggressive proselytising among other Christians and among followers of other religions. People of other religious traditions find this insulting, demeaning and threatening. It disrupts the harmony that was once the dominant trait of so many Asian societies. It gives Christianity a bad name and is not justified by the tradition of the early Church which one finds portrayed in the Acts of the apostles. The apostles set out to preach the Good News of the coming of God's reign in Jesus Christ. They spoke against abuses in other traditions; they demeaned no religious tradition.

Within the Catholic Church itself fundamentalist movements have crippled the rest of Catholicism by inhibiting its response to social problems, obscuring its former image of hope and outreach, and setting sectors of the Church against each other.



Many prophets are intimidated, and are unwilling to risk their careers on behalf of the causes which annoy the fundamentalists: women's rights in the Church, civil rights, environmental questions, the world economic order, support for Third World Churches and their struggles for liberation and inculturation.

If one is to address the fundamentalist threat, one must first realize that many of the concerns expressed by the fundamentalists are valid concerns, and should also be our concerns. After all, the Gospel challenges all cultures-ancient cultures, yes, but also the current culture and the values of this culture which are propagated by the mass media, the arts and popular entertainment. Many of the same values are embodied in the activities of international organizations, such as the World Bank, the IMF, family planning and development programs. Are such values as consumerism and unrestricted individualism Gospel values? Does the so-called free trade of the present global market, which seems to further widen the gap between the rich and poor, build up the Reign of God in our World. In the present age of rapid change and uncertainty, how does the Gospel provide us with the security necessary to exercise the freedom of the Children of God, and to join hands with people of other faiths and traditions to provide a better world?

At another level, the fundamentalist movement is a critique of "modernism," a philosophy of life which has substituted human values for Gospel values, a philosophy which substitutes a scientific, rational attitude for revelation. The fundamentalists contend that the Churches have surrendered rather than meet these issues. In an Asian context even such documents as the "Universal Declaration of Human Rights" are sometimes seen as a Western imposition which does not have its roots in Asian traditions. Certainly we must admit that the document is of Christian inspiration, and that we should engage in a constructive dialogue with people of other traditions in our own countries, to come to a formulation of Human Rights that is acceptable to all.

Finally, globalisation, as an exchange of information, goods, services and relationships on a global scale, can be a good thing. The world is full of variety: of creative produces, philosophies, religions and political or economic systems. Exchange products

enrichment; but it can also lead to a domination of one particular group over others, leading to the destruction of whole cultures and traditions.

A local Catholic Church is never turned in upon itself concerned only with the care of the faithful within its boundaries whether those of a parish or a diocese. The Church always reaches out to bring the Good News of Jesus Christ to the community as a whole. We have something to share with men and women of all faiths and must join hands with them .

In PART II, the paper deals with moral theological foundations of the Right to Religious Freedom in the tradition of the Church, its development in the history of the Church and the magna carta on Religious Freedom of the Second Vatican Council, namely the Declaration on Religious Freedom (*Dignitatis Humanae*) and its consequences for effective law and its embodiment also in the documents of the U.N.

## **PART II**

### **MORAL THEOLOGICAL FOUNDATIONS AND THE TRADITION OF THE CHURCH**

#### **A. Moral and Theological Aspects of Religious Freedom.**

Right to religious freedom is based both on the nature of the human person and human dignity and the social goals of human persons living as a community involving socio-cultural civil, juridical and political dimensions of life in common. This would be clarified by the social and relational nature of human beings. Every human person is rational (endowed with reason understood in all its meaning), relational and responsible and is constituted in fundamental freedom to be, to become, to grow, to relate and to act.

In the Christian tradition, creation of humankind as man and woman in the image and likeness of God (Genesis 1:26-27) is considered the foundation of the dignity of human person. Every



human person, man or woman and the community of persons are the image of God. Human community is a community of relationships in love and freedom called to fullness of life and communion with God. It means that every human person is called to seek truth towards fullness of life and communion in knowledge, freedom and love building relationships and solidarity. It also means that human beings by their very nature and calling enjoy a freedom essential to their nature and dignity to seek the truth, and realise their vocation to communion of life with God and one another. Freedom of conscience is intrinsic to this dignity and vocation, and right to religious freedom flows from this dignity and destiny of human person.

The same Christian tradition affirms the reality of sin ( cf Genesis 3), which has marred the dignity of the human person and disfigured the image of God that every human being is. God has not abandoned humankind but graciously willed to save them not only from personal sin but also from the effects of sin entering into the structures and institutions of society and culture. At the same time God has willed to redeem humankind from sin and restore humankind to its pristine vocation to communion of life in fullness with Him and with one another. Christian faith affirms that redemption of humankind has been fulfilled in the paschal mystery of Jesus Christ. This truth of faith means that the dignity of every human being has been redeemed by the blood of Christ.

The Christian moral tradition on the one hand affirms the dignity and freedom of every human person, and on the other acknowledges the sinful distortions that have entered our history and human community. From this flows a need for guarantee for freedom of conscience and its protection from sinful coercion. There is also need to impose legitimate limits to this freedom to protect public morality and the common good.

Right to religious freedom based on the nature and dignity of human person is therefore a human right. Religious freedom is an essential expression of the vocation of the human person as mentioned above called to engage in search for truth and meaning of life in freedom. If religion has to do with the explanation of the ultimate meaning of life and the way of life flowing from

it, then search for meaning of life and truth is a foundational dimension of a person's humanity (cf L. Swidler: " Human Rights: A Historical Overview." *Concilium*, 1990, no.2, p.14). Granting the right to religious freedom to persons and communities is ethically necessary and appropriate expression of their humanity.

We know that it is essential to the moral nature of human behaviour that human person acts freely and responsibly or that human actions are free and responsible acts of human subjects, which demand acting out of insight implied in human person's search for truth and meaning of life. Moreover, we affirm that act of faith is a free act. We can say that act of faith is eminently a free act. Religious freedom presupposes that all acts of faith are eminently acts of freedom empowered by grace. The necessity of freedom of the act of faith is an unbroken tradition running from the New Testament to today (cf Murray, *Religious Freedom*).

Religious Freedom as a human right based on the nature of human person needs to be understood in a relational perspective. It is not a mere right of individual human beings isolated from others. It is both right of persons and communities. Because of the relational nature of human beings, rights of persons have a social dimension too.

For that matter, human rights in general can be adequately understood only in the light of relational anthropology. Because of this, all human rights including the right to religious freedom can never be privatised. Because of the social nature of human beings, human rights become also duties. If all human beings enjoy human rights as due to them in so far they are human beings, human beings have the duty to respect the rights of each other. Religious freedom as a human right demands a duty to respect, to protect and guarantee it.

Human freedom is not intelligible and meaningful outside of its exercise as right and duty. We could also say that right and duty are not alien to freedom but constitute it and for that matter also religious freedom. We are used to associating freedom mostly or only with right or rights and hardly think of duty as an expression of freedom. In the Indian tradition of dharma, duty is



the expression of freedom. People point out that there is no word for right in Indian tradition. Today we put rights and duties together with stress on duty. This is in keeping with the Indian understanding of dharma. We need to understand the reality and value of freedom in the double manifestation of right and duty. Freedom is manifested and shines forth in responsible action.. A holistic understanding of freedom includes the integration of right and duty as correlative of each other. In the language of human rights, such an understanding is necessary. All this means that duty is not a limitation or restriction of freedom but a manifestation of freedom.

We say that religious freedom is subject only to the limitation of public peace or common welfare, public order and morals. Instead of considering them only as limits to religious freedom, we could think of them as positive expressions of religious freedom. In other words, we need to integrate into the purpose and meaning of religious freedom these so-called limits as social goals as integral to its own meaning. In this line of thinking, we would, therefore say that the true exercise of religious freedom is manifested and authenticated in the service of the social values of peace , common wellbeing , public order and morals.

Religious freedom as a human right is constituted by human nature and dignity. This freedom by its very nature would lead to pluralism in the way and the content of peoples' search for truth and meaning. Such pluralism is not an accidental pluralism (de facto). This situation is more than de facto pluralism. Divine grace delicately respects the concrete historical pace of everyone in the search for truth and meaning, including search for true religion of the Gospel. By the very fact that the church has accepted the doctrine of religious freedom, it has accepted a religious pluralism of a kind de jure. Such a pluralism belongs to the providence of God's ways which we do not fully fathom.( cf J.L.Hooper on the parable of wheat and tares to which Pius XII himself refers in his allocution to the Italian jurists in 1953 ). It is a relative pluralism we have to learn to respect in ecumenism and inter-religious dialogue.

All human beings have dignity. As the Catholic Social Magisterium teaches, the dignity of human persons reaches a very

high level, in fact the highest level in this created world because of the encounters of God with humanity in the following important events of salvation history. First of all, human beings are created in the very image and likeness of God. This divine image in every human being is further enhanced when God embraces humanity and becomes a human being himself in the person of Jesus Christ. This God-Made-Man, finally, gives up his life by shedding his precious blood for the redemption of all humanity. Then the Holy Spirit continues this redemptive work by his continuous presence and sanctification of all human beings. All these encounters of God with humanity clearly indicate a common destiny, a common mission ordained by God for all human beings. In other words, human beings have dignity, a dignity that demands respect for all members of the human family.

Before we move to the teaching of the Council on Religious Freedom, we make a brief survey on the development of the doctrine of Religious Freedom in the history of the Church which will help us understand better the background and circumstances for the significant shift in the doctrine of the Church on Religious Freedom.

### **B. Brief Historical Survey on Religious Freedom.**

In this brief historical survey and development of the right to Religious Freedom, we do not enter into the biblical period either that of the Old Testament or that of the New Testament. Since the history of the question is complex, we recall some significant moments and developments without being exhaustive.

In the pre-Constantine period, Tertullian (212 A.D.) makes a defence of the freedom of worship and the practice of religion. He made this defence before the Roman Proconsul Scapula: "It is a fundamental human right, a privilege of nature, that all human beings should worship according to their own convictions; one human person's religion neither harms nor helps another. It is not proper to force religion. It must be undertaken freely, not under pressure" (L.Swidler, "Human Rights: A Historical Overview" in Concilium, 1990/2, p.14). We could say that it was in 4th century during the reign of emperor Constantine the high



point of Religious Freedom in the early part of Christian era was reached when the Edict of Milan (313 A.D.) was promulgated. Though it is commonly known as an edict, it is not. It was a deal between the emperors Constantine and Licinius to recognise the legal status of the Christian Churches and tolerate all religions equally. This they did when they met in Milan in the early part of 313 AD and agreed on the freedom for all to follow their religions. The sum of this agreement is:

"We should therefore give both to Christianity and to all others free facility to follow the religion which they may desire." ( cf Swidler, pp.14-15 )

For Constantine religious freedom that he gave to all is for the social and political goal of peace and harmony among all peoples in the Roman Empire. But this edict of Constantine of religious freedom for all did not last long. The Edict of Thessalonica of emperor Theodosius in AD 380 restricted it to Christianity. It said that all people of the empire should practice the religion that Peter the Apostle transmitted (cf Swidler, p.15 ).

Later Augustine's view leaned heavily towards the use of coercion to restrict error( of Donatists) for the sake of the religious and civil unity in North Africa. Though Augustine would not endorse capital punishments for heretics, his position that " nothing can cause more complete death to the soul than freedom to disseminate error " ( Letter 105,chap.10 ; cf "Religious Freedom" in New Dictionary of Catholic Social Thought , 822-825 by J. Leon Hooper) encouraged rulers and the clergy to authorize capital punishment.

Thomas Aquinas following his teacher Albert the Great affirmed the freedom of conscience even if it was erroneous( objectively speaking). He rejected the right of use of constraint for any Christian ruler for the conversion of Jews and non-Christians while he was for limiting their public expression ( S.Th. II-II, q.10, art.9; cf J.L.Hooper: Religious Freedom ).Aquinas recognized the natural right of non-Christians and others to bring up their children in their faith and he would not recognize the right of Christian rulers to take away children from non-Christian families ( II-II, q. 11, art. 3 ; cf Hooper, religious Freedom).

But he was severe with regard to the heretics within the Church, endorsing persecution, even capital punishment.

In this connection, we can make a reference to argument over the rights of indigenous peoples in Spanish colonies in fifteenth and sixteenth centuries. Significant person on this question of the rights of the indigenous peoples was the Dominican friar Bartolome' de las Casas ( 1474- 1566 ) who worked as a missionary in Latin America. In his reform programme he stressed two points: 1. War being contrary to the spirit of the Gospel cannot be used for the spread of the Gospel but one must by witness and gentle words preach the Gospel. Persuasion, not coercion is the method of sharing of the Gospel.( cf " Religious Freedom " by Angelyn Dries in *The Modern Catholic Encyclopedia*, Michael Glazier Book, Collegeville, 1994, p.734 ).

2. The right of Spanish king in the New World cannot take away the personal freedom of Indians. This prophetic voice of de las Casas is in continuity with the method and pedagogy of Jesus and 'the early Church's non-coercive advancement of the Gospel' (cf *Dignitatis Humanae* by J.L.Hooper in the *New Dictionary of Catholic Social Thought*, 284-290). As *Dignitatis Humanae* says that the church in its doctrine of religious freedom " follows in the path of Christ and the apostles " and that "it is in keeping with human dignity and divine revelation ." (no. 12). . More on this in the next section.

In the Reformation period, the Augsburg Settlement (1553) and the Peace of Westphalia (1648) promoted the principle that the religion of the ruler was to be the religion the subjects ( *cujus regio,ejus religio* ) .

In this connection, one could mention the case of the missionary method of Robert de Nobili in India. Traditionally, in the history of the missions, missionaries cared more for their freedom to preach the Gospel than for the freedom of the evangelised to hear the Gospel. Missionaries therefore tried to get the good will of the rulers (a kind of royal placet ) or that of the tribal chiefs and thus freedom to preach the Gospel and thus freedom for the Church and cared less for the necessity of freedom of the people to hear and receive the Gospel . De Nobili's method of encounter with the culture of Indians led him



to appreciate and value all that was beautiful and good in Indian culture and religion provided that these did not contain elements that would contradict true religion and morality. He allowed Christians to retain all the valuable elements of culture. It means he respected the humanity of people expressed in their culture. This respect for the cultural humanum of people meant respect for their freedom. Hence de Nobili went against the principle of *cujus regio, ejus religio*. His so-called method of adaptation implied the principle of respect for the freedom of the people in the area of religion.

From the above reflections, it is clear religious freedom should have always been and should always be a doctrine intrinsic to and inseparable from , evangelisation. Authentic inculturation which is an essential part of evangelisation also implies religious freedom. Religious freedom and authentic inculturation are inseparable.

In the nineteenth century, Enlightenment played a prominent part in promoting liberal ideas of freedom and had influenced the formation of the United States of America , the French Revolution that threw up the ideas of liberty, equality and fraternity and the book of Thomas Paine: *The Rights of Man*. Their ideas went against the established religion. Later Catholic liberalism in France (Lamennais, Lacordaire, Montalembert) advocated the liberal ideas of freedom of the press , complete separation church and state and religious freedom. These ideas were rejected as those of liberal Catholics. Pope Gregory XVI censured these ideas in his *Mirari Vos* (15 August 1832) . This was the time of the gradual loss of the Papal States . Then came the condemnations of the liberal idea by Pius IX in his *Quanta Cura* (8 December 1864) and the *Syllabus of Errors*. Some of the liberal or secular propositions rejected by Pius IX in his *Syllabus of Errors* are that: "the Church ought to be separated from the state and the state from the Church" (55) , that "it is no longer expedient that the Catholic Religion shall be held as the only religion of the state, to the exclusion of all other modes of worship" (73), that non-Catholics in catholic countries "shall enjoy the public exercise of their worship" (79), that "the Church has not the power of availing herself of force, or any direct or indirect temporal power" (24) , and that "every man is free to embrace and profess the religion he shall believe true, guided by the light of reason" (24) . Pius also rejected the suggestion that "the Roman pontiff can, and ought,

to reconcile himself to, and agree with, progress, liberalism, and civilization lately introduced"(80) . These condemnations followed the pattern of earlier papal condemnations of liberal ideas.

Historically the position of truth of the Catholic Church that easily developed into judgmental attitude affirming that "we are right and you are wrong" led to inquisitions, intolerance, persecution, punishment of those who dared to dissent and to downright lack of compassion, not to say lack of dialogue. The virtue of dialogue would be considered anathema.

Here we would like to mention that the tradition of the Christendom and that of the nineteenth century still revolved around the thesis that truth, true religion (catholic Christianity) alone enjoys freedom and has rights and that error has no rights and may be repressed or tolerated according to pragmatic considerations , and not because of principle- the latter called hypothesis. In 1865, Felix Dupanloup , bishop of Orleans made the above distinction of thesis and hypothesis to explain the teaching of the century. In his view papal teachings proposed the ideal, the permanent teaching. That is the thesis, but the ideal must be judged in the concrete situation which may allow the Catholics to settle for less than the ideal, hypothesis- hence in this way they may accept the separation of Church and state and religious freedom which would be a matter of prudential judgment. A minority in the Second Vatican Council also veered towards this view and pleaded strongly for such an approach. In the next section, we reflect on the doctrine of the Church on religious freedom in Declaration on Religious Freedom (*Dignitatis Humanae*).

## **C. Declaration on Religious Freedom (*DIGNITATIS HUMANA*E)**

### **1. Introduction to the Declaration**

Declaration on Religious Freedom (*Dignitatis Humanae*) marks a shift in perspective in the official teaching of the Church on religious freedom . It was the last but one of the most historic documents of the Second Vatican Council promulgated on 7th December 1965. It received 2308 positive and 70 negative votes. Eight



votes were invalid. Originally it was proposed as chapter five of the schema of the Decree on Ecumenism. The schema went through five relations and the sixth schema was voted on in the last session of the Council as Declaration on Religious Freedom. It is one of the three Declarations of the Council. This Declaration on Religious Freedom together with Pastoral Constitution on the Church in the Modern World and Declaration on the Relation of the Church to Non-Christian Religions point to the movement of the church to become a church in dialogue with the world and a world church (cf Karl Rahner). Declaration on Religious Liberty has two chapters. The introductory section has the title: "On the Right of the Person and Communities to Social and Civil Liberty in Religious Matters." Chapter 1 has the heading: "The General Principles of religious Freedom." Chapter 2 has the title: "Religious Freedom in the Light of Revelation." Chapter 1 contains the main teaching of the Council.

## **2. Some aspects of the discussion on the schema of the Declaration.**

When bishop De Smedt introduced the relatio, he said that the purpose of the document is limited to the question of civil liberty in religious matters meaning that individuals and groups are free from coercion in religious matters. It was also recalled that by the time of the Council more than 100 countries included the provision for religious liberty in their national constitutions. The main point of the document could be stated in the following propositions: 1. Every person has a natural right not to be coerced to act against one's conscience; 2. has a right not to be impeded in acting according to one's conscience; 3. this right means freedom to express one's religious convictions and 4. this right is subject to certain limitations.

The open and full discussion on religious freedom in the aula of the Council removed the restriction that prohibited discussion of the topic ten years earlier. The discussion revolved around two views on the topic. One view considered that the church in possession of the one truth had the right to religious freedom (a position called thesis) and allowance of other religions and separation of Church State could be tolerated (called hypothesis). According to this view, Catholic state was the ideal, the thesis. Cardinal Ottaviani, Italian and Spanish bishops supported this position. Bishop Lefebvre belonged to this group.

The second view, a newer perspective considered religious freedom as a civil and human right embodied in constitutional law. It is an expression of growing democracies recognising religious freedom for witness and practice affirming immunity from being constrained to act against one's conscience. This stood for the freedom of the church in her mission and the rights of the human person whose act of faith required freedom. The second view was supported by the bishops of the United States, cardinal Frings, Bp De Smedt, Jerome Hammer and Congar and also the British bishops, especially cardinal Heenan who made a vigorous plea for the Declaration. Cardinal Heenan said that the statement on religious freedom is to proclaim the Church's belief in religious freedom for all humankind and that it is a welcome sign that the Catholic Church is strongly committed to religious freedom. The notion of religious freedom as political and religious immunity is not to be considered lesser of two evils as the proponents of the first view would hold. It is a positive right.

### **3. The Basic Perspectives of *Dignitatis Humanae*.**

#### **Analysis of the Articles.**

(For this section, cf the excellent commentary by Pavan in *Commentary On The Documents of Vatican II*, Vol. IV edited by Herbert Vorgrimler, pp.49- 86).

We consider below the main arguments and perspectives in the different articles in the two chapters of the Declaration.

#### ***Chapter 1.***

Religious freedom in the present historical situation is a mutual right in social relations and is seen as an expression of personal dignity and exercise of responsibility. In this Declaration, the traditional position on the moral duty of human persons and communities towards the true religion and the one true Church is not considered. Moreover in the view of the Council, the doctrine on religious freedom evolves and develops through various papal contributions. Recent popes have emphasised the dignity of the human person and the inviolable rights flowing from this and the constitutional order of society (article 1).



In article 2, doubtless the most important of the Declaration, we get the essential content of the document. The solemn declaration of the Council on religious freedom is the first sentence : " The Vatican council declares that the human person has a right to religious freedom ." (L. " Haec Vaticana Synodus declarat personam humanam ius habere ad libertatem religiosam" ) . In the first part of the article we have the main points : 1. Every human person enjoys this right because he/ she is a person; 2. This freedom is first and foremost an immunity from coercion from individuals, or social groups or any human power ; 3." Within due limits no men or women are forced to act against their convictions nor are any persons to be restrained from acting in accordance with their convictions in religious matters in private or in public, alone or in association with others" (CF Austin Flannery, *The Basic Documents of the Vatican Council II*) ; 4. The right to religious freedom is founded on the very dignity of the human person known through the light of the revealed word of God and reason ; 5. This right must be given recognition in the constitutional order of society.

There was a strong minority which considered this right just as a positive civil right . But the majority were for affirming that this right is a fundamental right of the person or a natural right founded on the very nature of the person. The object of this right is an immunity or freedom from coercion. It means compulsion is excluded in the religious sphere. Hence the object of the right is not connected with the content of religion as true or false. The deeper reason why the content of religious faith cannot be the object of religious freedom is that the matter of relations between the content and persons is not legal but belongs to the realm of metaphysics, logic or morality (CF Pietro Pavan, *Declaration on Religious Freedom*, in *Commentary on the Documents of Vatican II*, ed.Vorgrimler, IV, Burns and Oats , 1969,p.66). Moreover, since the right exists in a person, it means all other persons have the duty to recognise and respect it. Abuse of this right does not destroy it (*abusus non tollit usum*) .

Article 3 affirms that everyone has the right and duty to seek the truth in matters religious in a way appropriate to human dignity and the social nature of the human person. The Council con-

siders the right and duty to seek truth a characteristic trait of human dignity. The social nature requires that human person has the right to communicate with others on religious matters and give external expression to personal acts of religion provided the just requirements of public order are fulfilled. The civil authority must accept and respect religious freedom while recognising their competence is limited to terrestrial and temporal affairs.

Article 4. Article 4. It is important to affirm that subjects of the right to religious freedom are human beings considered as persons, be they believers or unbelievers. Hence this right is stated in its full amplitude. This article states that religious communities are also subjects of the right to religious freedom and enjoy immunity from coercion just as individuals do when they act in community. While these communities are not to be prevented from organising themselves and their lives according to their own religious principles, they must " at all times avoid any action which seems to suggest coercion or dishonest or unworthy persuasion, especially dealing with the uneducated or the poor. Such a manner of acting must be considered an abuse of one's own right and an infringement of the rights of others "(Flannery, pp.555f). It means that religious witness must be ready to forgo even the slightest hint of coercion (J.L. Hooper, *Dignitatis Humanae*, New Dictionary of Social Thought, 822-825). Avoidance of coercion as mentioned here not only makes for credibility but also for authenticity of what we want to communicate and share with others (here we recall Pope's asking for pardon for the mistakes and wrongs which the members of the church had done in the past on Ash Wednesday of the Jubilee Year).

Article 5. This article affirms that besides individual human persons and religious bodies, families are also subjects of the right to religious freedom to order their own religious life under the care of parents. Parents have the right to decide on the religious education of their children in accordance with their religious beliefs, have therefore the right to choose schools and institutions to fulfill this purpose. Hence governments must recognise this right of parents and should not impose unjust burdens in fulfilling this right. This is in keeping with the catholic tradition that the family is the basic unit of society . It is right and proper



that this basic cell of society enjoys this fundamental civil and human right .

Article 6. In the view of this article, right to religious freedom is part of the common good of society. Because of this, its protection is " the common responsibility of individual citizens, social groups, civil authorities, the church and other religious communities. The civil authority must effectively safeguard the right to religious freedom of all its citizens by appropriate legislation and other means. If there is a case for special legal recognition of a certain religion (on this there was a division of opinion among the fathers) , it was asserted that it was imperative that the right to religious freedom is granted to all citizens and religious bodies and made effective in practice (cf Pavan, p.72 ). All efforts to make provision to favour a Catholic state were neutralised by the ringing affirmation that the right to religious freedom belongs to all without any partiality towards one or another . Equality of all citizens before the law (in juridical language called rule of law) should be never violated (Article 7) .

This article considers the full social nature of the exercise of the right to religious freedom. It has to be exercised with respect for the rights of others and the demands of the common good (Article 7, para 1 ). That people can abuse this right does not abolish the right as mentioned earlier. Abuse can be controlled by juridical norms which are in conformity with the objective moral order ( Article 7, para 3 ). The critical question was what should be the criterion to prevent the abuse of religious freedom. The suggestion that the common good if violated, could necessitate the state to limit the exercise of religious freedom was found to be too general and vague. Finally the fathers agreed on the criterion of public order which includes the elements of the effective protection of the rights of all the citizens and the peaceful settlement of conflict of rights, adequate protection of public peace and the proper guardianship of public morality. Genuine public peace comes about when people live together in good order and true justice ( 7, para 3 ).The criterion of public order may become an ideological tool in the hands of authoritarian and dictatorial governments and used wrongly by them but still it was retained as the criterion for the lawful limitation of religious

freedom. Of course today, we need to be careful about the use of law and order principle. Religious freedom should always be governed by the principle that "people's freedom should be given the fullest possible recognition and should not be curtailed except when and in so far as is necessary" (CF Flannery, p.558).

Article 8. This short article emphasises the importance of education for religious freedom which requires respect for the moral order, obedience to lawful authority and love of true freedom - significant moral perspectives for mature morality. This means that people will be able "to form their judgements, direct their activities with a sense of responsibility, and strive for what is true and just in willing cooperation with others" (8, para 2.). It is striking that the Declaration states that education should help people to become "lovers of true freedom." Can education help towards making people as lovers of freedom and promoters of freedom just as making them as persons for others?

## *Chapter 2.*

Article 9. This article states three important things : 1. Religious freedom as a right of persons to immunity from coercion is not directly affirmed in Revelation. 2. but at the same time religious freedom has its deeper root in Revelation. 3. Dignity of the human person on which religious freedom is based is fully known and understood only in the light of Revelation. Christian faith demands freedom and affirms that the act of believing in the word of God is a free act. It means man's relationship to God is to be conscious, free and responsible.

Article 10. This article more or less affirms what article 9 affirms, namely the free nature of the act of faith. Granting the grace of God is necessary, human person comes to a free decision regarding faith. The very nature of faith excludes all coercion. We can recall Augustine's saying "Ad fidem quidem nullus est cogendus invitus (PL, XLIII, 315).

Article 11. This article draws attention to the way Christ and the apostles spread the faith in the manner of invitation, challenge and appeal, the language of the Gospel. The message of God's redemptive love cannot but be the language of persuasion,



freedom and love. This article refers to a number of references to Gospel texts that show that the Lord never used compulsion or exerted coercion upon his hearers. Though religious freedom as a right of the person has not been formally stated in Gospels, the message and the manner of Jesus and the apostles show that the suffering and servant messiah, "a bruised reed he will not break, and a smoking wick he will not quench"(Mt. 12: 20). Theologically speaking, by the nature of the Gospel and religious faith, they can be communicated and received only in freedom. We can assert that religious freedom should be in a sense a constituent and inseparable element of evangelisation. Hence respect for the right to religious freedom is not just a pragmatic strategy for effective work of mission but a theological requirement of the act and life of faith while recognising its foundation in the dignity of the human person.

Article 12 states that the church in faithfulness to the truth of the Gospel and following the path of Christ and the apostles recognises and supports the principle of religious freedom as being in accord with human dignity and divine revelation. The Gospel as leaven has also contributed in great measure to the recognition of the dignity of human person and has strengthened the conviction that person in society should be free from all coercion in matters religious.

The main point of article 13 is that the church claims her sacred freedom for her mission according to the mandate of Christ. The Christian faithful enjoy the right in common with others not to be prevented in leading their lives in accordance with their own consciences. When the church claims this freedom, it does always recognise this right to freedom in religious matters as the right of all citizens and communities expressed in constitutional law. There is a harmony between the freedom of the church and the religious freedom of all others. Historically when the church entered society with its spirit, people were accorded the right to enter into relationship with God freely and responsibly as symbolised by the Edict of Milan. While the church always defended the principle of religious freedom, the right of men not to be forced to accept the true religion because of the special freedom of the act of faith, was not always respected. We are aware

of the pitfalls of history. The right of people not to be impeded from practising the true religion, that is, the catholic faith (cf Pavan, p.83) the Church always defended. As a pilgrim church, it lived its vicissitudes and committed mistakes and wrongs. Moreover, as Pavan remarks, the church only in modern times began to recognise and teach definitively in the present Declaration religious freedom as a right of the person not to be hindered from practising one's religion whatever it may be. Fr Courtney Murray and the Declaration itself consider this doctrine of religious freedom in its broader meaning and value a true development of doctrine in a growing tradition.

It was also said in the discussion that the freedom demanded by the church for itself did not differ from that which the church recognised and conceded to all persons and other religious communities. Moreover, this freedom as a right of the person is a truth and that it is due to the dignity of person and that it is fully in accord with God's plan of salvation. (cf Pavan, p.84).

Article 14. This article again reminds Christians to share their faith according to the mandate of Christ, always " in the Holy Spirit, in unaffected love, in the word of truth (2 Cor. 6: 6 ; article 14, para 2 ). Again this article emphasises that the Christian faithful in their apostolate should never have " recourse to means that are incompatible with the spirit of the Gospel (article 14, para 2). This article while speaking of the duties of the apostolate, it includes the duty to the rights of the human person. While exercising one's apostolate, " all is to be taken into account- the Christian duty to Christ, the life-giving word which must be proclaimed, the rights of the human person, and the measure of grace granted by God through Christ to men who are invited freely to accept and profess faith (article 14, para 2).

Article 15. The last article takes up the basic motive of the whole document: the dignity of the human person considered historically. The civil and human right of religious freedom to practice one's religion both in private and in public has been recognised in most constitutions. This right is the desire of men today. The Council considers this a sign of the times. This right has been solemnly recognised as mentioned earlier, in the international documents of the U.N. We



should mention that prior to the Council, the World Council of Churches also declared this right.

In the present condition of the human family, religious freedom is greatly necessary. When nations are coming closer together and when cultures and religions enter into closer relationships, religious freedom is all the more necessary for the establishment of peace and harmony. This right of people freely to lead religious life in society needs effective constitutional guarantee. Can we say that religious freedom taught in the Declaration has nothing to do with "glorious freedom of the children of God"? (Rom. 8: 21).

The Declaration is significant in its affirmation of the validity of the search for truth among the followers of other faiths. While freedom for the search for truth (here religious truth) is implied in the right to religious freedom, which is both a theological and philosophical affirmation, the right does not enter into the content of the truth nor into a judgment of the truth or falsity of the content as mentioned earlier.

#### **D. Religious Freedom in the Post-Conciliar Magisterium.**

The church's teaching in *Dignitatis Humanae* has made a basic shift from the nineteenth century approach of tolerance and intolerance of error to the doctrinal teaching of religious freedom as a right due to all. The post-Conciliar magisterium basically affirms the doctrine of the Declaration of the Council and calls for recognition of the right to religious freedom, and relates it to the teaching on human rights.

The synodal document *Justice in the World* speaks of justice being injured through the deprivation of religious liberty preventing people from honouring God in public worship or from publicly teaching or spreading the faith or from conducting temporal affairs according to the norms of their religion (n.23).

The post-synodal Apostolic Exhortation *Evangelii Nuntiandi* (80.5) speaks of respecting the freedom of conscience in the task of evangelisation. "It would certainly be an error to impose some-

thing on the consciences of our brethren. But to propose to their consciences the truth of the gospel and salvation in Jesus Christ, with complete clarity and with a total respect for the free option which it presents - "without coercion, or dishonourable or unworthy pressure" (D.H.) - far from being an attack on religious liberty is fully to respect that liberty, which is offered the choice of a way that even non-believers consider noble and uplifting" (cf also *Ecclesiam Suam*, of Pope Paul VI, n.75 ; concerning freedom of conscience that is relevant to religious freedom cf also *Libertatis Conscientiae*, n.19; *Veritatis Splendor*, n. 31).).

John Paul II in his first encyclical *Redemptor Hominis* (1978) affirms that "curtailment of religious freedom of individuals and communities is not only a painful experience, but is above all an attack on man's very dignity, independently of the religion professed or the concept of the world which these individuals and communities have...In this case we are confronted with a radical injustice with regard to what is particularly deep within man, what is authentically human" (n.17). The Pope in his World Day of Peace Message, 1991 with equal firmness affirms freedom of conscience which religious freedom supposes. According to him "freedom of conscience is a necessary condition for seeking truth worthy of man, and for adhering to that truth once it is sufficiently known" (n.1).

John Paul again affirms that "religious freedom, an essential requirement of the dignity of every person, a cornerstone of the structure of human rights, and for this reason an irreplaceable factor in the good of individuals and of the whole society... the freedom of individuals and communities to profess and practice their religion is an essential element for peaceful coexistence" (World Day of Peace Message, 1998, Introduction).

Archbishop Renato Martino, Permanent Observer of the Holy See to the United Nations in his intervention in the U.N. on 10 November 1999 echoing the words of the Pope said, "Religious freedom constitutes the very heart of human rights." He also stated "religious freedom is a cornerstone of the structure of human rights and the most profound expression of the freedom of conscience". He further stated: "As such, no privilege is asked for, but only respect for an elementary right. Actuation of the



right to religious freedom is one of the fundamental tests of humanity's authentic progress in any age and in any society".

As we saw above, the Church emphasises the need for legal and constitutional recognition of the right to religious freedom. In Part III, we explain the need for , the shape and nature of effective law for this right ,and the legal effect given to the right to religious freedom in the U.N documents even before the Council's Declaration and the later documents of the U.N. applying the right to new situations.

### **PART III.**

#### **A. Effective Civil Law.**

A. The above study of the teaching of the Church on the right to religious freedom shows the imperative of legal embodiment of the right in the law of the States both locally and globally. We need to reflect on the need for effective law to guarantee and protect the right to religious freedom for practice of the civil community. Before we mention the legal embodiment of this right, we give a brief note on the nature and purpose of civil law for effective practice of the right.

Below we give a note on effective civil law, its purpose and nature.

Christians, with their zeal to protect and promote the dignity of the human person, visualize in a civil society an effective protection of civil rights. Consistent with the ethical and theological foundations for religious freedom that we have elaborated, it is obligatory upon the civil authorities to put in place the appropriate legislation and, in addition, to promote a civil culture, that will protect this freedom.

Effective civil law, in this sense, has three closely related facets.

In the first place, in keeping with the negative moral norm of non-coercion, Christian understanding envisages every civil

society to have functional laws that clearly limit the coercive power of the government, so that citizens may practise the religions of their choice without let or hindrance. Such laws, while they speak negatively in that they pertain to a negative moral norm, operate to protect the people from coercion in the exercise of their conscience.

In the second place, as civil rights are positive rights, a civil society, therefore, legislates laws that clearly spell out the fundamental positive rights of the people in the way of fundamental liberties, especially, in the context of the present discussion, religious liberty.

And yet, in the third place, Christian understanding accepts that there ought to be legitimate limitations to one's freedom. This understanding stems from the twin considerations of sin and the common good. Given our human propensity to sin, even positive rights under the law may be abused to such an extent as to render others' civil rights inoperable. Thus, Christians are impelled to also acknowledge that there are legitimate limits to the exercise of civil rights. In this regard, a potential danger war-rants mention: while we accept legitimate restraints on the exercise of civil rights — all of which, to be legitimate, must in turn be limited to the unquestionable interest of the common good — we need to be watchful lest these restraints become a cloak for insidious coercion.

Turning now to the categories of law that ought to be put in place in a functional civil society, the following are consistent with our understanding:

- \* Every person must be accorded the right to profess, practice and propagate his or her religion without let or hindrance;
- \* There should be freedom from discrimination on the grounds of religion in all sectors of public life;
- \* Every religious group must be accorded the right to manage its own religious affairs, to establish and run institutions for religious or charitable purposes; to cater to the



religious education of its members, including the right to publish and use religious literature; and to acquire, own and administer property;

- \* The right to practice one's religion implies a number of things, one of which is the right to do so together with other people, which in turn implies the right of assembly and the right to construct and use places for public worship.

Having said all this, we must return to the idea of "effective civil law". In the Asian context, we see a wide spectrum of realities. On the one hand, there are countries that still do not have religious freedom enshrined in their Constitutions. On the other hand, countries that do proclaim religious freedom in written laws honour these provisions only in their breach. Asians are acutely aware that a Constitution is as good as the will of the people, particularly those holding a political majority, to uphold the principles enshrined therein. Many countries in Asia have over the years witnessed, with grave concern, a steady erosion of their religious freedom enshrined in the laws of their lands. And so, the obligation to provide "effective civil law" must perforce include a political will to cultivate and nurture a civil climate and attitude towards the religious freedom of others who do not profess the same religious beliefs as one does. To be effective, in multi-religious Asia, declarations on freedom of religion or belief, important as they are, must be built upon the right civil culture. This civil culture is one in which the adherents of different faiths subscribe wholeheartedly to the common enterprise of elimination of intolerance and of discrimination based on religion. Herein lie the most serious challenges of our day for those who would work for religious freedom.

## **B. Legal Embodiment of the Right to Religious Freedom in the Documents of the U.N.**

We mention the documents of the U.N. that give clear legal effect at the global level to the right to religious freedom. In the realm of global secular polity, they are expression of cooperation between nations for human rights and right to religious freedom. The U.N. documents are a testimony to such cooperation. We take note of the significant statements on this right in the U.N. documents, especially

the Universal Declaration of Human Rights that shows the possibility of effective law to guarantee the right to religious freedom.

When the Second Vatican Council passed the historic document

*Dignitatis Humanae* on Religious Freedom, it was mentioned that by then more than hundred countries had recognised the right to Religious Freedom for its citizens in their constitutions. Here we will not be able to go into the provisions regarding religious freedom in different countries But we mention the provisions for the right to religious freedom in the documents of the U.N., namely the statements and declarations of the world body that affirm the rights and freedoms of all, including the right to religious freedom for all. in the law of the member countries of the U.N. We mention them not just for the sake of information but because they embody the moral reasons for the right to religious liberty in terms of the common good of the body politic for all the citizens in the present moment of increasing democratic consciousness among the countries of the world.

The ethical foundation for the human rights is the intrinsic and inalienable dignity of every human person. The Universal declaration of Human Rights adopted and proclaimed the United Nations General Assembly on 10 December 1947 recognizes " the inherent dignity and of equal and inalienable rights of all members of the human family"(cf U.N.Declaration).

Article 18 of the Declaration states the right to Religious Freedom clearly: 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.

2. Religious Freedom has been confirmed and expanded further by two international agreements by the member countries of the U.N.:

- a. The International Covenant on economic, Social and Cultural rights.



**b. The International Covenant on Civil and Political rights.**

Article 18 of the International Covenant on Civil and Political rights states:

1. Everyone shall have the freedom of thought, conscience and religion. This 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 religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.

3. 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 freedom of others. (This should mean no coercion not to change as well as freedom to change).

In the same Covenant, article 20(1) we read, " any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law".

In article 27, we read " in those states in which.... religious or linguistic minorities exist, persons belonging to such minorities should not be denied the right ... to profess and practice their own religion". This provision for guaranteeing the rights of minorities including right to religious freedom is only an affirmation that the latter right is a right of every human person.

Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religious Belief adopted and proclaimed by the General Assembly of the United Nations in 1981 gives clear and authoritative guidelines to member states on ways to remove all forms of intolerance and discrimination.

First of all these international agreements have certainly helped to focus the attention of the world community on the inalienable right of religious freedom. They have helped to lay the foundations of a universal culture of human rights, including the one to religious freedom. All these affirmations of the right (and duty) of religious freedom by the different declarations and covenants of the U.N. testify to the shared understanding of this fundamental right of every human person and consensus regarding its practice in the civil society based on the acceptance of the "inherent dignity and of the equal and inalienable rights of all the members of the human family".

Here one could make a comment on the U.N. Declaration of 1981. This Declaration speaks of the elimination of all forms of intolerance. The mandate to eliminate all forms of intolerance is categorical, and apodictic. It is worth noting that it does not speak of or plead for tolerance which would admit of conditions and degrees. Here the positive mandate and affirmation implied means that the fundamental right to religious freedom is due to all, not tolerance. While speaking of minorities, the U.N. documents do not ask for or advocate tolerance of minorities but for rights. Wherever there is talk of rights in the documents of the U.N., the term and concept of tolerance does not figure anywhere. We can state that tolerance cannot be a right in the proper sense of human right, and it does not fit the language of human rights.

Article 4(1) of the Declaration states that "All States shall take effective measures to prevent and eliminate discrimination on the basis of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life." Article 4(2) continues to state"

All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter." Article 6 considers religious freedom as freedom to worship, and to maintain and establish humanitarian institutions, to teach religion, etc. The same document also established a Special Rapporteur to monitor



its implementation. Here we note that there is no plea for tolerance but a definitive no to intolerance and clear affirmation of rights that are due to all.

Declaration of rights of Persons Belonging to National or ethnic, Religious or Linguistic Minorities adopted by the U.N. General assembly on 18th December 1992, states in article 2(1) that persons belonging to a religious minority have the right to profess and practice their own religion.

### **Epilogue.**

As we conclude this study on Religious Freedom in the Asian context, we do not suppose it to be an exhaustive study. We have kept in view the Asian situation subject to rapid changes. We have considered the multi-cultural and multi-religious character of the Asian countries and people. We have taken into account the differing political situations of the Asian countries.

The study of the right to religious freedom in the context of Asia has made abundantly clear that this right needs an affirmation as a human right at a time when it is being threatened in various ways in different countries. The local Churches of Asia have a duty to promote this right not only for themselves but also for all. This they do in solidarity with Asian peoples in their struggles for justice, freedom and peace. The commitment of the Church to promotion of a just peaceful society is a constitutive dimension of the evangelising mission of the Church. In the multi-religious and multi-cultural situation of the Asian continent, promotion and protection of the right to religious freedom calls for the collaboration of all groups and communities of different Churches and ecclesial communities, and followers of different religions including civil society. It has to be an ecumenical and interreligious project.

Promotion of human rights and right to religious freedom calls for a culture of human rights in our own communities. This would demand a commitment to education for human rights according to the social teaching of the Church. Promotion of hu-

man rights and religious freedom as an inter-religious project will call for a culture of interreligious dialogue.

We know that inter-religious dialogue is primarily a matter of inter-religious relations and cooperation, and not matter of protecting independent, isolated identities of religious communities. In the Asian continent life of people culturally develops into a style of interreligious living. In the practice of interreligious living, people discover an innate inter-relatedness between persons and people which needs to be continually reflected upon and appropriated in our context of multicultural and multi-religious world.

Interreligious way of life supposes religious freedom for all. It will also contribute to the strengthening of religious freedom in a qualitative sense. Public care for religion in civil society and in the body politic can be expressed in the Indian phrase "sarvadharmā samābhava" meaning sentiment of equal respect for all religions leading to oneness of people, peace and harmony. Constitutions of different countries echo the spirit of this tradition..

Today the Catholic confessional states do not exist any more. But we have countries that have state religion. While we recognise the fact, we can ask in the present context of growing democratic consciousness and the growing importance of human rights guaranteed by the documents of the U.N. and a great number of constitutions in the world if the principle of state religion is acceptable. Countries that have had state religion have history of discrimination against religious minorities. In the light of our study we find it difficult to accept today political formation of countries based on a particular religion. The principle of dividing and building modern states and the governance based on religion make human rights of citizens including right to religious freedom invariably vulnerable. Privilege of one religion in polity can only make other religions and their followers disprivileged and second-class citizens. The principle is by its very nature one of discriminatory exclusion.

In the final analysis we may state that right to religious freedom is not only a civil and political right but in sense a corner-



stone of human rights and its authentic test. Since human rights are indivisible, we cannot promote the right to religious freedom in isolation from other human rights. On the part of the Church, commitment to religious freedom should strengthen its commitment to the promotion of human rights and justice in the world.

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