

Hindu Views of Human Rights Regarding Religious Minorities, Freedom of Religion, Freedom of Conscience, and Anti-Conversion Laws

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In India, the Human Rights notions of freedom of thought, conscience, and religion are integrated in the Indian Constitution but interpreted from within an Indian framework of reference that has close links to premodern and modern forms of Hinduism. The doctrine of Human Rights cannot automatically count on meeting with approval from the part of the world's religions. If the current Human Rights discourse is typically a 'modern' discourse based on an initially Western view of the human being, how does it relate to religions such as traditional Hinduism, Neo-Hinduism, and nationalist Hinduism that draw from both premodern and modern sources? More specifically, how do these forms of Hinduism view freedom of thought, conscience, and religion as stated in the Indian Constitution? It will be argued that Hindu approaches to religious freedom and conversion highly depend, not only on whether they are traditional or modern but also on whether Hindu traditions draw their external boundaries from within or from without.

I. Introduction

The doctrine of Human Rights cannot automatically count on meeting with approval from the part of the world's religions. The main reason for failing to gain automatic religious approval is a straightforward one: both the doctrine of Human Rights as stated in the UN *Universal Declaration of Human Rights* and the religions facing it are expressions of particular worldviews and products of particular cultures and their histories, regardless of their universal claims. If the current Human Rights discourse is typically a 'modern' discourse based on an initially Western view of the human being, how does it relate to religions such as Hinduism that draw from both premodern and modern sources? Do religious traditions such as traditional Hinduism, Neo-Hinduism, and nationalist Hinduism approve of and support, or resist and reject, the modern Human Rights discourse? More specifically, how do they view freedom of thought, conscience, and religion as stated in the Indian Constitution?

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2. A Modern Discourse on Human Rights

The doctrine of Human Rights as stated in the UN *Universal Declaration of Human Rights* is a modern doctrine, that is to say, the particular product of a historical development called ‘modernization’. It builds on a pre-modern tradition of so-called ‘natural rights’ that saw ‘natural law’ as different from ‘positive law’, and as of a higher order. (Cliteur 1999: 13-42)¹ This notion of natural laws as being of a higher order was later maintained but modernized. What exactly is ‘modern’ about the Human Rights discourse?

First of all, these higher laws were written down, codified, transformed into international treaties and national constitutions.²

Secondly, modern states were much more focused on and successful in politically centralizing, instrumentally rationalizing, and formally standardizing power, rules, policies, and judicial procedures, than premodern states, to the democratizing point of promoting formal ‘equality before the law’.³

Thirdly, the combination of functional differentiation and self-reflexive rationalization meant that ‘law’ became a relatively autonomous domain within society at large, separate from the state rulers and from religious authorities, managed by a relatively independent bureaucracy of legal specialists who were trained to reflect on the nature and consistency of legislation, and to judicially review all laws in the light of the higher order laws of national constitutions and international treaties. This led to the formal protection of the higher order laws by making them politically much more difficult to repeal than common laws. It also led to a secularized understanding of rights as neither explicitly divine nor in need of religious justification, a development that culminated in a justification of human rights as grounded in ‘human dignity’. In the *Universal Declaration*, the (religious) key framers of the document solved the problem by using the expression ‘inherent dignity’, leaving it to the member states to imbue this concept with religious and metaphysical associations. (Hughes 2011) The modern trend towards increased moralization meant that ethics now dominated religion instead of the other way around, thus calling religion to account.

¹ In Sophocles’ *Antigone*, ‘age-old customary law’ is presented as ‘divine’, as the ‘laws of the gods’, and therefore superior to the ‘laws of the ruler’ that are man-made.

² This dimension of the modernization process started in premodern times but it became increasingly exclusive and binding in modern times, a formal means of mastering the world, at the expense of oral legislation and of informal customs. Eventually, the vanishing line between ‘natural’ and ‘artificial’ or ‘cultural’ would open up the possibility of perceiving human rights as purely positive rights (institutionally stated and posited claims) instead of codified moral rights (institutionally recognized values).

³ Modern aristocratic gentlemen were raised to not just join the military but to study law and to serve in state bureaucracies. Centralization, rationalization, and standardization led to a much higher degree of structural uniformity and general applicability of non-arbitrary written laws.

Fourthly, the emancipatory Enlightenment tradition limited the applicability of ‘natural rights’ to the protection of individuals from violation of their rights by state interference, on the one hand, and extended their applicability to the wider horizon of humanity as a whole, on the other hand. It is due to the Enlightenment’s inclusive scope of envisioning humanity as a whole that the Human Rights doctrine claims universality. The individualist outlook underlying the eighteenth century civil and political rights meant that individualism was institutionalized at the expense of kin-based networks.⁴

The shock of World War I created three competing versions of modernity: socialism/communism, capitalism/democracy, and nationalism/fascism. The need to tame the destructive power of modernity was felt even more with the shock of World War II. This resulted in the worldwide adoption of the 1948 UN *Universal Declaration of Human Rights*.

3. Premodern and Modern Hindu Views of Rights and Duties

What are the implications of the shift from a premodern to a modern outlook on rights and duties? In general, Harré contends, all duty and right talk is a discursive convention to regulate specified social roles, only rarely related to being human in general. (Harré 2005: 239) It may seem natural to say that rights entail duties and vice versa. But, according to Harré, the presumed correlation or complementarity between duties and rights is a recent adoption. In many premodern societies such as feudal Europe and feudal Japan, duties were reciprocal. Thus, duties corresponded to correlative duties, not to rights. Psychologically, Harré writes, ‘whereas in medieval times one might feel betrayed by one’s lord, there was no place for resentment, the characteristic emotion of those whose rights, real or imaginary, have been ignored, denied, or trampled on. Instead one would have felt demeaned and humiliated because the defaulted duty was owed to oneself as a person of a certain rank or estate.’ (2005: 232) Duties were intertwined with social roles, ranks, and honor. Western modernity means a transition from man as a divine creation to man as a natural human being, and from a person’s duties toward his Creator to a person’s rights in society as a project willed or consented to by the people. (Barak 2015: 25-26; Harré 2005: 231) The modern shift from duties to rights means that the focus

4 Modernization was initially driven by economic growth outpacing population growth, accelerated by the Industrial Revolution. (Clark 2007) Due to the subsequent emergence of organized class-specific and issue-specific interest groups, its individualism was later complemented by the addition of socio-economic and cultural rights. Due to post-industrialization, there was an additional shift from modern survival values (prioritizing economic and physical security) to (post)modern self-expression values (prioritizing personal choice and taste) in high-income countries. (Marsh 2014: 261-283, esp. 271)

is now on rights as natural and primary, and duties as being derived from rights. The asymmetry between rights and duties in constitutional declarations in favor of rights reflects the imbalance of power between the weak citizen and the powerful state. (Spini and Doise 2005: 21-73, esp. 42).

Western Human Rights are primarily about rights, not about duties. In the case of most religions, the reverse is true. Hinduism too, starts from duties, not from rights. (Saksena 1978: 369f.; Bilimoria 1993: 36, 39; Carman 1988) Duties are the primary data and rights can be derived from them. If R.C. Pandeya (1986: 267-277) can help it, Article 29 of the *Universal Declaration of Human Rights* becomes its guiding first principle: 'everyone has duties to the community in which alone the free and full development of his personality is possible'. The Hindu connection between 'duty' and 'religion' seems even stronger than in other religions because the very word *dharma* means both 'duty' and 'religion', since both duty and religion express the underlying social and cosmic order (*dharma*) of reality or nature itself.

The Sanskrit word for 'duty' is *dharma*, that is to say, the duty that goes with and arises from someone's natural place in the social order (someone's status in the status quo) of the particular group into which the person was born. A traditional Indian, then, owes something to his group. It would be inconceivable to share the Western argument that one owes something to oneself, say, to stand up for one's individual rights as opposed to the interests of the group. The social role, with its accompanying status, is an expression of what one is by nature. 'Duty by birth' instead of 'right by birth' but bound up with a specific group of status: by nature, different groups have specific abilities (*svabhava*) to perform specific functions. The innate constitution is the natural basis for the corresponding prescribed or proper function (*svadharma*), without further selection or testing. Austin B. Creel states: 'This is seen, for example, in the Hindu way of expressing occupational category; one does not say, "He is a carpenter", but rather, "He is for carpentering".' (Creel 1972: 156f.; Bilimoria 1993: 37: 'the brahmin claims his entitlements *qua* being a brahmin, not *qua* being a human being per se.'). In short, unlike the premodern Western tradition as described earlier, the Hindu tradition does without a difference between 'natural order' and 'social role', between 'natural' and 'positive' law, between 'higher order' versus 'lower order' law.

The Sanskrit word for 'right' is *adhikara* which means 'justified claim' in the sense of 'acquired right' or 'entitlement'. By nature, men do not have rights but duties. Being human is not a status from which one can derive rights. What a human being *is* is determined by what a human being *does*. If a person fulfills his particular duty, he acquires a particular right. Duties are what you have, rights are what you can get, what you are entitled to after the fulfillment of your duties. In a close community, duties are carefully defined, not in the form of articles of law but in the form of expectations. The code of communication is implicit, but no less effective. The message comes across painfully clear, as soon as you don't do what is expected from you. But how does a group know

what *dharma* consists of? That is hardly described in the law codes. The content of the group *dharma* is determined by the 'good habit'. (Creel 1972: 159f.) *Dharma* is not an ethically reflected conception that can test changing habits normatively from without but it is itself 'the existing custom elevated to a norm'. (Creel 1975: 161-173)

Pandeya associates duties with responsibilities and rights with freedom: rights are something that you can claim but you can also abstain from claiming them. Doesn't something similar go for duties too? Responsibility presupposes freedom of choice, doesn't it? The *Bhagavadgita*, a scripture that gained general esteem and huge prominence in the nineteenth century among both Western and Hindu audiences (Sharpe 1985; Agarwal 1993; Gowda 2011), offers a traditional Hindu model of responsibility. (Creel 1975: 164-167) Arjuna's duty is evident: his *dharma* consists of that which is expected of him. What is expected of him is fighting, because that is the task of the group to which he belongs, the warrior estate (*kshatriya varna*). There is no going back on this task, unless the war in case would be an unjustified war. But this is a justified war. (Koller 1972: 143; Upadhyaya 1969: 163ff.) The consequence of casualties is no argument against it. That fighting can have a contrary effect is not an argument either. Arjuna's task is not a point of discussion, and that is shown once more by the argument that his duty is contained in the traditional Law Books (*dharmashastras*). One is reminded of the Latin expression '*deo volente*' and the Arabic expression '*in sha' Allah*', 'God willing'. These expressions don't presume a divine freedom that conjures up free-floating fantasies going off into any direction that God wants. They presume a divine freedom to confirm or not to confirm the event taking place. The event is a given whose confirmation can be withheld. Likewise, the duty is a given whose fulfilment can be forsaken. Arjuna's task is not a matter of freedom of choice. The only play he has is: to perform his duty or not to perform his duty. It would be a catastrophe if he were not to do his duty, but this is an *irrealis*, unthinkable, no real option. There is no freedom of choice to set his own targets. Proposed action is unavoidable and the issue is not whether action should be undertaken but how. According to Pandeya (1986: 274), devotion to duty is essentially devotion to self-restraint, to control of one's conduct and emotions. Duties are restrictive acts that keep the emotions under control. Arjuna has no objection to military service on grounds of conscience or to fighting for a just cause, Pandeya suggests; his existential crisis consists of the fact that simultaneously, he has to fight against his emotions. This is a matter of inner discipline. In view of that, Arjuna is receiving instructions from Krishna. Krishna shows him that he has no choice, that there is no need to be confused as long as he realizes that his true Self is not at stake.

Traditional Hinduism offers only one alternative to remaining within the hierarchical order of society and its duties: to opt out of society entirely and become a traditional other-worldly ascetic who focuses on spiritual values that are cosmic instead of social in nature.

Neo-Hinduism marks the shift to modernization. Several Neo-Hindu philosophers have reinterpreted the traditional understanding of *dharma*. None among them elaborates the notion of *dharma* in a premodern sense, as the 'eternal, innate, natural law and duty'. Modern Hindus interpret it as a value. As such it refers to social regulation, ordering, social solidarity (Sarvepalli Radhakrishnan, philosopher at Oxford and in the 1960s President of India), social integration (M. Yamunacharya, R. Panikkar), social well-being and social justice for all (Radhakrishnan and others), equality on the basis of unity of all with Ultimate Reality (Brahman). (Martin 2003: 269-277) The Vedanta philosopher M. Yamunacharya who taught in Mysore until 1971 (Yamunacharya 2018) argues that respect for all persons is based on the realization of Brahman and on the knowledge that Brahman is all. Spiritual values like spiritual freedom and equality that were traditionally connected to the monistic Hindu (and Buddhist) tradition of other-worldly asceticism are now applied to this-worldly realities such as society and the individual. Compared to traditional Hinduism, that is strikingly 'modern' about Neo-Hinduism: to claim that cosmic values from the other-worldly realm of spiritual asceticism such as 'freedom' and 'equality' (traditionally understood in a spiritual sense) are applicable to the this-worldly realm of the social order (traditionally based on duty and hierarchy but now on political freedom and equality).

Gandhi too, stands in this modern Neo-Hindu tradition when he stresses the unity of all people, including the untouchables (Bilgrami 2011: 104-105, 110-111; Arnold 2001: 169-185). By calling the untouchables '*harijan*' 'children of Lord Vishnu', 'creatures of God'. Gandhi appeals to the traditional Hindu vocabulary that is used within the devotional henotheistic tradition called *bhakti* (with its religious focus on equal access and personal surrender to one's chosen deity). But he suggests that spiritual equality before God may have inclusive consequences for the social status of outcasts who thus become 'incasts'. Spiritual equality opens the door, not to social equality but to social inclusion within what remains a hierarchical social order. He declares the cosmic order (*dharma*) of spiritual values that are connected to the ultimate spiritual freedom from the cycle of rebirths applicable to the social order (*dharma*) of society. This is a Neo-Hindu reinterpretation of traditional Hinduism (of polytheistic, monistic, and henotheistic traditions alike). In fact, it is an infringement on the premodern concept of 'social order' in traditional Hinduism. The traditional Hindu has as his horizon the social order as a manifestation of the cosmic order. The Neo-Hindu's horizon is the social order as a manifestation of cosmic freedom. Traditionally, unity with Brahman and spiritual liberation from the cycle of rebirths are indeed the highest goal, yet they are undifferentiated, non-societal realities on which no social ethics can be built. Even the individual dissolves into the undifferentiated ocean of Ultimate Reality that is without attributes. This-worldly *dharma* may lead to other-worldly freedom (*moksha*) but there is nothing in other-worldly *moksha* (the final liberation from this world) that incites a return

to this-worldly *dharma*.⁵ (Creel 1975: 165) In Neo-Hinduism, however, a two-way traffic is taking place. This two-way traffic allows for an application of the religious ethics of other-worldly ascetics who traditionally are social outsiders, an application to social insiders that undermines the traditional religious legitimacy of the caste system, that legitimizes a modern political democracy religiously and embraces religious pluralism. Neo-Hindus such as the Vedanta reformers Sri Ramakrishna and Swami Vivekananda embraced the principle *sarva dharma sama bhava*, ‘Let all religions prosper (because they all lead to the same ultimate destination),’ and it became a slogan used by Gandhi to reduce tensions between Hindus and Muslims. (Long 2012)

Neo-Hinduism, in my opinion, takes the step from a ‘religious democracy’ to a ‘political democracy’. What do these terms refer to? ‘Political democracy’ in the modern West started out as the political translation of social mobility, as the struggle for ‘equal access to all offices’ (Parsons), on an individual basis and not on the basis of status or birth. What I understand by ‘religious democracy’ is much older. ‘Religious democracy’ is not the struggle for ‘equal access to religious offices’ but the struggle for ‘equal access to God and spiritual liberation’, the religious translation of social equivalence. The traditional devotional (*bhakti*) Hinduism of the *Bhagavadgita* is an example of ‘religious democracy’. Neo-Hinduism translates this ‘religious democracy’ into ‘political democracy’. The ‘equal access to God’ becomes the main religious ground of justification of the socio-political right to ‘equal access to all offices’, of the right to a job and to education, of the right to an existence worthy to man. Neo-Hinduism has inspired a reform of society and the state, but even more a reform of the pre-modern religion. According to Sarvepalli Radhakrishnan, for example, someone’s duty, (*sva*)*dharma*, does not depend on birth or inheritance of occupation but on personal disposition, talent and character. By ‘duty’, Radhakrishnan means that every individual must try and grasp his own psychic ‘make-up’, and look for a corresponding occupation. (Sontheimer 1980: 393ff). This psychologizing and individualizing of the concept of *dharma* is modern and goes against traditional customs and expectations. The current political and judicial interpretation of the Indian Constitution too, explicitly works in favor of individualism. (Derrett 1980: 498ff.; cf. Martin 2003: 269, 271-277)

4. Hindu Views of Minority Rights

Historically speaking, the Western human rights tradition was inspired by the need for protection from state interference that citizens felt

⁵ In traditional Hinduism, hierarchical one-way traffic is operating at the expense of the social order: the ascetic renouncer of the Upanishads becomes one with Brahman and does not return from it; the *bhakti* devotee surrenders to God and realizes his highest, personal freedom.

when faced with the threatening power of the State. Initially, in the Enlightenment understanding of civil society as composed of autonomous and sociable but vulnerable free individuals, the focus was on the legal protection of individuals. Minority groups came to be seen as vulnerable too, and in need of protection either from the majority or from discriminatory treatment and persecution by the state. Previously, after the religious wars of the sixteenth and seventeenth centuries, the problem of the threatening power of religious states interfering with religious minorities had initially been 'solved' in the Treaty of Westphalia (1648) by asserting the right to emigration and religious asylum and the right of each state to select its own religion without seducing another ruler's subjects to its religion, thus separating religious spheres of influence. This solution was not sufficient. John Locke (1690) then demanded the individual's rather than the state's right to select a religion, and a clearer separation between church and state by claiming religion to be a private affair of the individual (Ishay 2004: 77-78). Taken together, the threat was perceived to come from a powerful state, from a powerful majority, or from religious institutions and groups with strong religious identities.

In premodern India, Indian religions were, unlike monotheisms, not expected to have a political blueprint for societal reform and political change or a religious code for state interference in curtailing religious affairs, and states were not expected to wage war in the name of religion. (Eisenstadt 2003: 329-344; Strong 1983) State rulers were expected to promote the well-being of all subjects and their religious practices. In general, neither was religious diversity seen as a threat to the state, nor was the interference of the state seen as a threat to religious diversity. On the contrary, traditional Hindu and Muslim rulers, including the Indian princes under colonial rule until 1948, were well known for their patronage of temples and mosques alike. (Eaton 2002: 94-132; Copland 2010: 131) Traditionally, all religions were expected to prosper from state interference. On the one hand, a ritual separation between religion and the state existed because the priestly caste of brahmins was ideally kept pure, that is, separate from the ruling caste of the warriors (*kshatriyas*). On the other hand, state rulers could interfere positively by actively supporting and protecting all religious institutions equally, thus ensuring their own legitimacy and neutrality. In the meantime, within the religious realm, polytheistic and henotheistic practices that allowed for tolerant indifference towards others, personal preferences, and multiple religious belonging or syncretism (Sharma 2004: 108, 118), were probably much more common than the also undeniable presence of militant groups with strong religious identities competing with or fighting each other (Van der Veer 1994).

In colonial India, the British shift from elite politics to somehow getting involved in mass politics, from strict indirect rule to the introduction of the modern census taking into account the numbers and categories that groups 'represented' as classified classes, pressure groups, and voting blocks, produced a modernizing system of mapping the Indian population in terms of ethnic and religious majorities and minorities. Peter van der Veer (1994: 26-27) writes:

'The odd effect of the census was that it simultaneously cut the society up into infinitesimal units and yet created a huge "Hindu majority," together with several "minorities," of which the most significant was the Muslim. Political elites, who had to respond to the new facts of life, tried both to enlarge the communities they "represented" and to define their boundaries more clearly. For example, Gandhi coined the term *harijans*, children of the god Hari (Vishnu), for untouchable castes that had been relegated to the outside of "pure" Hindu society for most of history. According to Robert Frykenberg, Gandhi did this to make untouchables part of the "Hindu majority." Likewise, Sikhs were counted as part of the "Hindu majority." All this was, of course, also contested in political arenas. A major leader from an untouchable caste, Dr. B.R. Ambedkar (1892-1956), argued against the Gandhian construction of a Hindu majority and ultimately organized a movement that encouraged untouchables to convert to Buddhism.'

Basically, British census and orientalism had constructed India as a majority Hindu nation in decline (less brahminical-Hindu than originally). Also, the East India Company 'initially tried to distance itself from indigenous religious life, fearing the political consequences that would follow if the "natives" (especially the unruly Muslims) came to believe that the new government was bent on converting them to Christianity.' (Copland 2010: 131) Increasingly, however, the maintenance of law and order forced the governing authority to intervene in interreligious disputes.

British colonialism triggered the emergence of two forms of Indian nationalism: 'secular' nationalism (often Neo-Hindus) and 'religious' nationalism (Hindu nationalists). In post-Independence India, the 'secular' nationalists were able to write and implement the Indian Constitution. This document was full of modern human rights but also modern in the sense that it had inherited the colonial opposition between majority and minorities. Faced with the choice between a universalist legal code applicable to all citizens equally, and a pluralist legal code that allows for certain religious and tribal groups to apply religious and customary family and property laws within their own communities, universalists such as B.R. Ambedkar and K.M. Munshi lost their plea for a uniform civil code. Instead, a compromise was accepted that was hardly less modern. The idea of Nehru, Patel, and others was that building one nation included the need for a uniform civil code in the longer term and for a reform of Hindu 'personal law' to start with, that is to say, the need for state interference with religious and tribal matters in order to prevent religion from being misused to preach hatred and violence against minorities and to sanction social abuses. (Copland 2010: 128) Their concerns were nation-building and social reform. In Article 25 (2), the state was given the license to regulate, restrict, and reform religious institutions and practices, with these concerns in mind:

‘(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.’

The Supreme Court would be leading in bringing this about. First of all, in line with Neo-Hindu reformists such as Ram Mohan Roy, Vivekananda, and Radhakrishnan, the Court defined ‘Hinduism’ in terms of essentially classical monism and brahminical practice, rejecting polytheism, ‘irrational’ practices such as widow burning (*sati*), caste inequality, and untouchability. Its reduction of religion to ‘essential practices’ that were exempt from state intervention and reform meant a homogenization of Hinduism now defined as a rational way of life that included Buddhism, Jainism, and Sikhism. (Sen 2010: 1-19, 40-72) Secondly, the Court tried to gradually reduce the legal recognition of religious minorities in favor of legal uniformity. (Sen 2010: 128-157) Thirdly, it tried to marginalize religion in the public sphere by subordinating religious laws to the goal of a common civil code. (Sen 2010: 149)

The Western human rights concern that the state should not interfere with religion and should protect minorities from the threatening power of the majority was not shared by those Indian ‘secular’ nationalists who felt that for centuries, the Indian majority had been ruled by threatening minorities, first by the Mughals, then by the British. (Sharma 2004: 108) Hindu religious nationalists later rephrased the threat as saying: ‘first by the Muslim foreigners, then by the Christian foreigners.’

Sen (2010: 145-146) agrees with Rudolph and Rudolph who ‘identify five possible meanings for the uniform civil code: first, the colonial state’s attempts to standardize and modernize law was an implicit move towards a common civil code; second, for the modern nationalists, a uniform civil code was a means to promote national integration; third, for civil rights activists, a uniform civil code signified the empowerment of marginalized categories, especially women and minorities; fourth, for religious minorities, the uniform civil code was a direct attack on their personal laws and their cultural identity; and finally, for Hindu nationalists, a uniform civil code was a way to eliminate cultural differences.’

Hindu nationalism was as modern as ‘secular’ nationalism in arguing for legal uniformity, in presenting Hinduism as a homogenous, tolerant, and universal religion indigenous to India, in rejecting religious minority rights, and in rejecting conversion to Christianity and Islam. But by shifting from the inclusivist definition of Hinduism as a rational ‘way of life’ to the exclusivist cultural notion of ‘Hindu nationhood’ (*Hindutva*), it could now favor one religion over others and ignore or overrule the ‘secular’ neutrality of the state but still invoke it by arguing that Gandhi’s ‘secular’ formula ‘Let all religions prosper’

(*sarva dharma sama bhava*) meant state interference and state patronage *pro rata*, distributed by the state in accordance with Hindu majority rule. (Copland 2010: 142)

5. Hindu Views of Freedom of Religion

The articles on freedom of religion in the Indian Constitution and their interpretation by the Supreme Court, I would like to argue, reflect both premodern and modern characteristics.

Beyond pragmatic considerations favoring compromise and even though Nehru had wished otherwise, one of the premodern characteristics that seems to play a role in the background is the lack of urgency generally felt to radically separate between religion and the state in all respects. Indian rulers, after all, had been expected to protect all religions and they had not expected these religions to impose blueprints for socio-political change, so neither the state nor the religions had posed a threat to each other. The modern Indian state, I suggest, can build on an age-old indigenous tradition of positive state interference for the well-being of all subjects, also in religious affairs. New is the fact that the nineteenth century birth of Indian nationalism brought about a shift of legitimacy in the modern ‘agency of social reform’, as Partha Chatterjee (1994: 1769-1770) puts it: the legal authority of the colonial state is replaced by the moral authority of the national community. As such, the modern Indian state is actively involved in religion, as Sen (2010: xxv) sums up, by administering religious trusts, declaring holidays for religious festivals, undertaking social reform of religious law, preserving different family and property laws for different religions, and having ‘secular’ courts interpret religious laws. It is in recognition of this lack of complete separation between religion and the state that the designers of the 1950 Constitution, notably Nehru and Ambedkar, wanted the term ‘secular’ left out in its Preamble. The term ‘secular’ was inserted as late as 1976 by Indira Gandhi where the Preamble describes the country as a ‘sovereign socialist secular democratic republic’. (Copland 2010: 124)

Another premodern characteristic is the presupposition that, as Bhattacharyya (quoted in Sharma 2004: 98) put it, ‘an individual owes allegiance to his own religion (*svadharma*) that chooses him rather than is chosen by him.’ One is expected not to change allegiance by converting from one religion to another. Traditional Hinduism is primarily about social belonging to the community into which one is born. Within one hugely important form of traditional Hinduism, the henotheistic tradition of Hindu devotionism (*bhakti*), one may freely choose one’s favorite deity that is different from the favorite deities of other community members. But this individual right to choose constitutes, at the most, a right to change one’s chosen deity rather than to change one’s religion. (Sharma 2004: 118)

Rejecting conversion is not, however, just typical of traditional Hinduism. Modern Neo-Hindu reformists like Gandhi too, were opposed to conversion. From within, Neo-Hinduism has no strong external boundaries but all-inclusive multireligious belonging. What is the point of changing one's religion if all spiritual paths lead to the Absolute anyway? Instead of converting to, say, Christianity, a Hindu should be encouraged by Christians to aspire to become a good Hindu, Gandhi argued. (Sharma 2004: 97-100, 113) Moreover, one's religious affiliation is inclusive in the sense that, unlike monotheistic affiliations that are affiliations involving one exclusive relationship in having one exclusive relationship and then converting to another exclusive relationship, each time belonging to a maximum of one religion, Hindu affiliations can extend beyond their original affiliation to include faith in other religious figures and truths as well. Why cease to be a Hindu when embracing Christ as one's Savior? Christ was the favorite chosen deity of many Hindus in a Madras survey, Sharma (2004: 118) recalls. Freedom of religion, Sharma (2004: 113) concludes, means that the person is left free to explore his or her religious life without being asked to change his or her religion. The Indian freedom of religion is the freedom *not* to change one's religion, instead of the Western freedom to change one's religion. Yet, this different focus too, comes at a price. Neo-Hinduism has no strong external boundaries from within, weak internal boundaries, and multi-religious belonging but it has strong external boundaries from without when it comes to religions that oppose Hinduism's all-inclusivist claims.

What did the Supreme Court say on this issue? One of the Indian Constitution articles on freedom of religion is Article 25. I already quoted the second half of this Article. The first half states the following:

Article 25: Freedom of conscience and free profession, practice and propagation of religion

‘(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.’

The Supreme Court 1977 ruling on Article 25.1 guaranteeing ‘freedom of conscience’ to every citizen and not merely to the followers of one particular religion did not interpret ‘freedom of conscience’ as referring to the binding conscience of the individual who refuses to obey state laws by invoking the higher binding law of his conscience but as the right to practice one's own religion as opposed to the right to convert another person to one's own religion. (Sen 2010: 108-127) That is to say, ‘freedom of conscience’ was interpreted as the right to keep one's own religion free from interference by other religions instead of free from interference by the state. The separation here is not between religion and the state but between religions because that is where the threat is expected to come from, from the interference by other religions.

My impression is that this Indian interpretation of ‘freedom of conscience’ also has to do with the fact that Hindu philosophy never developed the concept of ‘a conscience that is binding enough to claim the right to negative freedom’ similar to the Western concept. (cf. Biardeau 1989: 77) There is no lack of a concept of conscience in the sense of capacity for moral judgement. The point is not conscience but freedom of conscience. One is also reminded of Arjuna’s moral dilemma in the *Bhagavadgita* where Arjuna refuses to fight because he refuses to violate *dharma*. At that moment in the story, Krishna could have praised Arjuna for abiding by his conscience but instead, Krishna blames him for his mental confusion, his polluted mind and lack of focus. Krishna instructs him to abide by his caste duty regardless of the consequences. At stake is not Arjuna’s ‘clean conscience’ but his ‘pure consciousness’ (a monistic notion) and ‘single-mindedness’ (a henotheistic notion).

Osuri (2013: 60) points out that the Supreme Court ruling virtually erases the right to propagate religion because as soon as its transmission or spreading goes beyond ‘an exposition of its tenets’ by including the intention to convert, it becomes practically illegitimate. The ruling validates the anti-conversion laws of Orissa, Madhya Pradesh, and elsewhere. Sharma (2004: 103) draws an interesting comparison with Western laws against harassment. He also points out that the Nepalese law even forbids conversion from one religion to another. (Sharma 2004: 105) The idea behind such laws, Sharma suggests, is that instead of legal protection from state interference, there should be legal protection from interference by other religions. Here, religious freedom is thought of as a group right (to continue practicing its own ancestral religion), not as the right of the individual. And if religious group rights are at stake, religious group identities and the violation and defense of group boundaries are at stake. I would like to point out that Sharma refers to the external boundaries only. ‘It is well known’, Sharma (2004: 113) writes elsewhere, ‘that most modern Hindus do not regard the various religions of Indian origin – Hinduism, Buddhism, Jainism, and Sikhism – as mutually exclusive religions.’ From Sharma’s Hindu point of view, Buddhism, Jainism, and Sikhism are considered heterodox forms of Hinduism, so neither the ‘interference by other religions’ charge nor ‘anti-conversion laws’ apply. Conversion presupposes strong external boundaries, and these do not exist within all-encompassing Hinduism, goes the Hindu argument. Internal boundaries within Indian religions are considered weak. Multireligious belonging and religious tolerance are expected. But I should add that there is a crucial difference between Neo-Hinduism and Hindu nationalism with regard to external boundaries. Neo-Hinduism has no strong external boundaries from within: Neo-Hindus such as Gandhi can imagine that one remains a Hindu but simultaneously follows Jesus Christ as one’s personal Savior (along henotheistic lines), thus moving the Hindu boundaries beyond indigenous Indian borders, whereas Hindu nationalism will refuse such an ‘identificatory habitus’ (Michaels 2004: 5-12) of religious inclusion beyond the Indian nation. Yet, both Neo-Hinduism and Hindu nationalism abide by strong external boundaries from

without, that is to say, they oppose all forms of conversion that explicitly threaten the universal claims of Hinduism as such.

There are also modern characteristics reflected in the Indian Constitution and its interpretations by the Supreme Court. Concerns for maintenance of the public order, for one thing, explicitly frame and limit the freedom of religion Articles 25 and 26, starting with: 'Subject to public order, morality, and health, ...' Secondly, the desire for a uniform civil code is particularly evident in the homogenizing ways in which the Supreme Court has interpreted the Constitution. Thirdly, the neutrality of the 'secular' state is upheld where rulings do not favor one religion over another. Sen (2010: xxix) quotes Nehru's definition of a 'secular' state as one where there is 'free play for all religions, subject only to their not interfering with each other or with the basic conceptions of our state.' Fourthly, the reformist agenda of promoting reformatory justice at the expense of religious freedom is considered a sign of modern progress.

Hindu nationalism shares two modern characteristics of 'secular' nationalism: legal uniformity and homogenization of Hinduism as the indigenous majority religion of India. (Chatterjee 1997: 109-113) Both characteristics had already been introduced by the modernizing power of British colonialism whose census reports, often in collaboration with upper-caste Hindu interests, focused on the origins of the converted (to Islam) in order to establish indigeneity versus foreignness (conversion due to Hindu oppression and exclusion, or conversion due to Muslim force). (Osuri 2013: 12-13) Categorizing religious and tribal groups as minorities presupposes their status as an exception to the majority norm of either a 'secular' Indian nation or a religious Hindu nation, in need of additional regulation, among others through anti-conversion laws. (Osuri 2013: 37) Ultimately, Hindutva preoccupation with conversion is not about religion but about politics. It is a majority-minority preoccupation fueled by the fear of conversions that will reduce Hindus to a minority status. (Katju 2003: 133-134; Osuri 2013: 96) The issue is not freedom of religious expression or intolerance of religious practice but freedom of religious identity or the existence of non-Hindus. (Osuri 2013: 95-96) On the one hand, Hindu nationalism has inherited the Neo-Hindu self-portrayal of Hinduism as a tolerant religion capable of embracing and absorbing religious and tribal diversity, morally superior to intolerant religions such as Islam and Christianity. On the other hand, Hindu nationalism can portray group conversions to Islam and Christianity as a threat both to the Hindu religion and to the Hindu nation. Its program of Hinduization or Sanskritization, of gradually absorbing especially the tribal communities into the culturally dominant Hindu orbit of (higher) caste claims and customs (Srinivas 1966: 1-45), is considered to be in the best interest of these tribal communities who, after all, need to be protected from preying missionaries paid by foreign imperialism. This perceived threat does not only justify the anti-conversion laws, it also explains the striking single exception to the rule of anti-conversion: reconversion to Hinduism is not regarded as conversion but as a ritual form of purification (*shuddhi karan*), shaking off the

polluting violation of caste taboos or contact with foreigners overseas (Osuri 2013: 4, 9, 22-23, 37), a ritual practice that the upper-class Neo-Hindu Arya Samaj movement had revived in the nineteenth century in its effort to transform Hinduism into a converting religion (similar to Christianity). When the middle-class Hindu nationalist Vishva Hindu Parishad movement later followed their example and called it '*paravartan*' ('transformation' or 'reconversion'), 'it came to imply not only conversion, but also bringing groups of unsemitized tribals to its fold. The VHP thus legitimized conversions [to Hinduism], and transformed Hinduism from a religion whose following was based on birth to a religion based on association and direct absorption through purification.' (Katju 2003: 128) Whereas reconversion to Hinduism is a matter of ritual homecoming, conversion to Islam and Christianity is, as far as the Hindu nationalists are concerned, not a Human Rights issue but a threat to the Hindu identity, to be met with anti-conversion laws.

6. Conclusions

Traditional Hinduism is focused on natural duties. Rights (by merit) are derived from the performance of one's duties (by birth). Premodern approaches to religious diversity are not conceived in terms of majority versus minorities but rather within the context of practicing multireligious belonging. One primarily belongs to the religion of the community into which one is born. Religious conversion is about personal dedication instead of switching religions. Within the henotheistic tradition of Hindu devotionism (*bhakti*), one may freely choose one's favorite deity but this individual right to choose means changing one's chosen deity rather than changing one's religion. In traditional Hindu philosophies and narratives, there are concepts of conscience in the sense of capacity for moral judgement but there is no notion of political freedom of conscience in the sense of a binding claim right to remain free from state interference. Religious diversity is not seen as a threat to the state because religions are not expected to have a political blueprint for society. State interference, in turn, is not seen as a threat to religions because the state is expected to protect and facilitate all religions equally.

Neo-Hinduism modernizes Hinduism by replacing collective duties with individual duties and by translating access to spiritual values (such as cosmic freedom and equality) from the other-worldly realm (religious democracy) into access to social values (such as political freedom and inclusion) for the this-worldly realm (political democracy). Neo-Hinduism inherits and embraces British colonial thinking in terms of an indigenous Hindu majority versus religious and tribal minorities. It homogenizes Hinduism in terms of essentially brahminical practices that constitute a rational and tolerant way of life that includes Buddhism, Jainism, Sikhism, and potentially also indigenous tribals and outcasts (Gandhi's 'people of God'). Neo-Hindu affiliations can extend be-

yond their original affiliation to include other faiths but not at the expense of Hinduism as such. There are no strong external boundaries from within but there are strong external boundaries from without. Exclusive conversion to Christianity or Islam is rejected. Freedom of religion is understood as the freedom not to change one's religion, instead of the Western freedom to change one's religion. Freedom of conscience is understood as the right to keep one's own religion free from the interference by other religions, instead of the Western freedom from state interference. Traditionally, the threat was expected to come from other religions, not from the state, and this has not changed in modern times.

Hindu nationalism is similarly modern in its homogenized image of Hinduism as a rational and tolerant way of life that includes the main indigenous Indian religions and therefore has weak internal boundaries. Hindu nationalism too, embraces British colonial thinking in terms of an indigenous Hindu majority versus minorities. It also rejects exclusive conversion to Christianity or Islam but it does so for fear of losing Hindu majority status and because Christianity and Islam are considered foreign religions and therefore per definition a threat to both the Hindu religion and the Hindu nation. The issue is not freedom of religious expression or even intolerance of religious practice but freedom of religious identity and the threatening existence of non-Hindus who resist purifying reabsorption into the Hindu nation.

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