The Rights of Religious Minorities in Ethiopia: the Law and the Practice

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Table of contents

Introduction

All human rights exist for the protection of those who have less power in a society. It is for the weak and the vulnerable that protection of human rights is mainly relevant. Reports show that violation of human rights is mostly associated with membership of groups, usually of minorities. Such facts reveal the importance of taking the rights of minorities seriously. It is said that a nation is to be judged by how it treats its minorities. Yet, rights of minorities have been and still are unclear compared to rights of individuals. The uncertainty starts with the meaning of minorities. The nature of their rights is also vague as it has both individual and collective aspects.

Among these minorities are religious minorities. The tension and conflict between religious groups has led to innumerable tragic results through out history, and the bearers of these terrible outcomes had, of course, been minority groups. Thus religious minorities shall be accorded special protections.

It is not very clear who religious minorities are and what their rights are in legal discourses. Especially in Ethiopia where the issues are not dealt with specifically under any law, the un-clarity is worse which would have an impact on the practical implementation of the rights. In addition to that the country's polity was formed on some religious views for so long a time and the religious views of other groups were not respected at all. Currently, the constitution recognizes religious freedom and equal treatment for every group, including minorities. Still, legislative gaps and proper implementation of laws, along with the culture of religious intolerance in the society, remain a challenge towards the realization of the rights of religious minorities.

In the research, the questions: who religious minorities are, what grievances, demands, and aspirations they share, what the relevant sources of laws on the protection of their rights both at national and international levels are, what enforcement mechanisms are

available, What limitations can be imposed on their rights, and what the practical aspect in Ethiopia regarding the rights of religious minorities look like, are answered.

The paper is intended to shade light up on the some vague issues relating to religious minorities, especially their meaning and the nature of their rights. It also identifies relevant laws from International legal instruments as well as domestic laws and tries to show the loopholes in the laws with a view to make the responsible organs take actions towards the improvement of the laws in the area. It also shows how the rights are protected /infringed in practice to necessitate further study on the area to tackle the problems.

As the study tries to explain who religious minorities are, how they are protected in international and domestic laws, legal instruments, Court Cases of different jurisdictions and writings of authorities in the area are analyzed. Regarding the practical aspects of minority rights, interviews with officials of the responsible organs for the implementation of the rights of minorities and those who claim the rights is used. The writer's own observations are also included in explaining some matters. In general, analysis of laws, literature review, interview, and observation are the methods used in writing the paper.

Regarding the practical aspects of protection of rights of religious minorities in Ethiopia, an overall review based on certain exemplary cases is presented. It is not a detailed assessment of the practicability of all the aspects of the rights in the whole country. That would be too broad to be covered with in the scope of this paper as the time and resources would not allow addressing all the diverse and numerous issues that may be raised with respect to each and every religion through out the country.

The paper has three chapters. The first one deals with minorities in general. Who minorities are, what their major claims are and the nature of their rights is discussed in the chapter. It also touches up on the historical evolution of protection of minorities under international law.

Chapter two focuses on religious minorities and the larger portion of it devoted to explain the meaning of religion. Models of interaction between religion and state in relation to religious freedom, especially those of the minorities, are discussed briefly. Protection of religious freedom in international law and the limitations that can be imposed on the freedom, along with the implementation mechanisms are covered in chapter two as well.

The last chapter is about rights religious minorities in Ethiopia. It briefly looks at religious freedom and treatment of minorities in the past history of the country, and goes on to examine the issue under the current constitutional system. It also tries to answer who can be termed as religious minorities in Ethiopia and identifies the constitutional principles and rights that are relevant to safeguard them. Legislative gaps and practical problems are tried to be identified as well. Lastly, institutions responsible for the enforcement of the rights are discussed.

The paper claims neither to be exhaustive nor discuss the matter deeply. Yet, it gives the basic ideas on the topic, and may encourage readers to dig further in to it.

Chapter One

1. Minorities in General

1.1. Minorities: Definition

The United Nations Covenant on Civil and Political Rights, which is the first and most important international instrument in recognizing the rights of minorities, reads under Article 27 as;

> *In those states in which ethnic, religious, or linguistic minorities exist persons belonging to such minorities shall not be denied the right in community with other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.*

Before going any further, it would be wise to know what is meant by 'minorities.' Any legal discourse can't begin but with definitions, since they give order to arguments. Nevertheless, definitions are dangerous as they tend to limit the scope of a given matter. They may be restrictive, exclusive, and distinctive at times which can result in discrimination.

Regarding the definition of minorities, international instruments and commentators are mostly silent. Who minorities are and to whom the rights accrue has been and still is largely uncertain. Leaving the term undefined raises the question 'who defines Minority?' Would it be up to the group or the State?' The Human Rights Committee General Comment No.23 (50) on Article 27 states that the existence of a minority group in a given state does not depend up on the decision of States. Some states argue wrongly that they don't discriminate any group on the belief that they have no minorities, but that requires to be established by objective criteria [1]

[1] Geoff Gilbert, "Religious Minorities and their rights", *International Journal on Minority Rights* (1998), P.103.

The most widely accepted and followed definition of the term is proposed by Capotorti, the Special Rapporteure to the Human Rights Committee on Minorities, and he defines Minorities as:-

> *Group numerically inferior to the rest of the population of a state, in a non dominant position, whose members being nationals of the state posses ethnic, religious, or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language.*[2]

Another definition offered by Jules Dechenes which is almost the same with Capotorti's goes on defining minorities as

> *a group of citizens of a state, constituting a numerical minority and in a non dominant position in that state, endowed with ethnic , religious or linguistic characteristics differing from those of the majority of the population , having a sense of solidarity with one another, motivated if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.*[3]

The two definitions share similar elements about the group's smallness in size, its position of non dominance, the distinctive markers it has setting it apart from others i.e. religion, ethnicity, or language, a sense of solidarity shared by its members and their collective will to survive. Dechene's definition discards the term inferiority which might have a negative connotation and simply states that group constitutes numerical minority. It also adds that the group aims to achieve equality with the majority, not only in law but in fact. Capotorti's definition doesn't say about the aspiration of the group to be free from discrimination. It only concentrates on their need to preserve their identity. The group should consist of citizens of the state in Dechenes definition while Capotorti says that

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[2] Patrick Thornberry ,*International Law and the Rights of Minorities* (1992),p. 6.
[3] Ibid, P. 7

they are nationals. It seems that the later definition avoids the vagueness of the term nationality.[4]

Still another definition is given by Asbijon Eide, with slight difference from the above definitions. A minority according to this definition is [5]

> *any group of persons resident within a sovereign state which constitutes less than half of the population of the national society and whose members share common characteristics of an ethnic , religious or linguistic nature that distinguish them from the rest of the population.*

The definition differs from the above two as members of the group need not be citizens or nationals, but residence is enough. This doesn't seem to be in agreement with the Chilean proposal which was the reason for the first phrase of article 27.[6] "In those states in which ethnic, linguistic or religious minorities exist" was included on Chile's suggestion that minority rights should not allow any group that is settled in the territory of a country especially under its immigration laws, to form distinct communities weakening its national unity and security, during the drafting of the article.[7] According to their proposal, minority rights apply only to those already existing groups.

Some say that it would be difficult to draw a borderline between migrants and indigenous minorities unless we limit ourselves to narrow time scales, since today's visitors may become tomorrow's immigrants and an immigrant group in ancient times would be today's indigenous group.[8]

Still others say that, it would be absurdity to deny non nationals or non-citizens including migrant workers, refugees, and stateless persons, protections granted by customary

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[4] The term 'National minority may be understood as groups whose members are nationals of the home state, or as groups with aspiration to nation hood or else as groups with kin state. See Gilbert, cited above at note 1, P. 103.

[5] Asbijorn Eide, *Approaches to Minority Protection* (1993) P. .

[6] Thornberry, cited above at note 2, p.150.

[7] Ibid

[8] Phillip V. Ramaga, "The Group Concept in Minority Protection", *Human Rights Quarterly*, vol.15, No.3 (1993), p. 579.

international law. For instance, states have to protect groups from genocide whether they are citizens or not.[9] This also holds true regarding the individual aspect of the rights. However, with respect to some of the group rights, for the reason mentioned in the Chilean proposal and the cost that the rights may entail, states may be justified if they don't treat migrants as their own citizens.

This definition gives a detail on the numerical inferiority of the group stating that they constitute less than 50% of the population of the national society. The Statement also explains against which group the minority group is to be compared. In the definitions of neither Capotorti nor Eide, is the issue clarified. If the group is compared against a population in a distinct state or district it may form a majority while it may be a minority at a national level.

All the definitions discussed above especially the third one assume the rest of the majority to be a monolithic cultural group which is not the case most of the times in reality. If you take an example of a state which consists of groups at a ratio of 40:20:25:15, 40 is a numerical minority with in the state but may be effectively dominant. Furthermore, Eide's definition does not consider dominant groups like the white minority in South Africa. Minoritiship should not necessarily depend on the size of the group though it is the most important factor in determining the status. The group may be non dominant in power, resources, opportunities and the like while it is relatively larger in size.

In sum, it is difficult to have an internationally accepted definition of minority group. Attempts of defining the term raise as many questions as they answer. Nevertheless, there are certain elements which can be agreed upon and are recurrently mentioned in definitions given by different authors on the issue. These are: the non dominant nature of the group, their distinctive markers (external markers distinguishing the group from others), and their solidarity internally, purposiveness to preserve the distinction markers, collective will to survive, and aspiration to be treated equal in law and in fact. The

[9] Thornberry, cited above at note 2 above, P. 8.

numerical smallness of the group, though there may be exceptions, is an important element in most cases. Generally, the focus must be on the protection of rights than on some definitional test of minority status.

1.2 The Group Concept in Minority Protection

The question whether the term "minority" refers to a juridical group or mere aggregate of individuals has been controversial .Many argue that protection of minority groups mainly focuses on the individual human being even if the rights are mostly enjoyed jointly rather than severally since the enjoyment of individual human rights may be impossible with out the implementation of collective human rights at times. For instance, freedom of religion which is an individual right can not be exercised as an individual human right where the religion requires worship in a temple in assembly with others. But this should not make the group which enjoys these rights be considered as a legal entity or as if they have personality.[10]

Many scholars argue that minority rights are individual rights on the basis of article 27 of the ICCPR .The article talks about rights of "persons" belonging to a minority group. The term 'minorities' was substituted by 'persons belonging to minorities' for making minorities subjects of international law would be difficult. Moreover, post World War II Human rights protection focused on the individual human being rather than groups.[11] Still the group aspect of the right is recognized as the persons are entitled to enjoy their rights in community with other members of the group.[12]

Determination of the boundary between individual and collective rights becomes uneasy especially when it comes to the manner of implementation. Is it the individual or the group that bears the right? Can the individual have *locus standi* alone? Despite the above arguments which deem minority rights to be individual rights which may be exercised in

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[10] Yoram Dinstein, "Collective Human Rights of Peoples and Minorities", *The international and Comparative Law Quarterly*, Vol. 25, No. 1 (1976), p. 103.
[11] Thornberry,cited above at note 2, P. 173.
[12] Ibid

communion with others, some believe that minority rights have group aspects that can never be exercised by the sole individual. Unless the group claims as an entity or a juridical person, remedies can never be sought by the individual. An example can be cited in the case of *Mikmaq Tribal Society V. Canada*[13], the communication made to the HRC was decided to be inadmissible on the ground that the author did not prove he is authorized to represent the tribe. This decision implies that had the author proved authorization, the communication would have been admissible. This clearly shows that the right can never be invoked by individual members but the group as a whole.

Likewise some states have affirmed the legal personality of groups in their territory. The US Supreme court recognizing the legal personality of Indian groups, and Australia, which has statutorily incorporated aboriginal groups can be mentioned as reference. [14]

From the above discussion it can be said that minority rights involve rights of the group and rights of individual members of the group depending on the nature of the rights. According to some lines of thoughts group rights are inimical to individual rights. The liberalists mainly focus on the individual right holder in any "rights" discourse, and if there is any reason that the rights of groups should be protected, it is because of the interest of the individual. This is reflected in many of the international Human Rights Instruments as well as constitutional Bills of Rights.[15]

Contemporary law of minority rights is an attempt to grip the group dimension of rights with in the individualistic framework of human rights law.[16] But the problem lies in the opposing view which assumes group rights as opposite to individual freedom and equality. It is a misperception to conclude in such a way says Kymlicka, since 'collective rights' is large and heterogeneous containing different kinds of rights under it and he

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[13]Ramaga, cited above at note 8 above, P.588. [Com. No. 78/1980, HRC Report, GARO, 39th Sess. Supp. N o. 40 UN Doc. A/39/40, Annex XIV(1984)]
[14] Ibid, P. 585.
[15] Will Kymlicka, *Multicultural Citizenship*(1995) P. 35
[16]Thornberry, cited above at note 2 above, P.10.

makes distinctions between two kinds of claims a group can have as external protection and Internal restriction.[17]

The first is claim of the group against the larger society and the other, claim of the group against its own members. The two claims raise different issues though they are usually labeled as 'group rights'. The first is about protection accorded to the group from external violators of its rights. Here, the rights of the group are consistent with the rights of the individual member. Every individual in it is protected as the group is protected. For example, the right of religious groups to teach their religion or belief, in places suitable for these purposes, or to assemble or worship protects the group from the state's or other's interference in such practices. This protection is concerned with the freedom of the group as well as the individual. The difficulty that can occur in relation to this claim is not internal oppression of group members but infringement of rights of other groups. For example an affirmative action accorded to a certain minority group may limit the rights of other groups. However, such things don't happen necessarily.

It is the second claim that can raise controversial issues regarding the individual's freedom and liberty. The claim involves internal restriction of rights for the sake of group solidarity. The group may need to use the right (power) given to it to limit the liberty of its own members which raises the danger of individual oppression. A common example may be cited in theocratic and patriarchal cultures where women are oppressed. A particular instance of a clear violation of individual rights by a minority group can be seen in the following case[18].

> *David Thomas, a member of the lyackson Indian Band in British Colombia was forcibly and with out consent captured and initiated in to the ceremony of 'Sprit dancing' in the course of which he was assaulted, battered and wrongfully confined. The members of the bands defended their acts on the ground that they had collective Aboriginal rights to continue their traditions of spirit dancing. The judge held 'He is free to believe in and practice any religion or tradition, if he*

[17]Kymlicka,cited above at note 15, P. 35-45.
[18]Will Kymlicka, *The Right of Minority Cultures*(1995) P264-266.

chooses to do so. He can not be coerced or forced to participate in one by any group purporting to exercise their collective rights in doing so. His freedoms and rights are not subject to collective rights of the aboriginal nation to which he belongs.'

Another problem related to this issue of internal restriction imposed on members of a group is the right of exit. As indicated in the decision of the court, an individual can freely choose to be in a group and willfully accept the restrictions but can not be forced to continue in the traditions of the group forsaking his basic freedoms. He has the right to walk away.

Yet, in certain cases exit right may not be an option as it seems. In the case considered above, the individual might have to leave the area he is living in, leave his family in order to exercise his right of exit. Some argue that this does not constitute a problem as long as there is an open market society to enter in to. Meaning, one's freedom to leave is determined by the openness of the society s/he might enter in to. A girl denied of education, the right to speak to, or associate with, any one out side of her culture, is considered to have a substantial right to leave assuming that there is an open market society. But this would be difficult to accept especially for the liberals as she lacks the preconditions to make a meaningful choice, and thus, this kind of system giving so much power over their individual members to communities is seriously problematic [19]

To some extent, all forms of government and the exercise of political authority restricts the liberty of its subjects. Such kinds of restrictions are accepted even by the liberal democrats. However some groups impose much greater restrictions as in the above examples. Therefore, it would be better to accord external protection to a group in a way that would not discriminate between other groups, and allow them to exercise autonomy internally as far as it would not jeopardize the fundamental rights the of individual members seriously.

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[19]Will Kymlicka, "The Rights of Minority Cultures: Reply to Kukhatas", *Political Theory*,Vol. 20, No. 1, (1992) P. 143

1.3. Historical sketch of Development of Minority rights in International law

Treaties have had important roles in the protection of minorities in the study of international law during the early stages of its development. Minority protective treaties were usually instituted for the security of aliens in a foreign land where there is a bond; religious, cultural or national, between the protecting power and the protected minority. The minority could consist of former nationals of the protecting power and become minorities in another state mostly in cases of cession.[20] Most of the early treaties were concerned with free exercise of religion of the minority group.[21]

Early instances of protection were the result of frequently strained relationship between Christian and Islamic powers. The promise of St. Louis of France in 1250 to protect the minorities as if they were French subjects, which was revised in 1849 by Louis XIV and by Louis XV in 1737, can be cited as a good example, though it was rather a unilateral act than a treaty. The position of France as a Christian protector was followed by Austria and Russia. The Austria-Ottoman Treaty (1615), Treaty of Carlowitz (1699) koutchouk Kainardji (1774) and treaty of Adriano pole (1829) are all similar instances.

The need to protect Christians of one sect from another arose later as a result of reformations and changes. Examples are the; Treaty of Olivia (1660) by which Poland ceded Pomerania and Livonia to Sweden protecting the enjoyment of the existing liberties of the inhabitants of the ceded territories, and Treaty of Vienna (1607) signed by king of Hungary and the prince of Transylvania granting the protestant minority in the later region the Free exercise of their religion. The emphasis in the early treaties was on

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[20] Unless otherwise noted this section on the history of Minorities is taken from the detailed discussion of Thornberry, cited above at note 2, P. 25-52.

[21] Ibid See also Dinestien, cited above at note 10 above, p.113.

freedom of conscience and worship, though sometimes even these freedoms were subject to restrictions in favor of public order.

After the Treaty of Vienna, there was a shift of treaty clauses from protection of religious minorities to national minorities. Still religious distinction was mostly an element in the treaties since national and religious difference co-existed between minority and majority.

The New Era in Europe built up on French and American Revolution developed treaty protections in a more secular manner. The French Revolution introduced principle of freedom of religion and public worship, and the 1st Amendment to the US Constitution stated that no legislation could be made providing for an establishment of religion or prohibiting the free exercise thereof.

The tradition of protecting minorities by treaty continued throughout the 19th century. The development of treaty protection of minorities had both organized and disorganized features. It was organized in a sense that the occasions for guaranteeing of rights exhibited similarities and it was significant throughout Europe, mostly the eastern part. There were also movements to broaden the guarantee from religious freedom to other civil and political rights.

The disorganization was reflected in the terms contained in the treaties. They were extremely vague, and occasionally recognized the existing rights of the group. They revealed little attempt to compensate for numerical inferiority of the minority protected. The instruments were not about encouragement but simple tolerance. Still the main failure was implementation. There were almost no humanitarian interventions though scholars say that customary international law supporting such practice existed at least in the nineteenth century.

The practice continued in the twentieth century, and it was after the First World War, the line of development of minority protections through treaties reached its peak. A more

ambitious universal scheme was created for a whole series of countries under the auspices of the League of Nations. The system which related to racial (ethnic), religious and linguistic minorities developed through different agreements, declarations and conventions. Still it shall be noted that the system was inapplicable beyond those countries which explicitly accepted it by declaration or convention. In addition, the system was not imposed on some of the big powers from the victorious allies, neither on some of the main defeated powers.[22]

The international protection of minorities system failed in the wake of the Second World War. Though the system was under the guarantee of the League of Nations, and more than 20 bilateral treaties were signed apart from the league in which neighboring countries undertook to protect certain minorities based on reciprocity during that time, it somehow could not be effective.[23]

The whole system of the League of Nations was overthrown by the Second World War. The idea of universal protection of human rights and fundamental freedoms emerged. The post World War II period was considered as the beginning of a new age. It was led by the UN Charter, the Universal Declaration of Human Rights and the subsequent international instruments which were concerned with the protection of every human being rather than specific groups as in the treaties during the league system.

1.4 Claims of Minorities

International law accords protection to minorities based on ethnicity, religion or language. Though they are not the only kind of minorities in the world, only these three have a preferred status in international law and enjoy rights on collective basis.

An ethnic minority may be a religious and linguistic minority at the same time. But it is also possible that the religious or linguistic minority may belong to an ethnic majority,

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[22] Dinistein, cited above at note 10, P.115.
[23] Id, P.117

and vice versa. An ethnic minority may neither have to be a linguistic or religious minority.

It is worth to note that all minorities may not be in the same shoe always. It would be advisable to realize the degree of the problem they are faced with. Some minorities may be dispersed in different places in a state while some effectively constitute a majority in particular regions .Certain minorities may be living in districts bordering to the neighboring states in which the same people live while others live in a far away land from any body who resembles them .In some cases a minority group may be willing to exist peacefully in a state but some minorities may not even be prepared to reconcile themselves to the existence of the state. [24] The subject of minorities obviously needs to be approached with care because of such diversity.

From what has been said above, it is clear that the rights that different minorities need are different. Yet, there are some general rights that can be claimed by minorities as a whole, starting from the basic right to physical existence through to self-determination, though it is obvious that the later is the right of people instead of minorities. In certain ways, it is said that this right (self determination) can be exercised by minorities.

1.4.1 Right to Physical existence

The right to physical existence corresponds to the prohibition of genocide. The term genocide was invented by the Jurist Raphael Lemkin as a result of a Nazi holocaust and is based up on a combination of two Polish words.[25]The term *genos* is a Greek word meaning race or tribe, and the term *cidium* originated from Latin meaning killing. Genocide is forbidden by customary International Law and additionally there is a convention adopted by the GA of the UN in 1948, on the prevention and punishment of the crime of genocide. Under article two of the convention Genocide is defined as any of

[24] Id, P. 113
[25] Id, 105

the following acts committed with the intent to destroy in whole or in part a national, ethnical or religious group, as such:

A. Killing members of the group;

B. Causing serious bodily or mental harm to member of a group;

C. Inflicting on the group conditions of life calculated to bring about its physical destruction;

D. Imposing measures intended to prevent births with in the group; or

E. Forcibly transferring children of the group to another group.

It can be understood that the essence of genocide is not the actual destruction of the group but the intent to destroy it as such in whole or in part. The most important element in the definition is the intent and hence if a group is destroyed about acts not intended to destroy it wholly or partially, there is no genocide. On the other hand, if a single individual is killed with the intention of destroying the group, it constitutes genocide.

The term "national, ethnic, racial, or religious" group is wide enough to cover minorities. Of the three kinds of minorities, linguistic is not mentioned in the definition of the convention. This possibly can be due to the fact that mere linguistic groups were not in danger of physical destruction, and the definition does not encompass cultural genocide.[26] Still the ethnic and national groups may constitute linguistic groups as well.

Cultural Genocide was a point of controversy during the adoption of the convention. The secretariat of the UN which was first assigned to prepare the draft included Cultural Genocide in it as;

> *Destroying a specific character of a group by (a)forced transfer of children, or (b) forced and systematic exile of individuals representing the culture of the group, or(c)Prohibition of the use of national language even in private intercourse, or (d) systematic destruction of books printed in the national language or religious works or prohibition of new publication, or (e) historical destruction of historical or religious monuments or their diversion to alien use,*

[26] Id, 118

destruction of or dispersal of documents and objects of historical, artistic or religious value and objects used in religious worship.[27]

Many states were furious about the elements of cultural Genocide and were not in favor of its inclusion. But still the Ad hoc committee that was established by the Economic and Social Council (UN) to continue on the drafting of the convention decided to retain it because 'denial of the existence of a group results in great losses to humanity in the form of cultural and other contributions represented by these groups.'[28]The committee devoted a separate article to Cultural Genocide and it defined it as

any deliberate act committed with the intent to destroy a language, religion or culture of the national or racial origin or religious beliefs of its members such as: (1) Prohibiting the use of the language of the group in the daily intercourse or in schools or the printing and circulation in the language of the group(2)Destroying or preventing the use of libraries, museum, schools, historical institutions and objects of the group[29]

The idea was extensively debated up on with wide range of differences in opinions. Finally it was decided that it would be better to include the concept in human rights instruments rather than the convention, since it would be a stumbling block towards its ratification by states. Only physical (a-c of art. 2 of the convention) and biological (d and e) genocides were accepted to be included in the convention. The last one(e) was first presented by the secretariat as cultural genocide, based on the idea that transferring children in to another culture and raising them in different cultures and mentality would destroy the culture from which they originated. But the physical and biological effects of such act were found to be more significant during the discussion and it got included in the convention.[30]

1.4.2 The Right to Preserve Separate Identity

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[27] Thornberry, cited above at note 2, P.71
[28] Ibid
[29] Id,P.72
[30] Ibid

The Universal Declaration of Human Rights, which is the first most significant instrument regarding human rights protection internationally, lists different rights so pertinent to minority rights although it does not specifically make reference to minorities. 'Every one is entitled to the rights and freedoms set forth in this declaration without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2 of the UDHR)

Under article 7, it is stated that all are equal before the law and entitled to equal protection against any discrimination to equal protection of the law. The right to marry without any limitation due to race, nationality or religion under article 16 and the right to equal pay for equal work without any discrimination can be relevant in many ways to the rights of minorities.

The declaration lists rights particularly pertinent to the identity of minorities under article 18, the right to freedom of thought, conscience and religion, Article 19 the right to freedom of opinion and expression, article 20 the right to peaceful assembly and association, article 26, the right to education and article 27 the right to freely participate in the cultural life of the community.

There was still a debate during the adoption of the resolution to include a specific article regarding the rights of minorities to preserve their identity, though it was finally rejected.[31] Later, this right was protected in the ICCPR under article 27. It shall be noted that although 'cultural Genocide' was excluded from the scope of definition of 'Genocide', the right to distinct identity, which can be seen as the right to be free from cultural genocide is protected under this article.

[31] Id, 135

The provision is declaratory in nature and reflects a minimum of rights recognized by customary international law. The general and somewhat abstract principles pronounced under article 27 of the ICCPR need further elaboration[32]

It is obvious that cultures change and adaptations and assimilations are normal as human beings live together and interact. Through time and developments, different cultures precipitate and vanish as evidenced by history. Neither international laws nor domestic protections can avoid such process of cultural development. What this provision tries to achieve is making the process of change subject to human rights protection. It is an attempt to enable members of the group play a part in the development of their heritage and choose the basis on which their culture can adapt to the world. Generally, it is about protection from forceful assimilations and forfeitures of identity.

1.4.3 The Right Not to Be Discriminated Against

The major international human rights instruments: The UDHR, ICCPR and ICESCR contain provisions of non-discrimination, which are pertinent to the rights of minorities as noted in the previous section. These rights were concretized more for minorities in different declarations and conventions. Both the Declaration and the Convention on the Elimination of All Forms of Racial Discrimination, Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, The UNESCO Convention Against Discrimination in Education, the UNESCO Declaration on Racial and Social Prejudice are among the most important instruments relating to equal treatment of minority groups, without prejudice to other provisions in different human rights instruments, which have relevance to non-discrimination and identity preservation of minorities.[33]

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[32] Dinistein, cited above at note 7 above, p.118. The article will be further elaborated in light of other provisions in relation to religious minorities

[33] The instruments having relevance to religious minorities will be discussed in the next chapter.

The contents of the principle of non discrimination are explored preliminarily in the Declaration on Elimination of All Forms of Racial Discrimination and the themes reappear in the later instruments. [34]

Article 1 of the declaration states that

> *Discrimination between human beings on the grounds of race, color, or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedom contained in proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among people.*

Even though the proclamation does not define discrimination, principles can be deduced from the preamble and the provisions in it. The preamble considers that 'the dignity and equality of all human beings' is the base of the UN Charter and recites the proclamation of the UDHR that 'all human beings are born free and equal in dignity and rights.' From these statements and the above article and other texts in the operative part, it can be said that discrimination is treatment which offends the principle of equality and dignity of human beings.[35]

To finalize, minorities are ethnic, linguistic or religious groups with non dominant status and smaller number (though not always) in the community they live in, which makes them vulnerable to violations of their rights. Historically, serious infringements of minority rights have been evidenced from destroying the whole group to simple discriminatory acts. And the basic claims of the groups are existence, identity and non discrimination. The protection accorded to them at international level developed through treaties until they became part of International Human Rights laws.

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[34] Thornberry, cited above at note 2, p.259.
[35] Id, P.258

The next chapter will solely focus on religious minorities, and their rights under international human rights instruments will be examined.

Chapter Two

2. Rights of Religious Minorities

2.1 Religious Minorities: Who Are They?

Religious Minorities are among those groups that can enjoy status of minority as indicated in the first chapter. It would be important to see who religious minorities are and what makes them distinct from other minority groups before proceeding to their rights. The shared religion is the external marker of the group making it distinct from others, and the group aspires to preserve this marker. Thus, "religion" is the key term regarding the distinction of religious minorities from other kinds of minority groups.

2.1.1. Difficulties in Defining Religion

Defining religion may seem unnecessary at first since we use the term commonly in our everyday life with out any need to interpret it technically. Yet, it poses difficult issues when it comes to legal discourses. When legal protections and exercise of rights depend upon having a certain religion or being a member of a religious group, it becomes difficult determining what qualifies as religion. Some have tried to find essential elements common to all religions but is objected on the ground that their outlook is affected by the kind of religions they are well acquainted with. This makes it difficult to have a single agreed upon definition of religion. The literal word "Religion" comes from the western Latin word *religare* which means to bind fast.[1] Some take it to mean whatever binding force in ones life while it is associated with beliefs in transcendent deity or deities usually. Accepting the former assumption would make the definition of religion so broad that any thing that holds the most important place in a human being can be considered as religion. Sex, greed, Communism, Nazism, even football may be regarded as one. But most of the times,

[1] ___, http://www.religioustolerannce.org/rel-defn.htm, last visited on February 28/08

especially in the western world and those who followed the western civilization, "God" is the central element of religion. For instance, the Milan Court of Appeal in December 2, 1996 defined religion in its consideration whether scientology could be regarded as religion or not, as:

> *A system of doctrines centered on the presupposition of the existence of a supreme being, who has a relation with humans, the later having towards him a duty of obedience and reverence.*[2]

But the definition was annulled by the Supreme Court which regarded it as a theistic definition which relies up on biblical definitions of religion and ignores other well known religions like Buddhism.[3]

A similar theistic definition was given in the US in *Davis* Vs *Bason*, 1890 when religion was defined by the Supreme Court for the first time. It was stated that "(t)he term religion has reference to ones views of his relations to his creator, and to the obligations they impose of reverence for his being and character, and obedience of his will."[4] Not only was the importance of a creator required in the definition but conformity of the teachings of the group to the morality of all "civilized and Christian countries" was further added.[5]

The theistic definition of religion was reaffirmed in another case, United States vs. Macintosh (1931), as the court stated "We are Christian People, according to one another the equal right of religious freedom, and acknowledging with reverence the duty of obedience to the will of God."[6]

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[2] Cass. Sez. sesta penale, 8 oct. 1997, registro Gen. n. 116835/97,Case summary by < www.censur.org >
[3] Ibid
[4] Eduardo Penalver ,"The Concept of Religion" ,*The Yale Law Journal*, Vol. 107, No. 3 (1997), P. 795.[133 U.S. 333(1890)]
[5] Ibid
[6] Ibid[283 U.S. 605(1931)]

Such views remained in the US until the court repudiated such definitions in the case of *Torcaso* vs. *Watkins* in 1961[7] the court struck down the constitution of Maryland which required declaration of belief in God to hold public office. The Court admitted the existence of non-theistic religions and warranted them protections belonging to religious groups, mentioning well known religions which do not teach the existence of God like Buddhism, Taoism, Ethical Culture, and Secular Humanism, and repealed the former definition of religious belief which puts God as the central point of all religions.

Broader conception of religion was given few years after the Torcaso case. In *United States vs. Seeger*, the definition of religious training and belief given by Universal Military Training and Service Act as[8] "an individual's belief in a relation to a supreme being involving duties superior to those arising from any human relation but not including essentially political, sociological, or philosophical views or a merely personal moral code.", was amended. Seeger claimed that his belief in devotion to goodness and virtue for their own sakes, and religious faith in purely ethical creed should be considered as religion worthy of protection under the Act. [9] The Court stated that "sincere and meaningful belief which occupies in the life of the possessor a place parallel to that filled by God" can qualify to be treated as religion.[10] Though what is meant by "parallel" is not very clear, it can be understood to show the strength of the commitment.

In the decision the Court significantly broadened the definition of religion, as almost any thing can occupy a place in a person's life parallel to the place of God, even in the life of the theistic believer. It is argued that the court's definition is more appropriate to conscience than religion as the former is broader and encompasses both religious and non religious beliefs.

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[7] __Freedom of Religion, "The Atheist and the Torcaso Case", *Virginia Law Review*, Vol. 47, No 2(1961), p. 315.
[8] Eduardo Penalver, cited at note 4 above
[9] Ibid[380 U.S. 163, 176 (1965)]
[10] Ibid

The broader approach towards definition of religion was problematic that in the case of *Yoder vs. Wisconsin* the court resorted back to the narrower conception and made distinctions between secular considerations and religious beliefs.[11] Later, the Adams test on the parallel position in Seeger's case was drawn in *Malnak vs. Yogi*.[12] The test puts the already known religions as models to determine whether a given set of ideas or beliefs hold parallel place with religion. Three guidelines were formulated for this purpose: the nature of the ideas raised should be "ultimate" questions; the ideas should be comprehensive; and signs whether formal, external or surface must be analogized with accepted religions.[13]

Based on these criteria a certain organization, MOVE, was considered non-religious in *Africa vs. Pennsylvania*.[14] The organization was revolutionary and absolutely opposed to any thing that is wrong, committed to all that is natural and untainted. It stated that "water is raw, which makes it pure, which means it is innocent, trustworthy and safe which is the same as God." It also required members to eat only raw food diet. To live according to the teachings of MOVE is believed to put a person "in touch with life's vibration." It did not have any ceremonies or rituals but believed every act in the day to day life to be exercised with religious meaning. It was decided that it didn't qualify to be a religious organization according to Adam's test, since it lacked the structural characteristics which is typical of religious organizations. Services, ceremonies, hierarchy, efforts, holidays and the like, which exist in almost all the known religions were absent in the organization. Thus it was said to be more like "philosophical naturalism" interested more in reforming society than religion concerned with spiritual or other worldly things.

The way the Court defined religion in the above case is criticized by some scholars. Most of the above mentioned elements, the absence of which made the organization unqualified to be religious are external factors. "How much should these external factors matter in determining

[11]Id, p.798 [406 U.S205 (1972)]
[12]Id, P. 799
[13]Id p. 800
[14]Id [662 F. 2d 1025 (3d Cir. 1981)]

what is and what is not a religion?" "Do all the religions in the world exhibit similar external elements?" Such questions are debatable. Mostly people tend to take elements of religions they know well and don't have rooms for other beliefs that are not familiar. Thus it may be unfair to follow Adam's test which makes the possibility of being analogized with common religions an important element in determining status of religion.

2.1.2 Importance of Defining Religion

How then should religion be defined? Or is it better to leave it undefined and let it be decided on a case by case basis? Since determination of a group or an individual as religious or nonreligious matters in the exercise of related rights and benefits, it would not be equitable to leave courts to make their own arbitrary determinations.

Defining religion is not a mere academic exercise. In Seeger's case for example, the consideration of his views as religious meant exemption from military duties, and the court's decision not to recognize MOVE as a religious organization meant refusal to his request of provision of raw food while he was in prison.

It is clear as discussed above that courts can get biased in deciding if a belief is religious or not. Therefore, it is important to define the term. Still defining religions can have limitations in that it may narrow down the meaning and predetermine the out comes of specific cases. Authoritative definitions create the risk of favoring groups that fall with in that definition at the expense of all who do not fall within the definition, effectively establishing a certain form of religion. [15] Some even argue that any form of definition of religion would violate

[15] Id, p. 807

freedom of religion as it would dictate to religions what they must be. [16]Yet leaving religion undefined or defining it as broadly as "whatever constitutes a person's ultimate concern" may not be right since special protections like exemptions from general rules as in Seeger's case are afforded to religions for special reasons. We can't simply accord those special rights for every case. It is necessary to tailor the application of religious liberties as narrow as possible, only to those who need them truly, because of positive burdens that may be incurred in addition to a grant of free exercise protections.

Among the reasons for protecting religions in a special way are: the role of religions in the lives of the adherents and historical evidence about religious violence and vulnerability of religious minorities.[17] Religion is especially worthy of protection since it fulfils a deep rooted human longing. As Herbert McCabe puts it, "While ethical systems and ideologies can tell us how we should live, religions provide answers to ultimate questions of why we should live. While science can try to explain to us the process through which we have arrived here, religions help us to understand why we are here at all."[18] Furthermore, believers in a religion do not submit their faith to standards of rationality out side the religion. What makes religious groups different from other ethnic, linguistic, cultural or nationalist groups is that the believers acknowledge some supernatural being or a revered teacher as guiding their lives and community, which makes it so difficult for them to compromise in case of conflict of interest with others.[19] Such religious disagreements are particularly not solvable through discussion. They mostly result in violence and marginalization of the weaker (minority) groups. Thus religious tolerance and understanding is the only hope to avoid such adversities. And this is achieved through special protections of religious freedom.

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[16] J. Weiss, Privilege, "Posture and Protection of Religion in the Law", *Yale Law Journal*, V.73 ,(1964), p.593, 604.
[17] Eduardo Penalver ,cited above at note 4, P. 803-807.
[18] Id, P. 807
[19] Geoff Gilbert , "Religious Minorities and Their Rights", *International Journal on Minority Rights*(1998)P.106

2.1.3. Approaches towards Determination of What Constitutes Religion

Now the question is how to determine whether a given belief system is religious or not, with out being too narrow to include systems unfamiliar to us or too broad to make a distinction between religion and all other thoughts and beliefs.

Having a 'dictionary style' definition of religion is criticized by scholars for it has certain limitations. Such definitions relate to word meaning by forming some abstract concept that allows us to classify our experience of the world around us as either falling in or out of that concept, and such rigid concept-based definition fails to capture the flexible and evolutionary nature of language.[20] Having a list of certain characters may not help one to understand the real meaning of the thing defined. Knowing the meaning of a word involves knowing how the word is used, which requires deeper understanding.

Instead of such definition, analogical approaches are suggested by many authors. The approach is better since it does not try to find out some common elements in all the religions which may not exist practically. Analogical approach sprung from the concept of "family resemblance" by Wittgenstein, and in his discussion he gives an example regarding games. Considering different games like board games, card games, ball games, Olympic games and so on, he asks what common elements are found in all. It may not be possible to get what is common to all but similarities and relations exist. A complicated network of overlapping and criss-crossing similarities; some times over all similarities, some times similarities in detail can be seen.[21] Just like the games, we may not find exact common elements in all religions. Religious status shall be determined by comparing the belief system in question with a

[20] Eduardo Penalver ,cited above at note 4, p. 808, 809.
[21] Id, P. 814

paradigm of religion. In the comparison, identical elements are not to be sought but similarities and relations shall be looked in to as in the given example of games.

Still the problem with this approach is selection of the paradigm cases. As already observed, Courts have the tendency to make a religion they are familiar with (Christianity for e.g.) as the only reference in making their paradigm, which is discriminatory for other religions. The baselines should be selected considering different religions from all around the world: African, Asian, Western, Native American and the like. The impossibility of taking account of every single religion in the world is certain. Yet, the major kinds of religions: theistic, non theistic (Hinduism for e.g.), and pantheistic (Santeria for e.g.) shall be well thought-out.

Determination of the base lines shall not be done by Courts arbitrarily. It has to be outlined beforehand by legislations to avoid unfair subjectivity and bias. In addition to having baselines, having negative guidelines would be helpful.[22] For example, lack of concept of God or gods, lack of particular structural characteristics of institutional features, or lack of failure to distinguish between the spiritual and other worldly should not be reasons to deny status of religion. Getting back to the case of *Africa vs. Pennsylvania*, MOVE was denied status of religion for lack of such features which are typical in western theistic traditions. But it had lots of features which could be analogized with religious belief systems. Its concern with purity, its belief that all things are sacred (religious) as in pantheistic religions, its provision for ultimate goal for human existence (following the rules and getting in touch with life's vibration) can be analogized with characters of religion. Here it would have been important to look at the nature of the question answered by the belief system. Ultimate questions regarding the meaning of human existence, nature of existence after death, and the like are answered by religious beliefs. Another indication that MOVE was religious is that all its beliefs indicated above can not be subject to scientific or philosophical standards. Though

[22] Id, P. 818

this criterion can not be sufficient for finding a belief system religious, in combination with other factors should weigh heavily in favor of granting a religious status.[23]

Wrapping up, religion is somewhat vague and indeterminate and difficult to define in short. It is better to have a baseline of features from different kinds of religions and comparing them with the belief system in question to determine religious status, rather than checking the fulfillment of certain elements in a given definition. Having negative guidelines along side would also be helpful as it reduces the risk of bias in such determination and avoids being too narrow giving enough room for inclusion of "strange" religions to courts.

2.2 Interaction between State and Religion

The interaction between state and religion determines the protection of religious freedom to a great extent. It is specifically important to those minority groups and people with no religious belief. Some even suggest that religion and state should be separated for the purity and autonomy of the favored religion.

There are different modalities of church-state relation. Though the modes of relation may be limited, the details in a specific mode of relation are various depending on the policy of each country. The major models of church sate relation are highlighted herein under.

[23] Id. P. 819

2. 2. 1. Established Church

In this model there is a religion established by the state. The system is characterized by tax payments and even compelled contributions from citizens in support of the religion. Laws especially favoring believers and disfavoring dissenters like restriction on access to public office exist. Such systems may be dangerous to minority religions. The dominant religion often times labels them as heretics, cults, sects and so on and it may even go to the extent of violent persecution. Such was the experience in Europe and America before the development of the ideal religious freedom and church state separation in a liberal constitution. Still today, there are countries which adopt this model like the Moslem states, The Jewish state of Israel and England where the Anglican Church is the official, established religion. It should be noted however that the mere existence of an established church does not result in persecution of other religions. In fact, religious freedom may be better respected in such states than in those where church and state are separated.

2.2.2. Accommodation

The classic example of this model can be seen in the non-establishment clause of the United States of America. The First Amendment to the Constitution reads as "Government shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."[24]According to Justice Black *in Everston vs. Board of Education*, the clause erects a wall between church and state which must be kept high and impregnable, where no slight breach can be allowed.[25] The state is supposed to refrain from any activity concerning issues related to religion. No act shall be taken whether it is in favor or disfavor of any religion. State is supposed to be neutrally inactive in this kind of model. Strict application of this

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[24] Cited above at note 7, [US Constitution Amendment I]

[25] Wilber G. Katz, "Freedom of Religion and State Neutrality", *The University of Chicago Law Review*, Vol.20, No.3(1953), P. 426

theory is criticized, mainly because state's inaction doesn't insure religious freedom. There are times where the state needs to act positively so that the freedom of religion may not be infringed. Further more, it seems to marginalize religion in the society. Given the religious background of America and other western countries, total deprivation of the role of religion in the community is unacceptable to many. There are various modes of applicability of the neutrality model.

2.2.3. Cooperation Model

In this model, religion is not totally kept away from the public sphere. State recognizes and supports religion. In South Africa for example, there is nothing in the constitution that prevents the state from supporting religious institutions. The only requirement is treatment of all equally. The state is prohibited from discriminating any particular group, and the right of individuals and communities to free exercise of religion is to be protected.[26] Germany can be cited as an other example in this model. Churches have privileges like tax supports from the state; denominational and interdenominational schools are publicly financed; religion classes may be given as part of the educational curricula and so on. [27]

2.2.4 Strict Secularism

In secular states, the demarcation line between religion and state is bold. Religion can not be mixed with any secular activity of states. It is strictly prohibited for religious notions to intrude in to secular spheres of the state. When individuals are allowed to practice and profess their religion, they are in no way allowed to introduce them to the non-religious and secular activities. Religious liberty is to be exercised only with regard to spiritual life, which is distinct from secular life. Countries with multi religious groups may prefer the model to

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[26] Johan Dewaal et al, *The Bill of Rights: Hand Book* (4th ed.,2001), p. 289

[27] __,Secularism as an Umpire Player(2006)(Unpublished) P. 59

avoid any potential issues of conflict. The difficulty in this model lies in where exactly the line between secular and spiritual activity can be drawn. The systems of France and India are commonly cited as examples of this model.

2.2.5 Socialist State and Church

The socialist state is known for open persecution of religious believers. Even after the fall of Communism and the ascent of the liberal conceptions of rights, religion may get acceptance only as far as it does not go against the socialist ideologies. Such practice exists in countries like China and North Korea.

2.3 Religious Liberty in International Human Rights Law

Religious liberty has been a delicate matter that needed protection for centuries. As overviewed in the preceding chapter, treaties have played the major role in safeguarding religious minorities and their liberties. Religious liberties are not solely attributable to religious minorities, but belong to every individual and religious group. Nonetheless, it is to the minorities that they bear greater significance as minorities are the ones vulnerable to infringement of their rights.

The United Nations Charter is the first international instrument that came up with the concept of human rights. The charter repeatedly talks about respect for human rights and fundamental freedoms with out distinction as to race, sex, language or religion.

The importance of religious liberty was recognized in the first internationally adopted Human Rights Instrument, the Universal Declaration of Human Rights (1948) by the UN. Aritcle18 of the Declaration states that:

> *Every one shall have the right to freedom of thought, conscious and religion; this right includes freedom to change his religion or belief and freedom either alone or in a community with others, and in public or in private to manifest his religion or belief, in teaching, practice, worship and observance.*

Article 18 of the Declaration is concerned with the individual believers but still, the community aspects of the exercise of the right are recognized. In fact religion is primarily a matter of conscience and thought of the individual. Nobody shall be coerced to hold thoughts of others. That would be against the essence of human dignity. Human beings are endowed with conscience, will, and ability to make their choice. They are morally and naturally bound to seek truth, adhere to it and live by it with out being subject to interferences. Freedom of religion covers not only the right to believe in religious views but also to disbelief. It includes ones freedom to choose, change, or leave his religion. Adopting atheistic views are well covered under freedom of conscience, thought and religion.

It shall be noted however that Freedom of conscience, thought and belief are different from freedom of religion as already discussed. Freedom of thought and conscience is wide enough to embrace freedom of religion, but every thought and belief is not religious. It may be noted that atheism may not be considered as a religion from the discussions under section 2.1. Yet, it can be protected under freedom of conscience.

The article also recognizes the individual's right "to manifest his religion or belief in teaching, practice, worship and observance", which implies the community aspect of the freedom in addition to the individual.

The right is further elaborated by the International Covenant on Civil and Political Rights (1966) and the General Assembly Declaration on the Elimination of All Forms of Religious

Intolerance and Discrimination Based on Religion or Belief (1981).Though the Declaration lacks a binding force it remains the most important contemporary codification of the principle of freedom of religion and belief.

Article 18 of the ICCPR further elaborates the freedom by recognizing the right not to be forcibly assimilated and the right of parents and legal guardians to ensure religious and moral education of their children in accordance with their conviction.

Freedom to hold or to adopt a religion or belief of ones choice is an absolute right. It is a matter of conscience of the individual and can not be injurious to others. A limitation can only be imposed on ones freedom to manifest religion or beliefs when it is necessary to protect public safety, order, health, morals or fundamental freedoms of others. These terms may some how be defined differently in legislations of different states as they are so broad. Still they can't go as far as legitimatizing laws that suppress any kind of religious manifestation in atheist governments on the presupposition that it is contrary to public order.[28]

The rights mentioned in article 18 are rights concerning any individual or any religious group in a state, whether minority or majority. Article 27 of the ICCPR specifically talks about rights of individual members of religious minorities. States are supposed to ensure that these persons are not denied the right to profess and practice their own religion. For those making the majority, it may not be a problem to exercise these rights since they have relatively more voice and power. Even states issue legislations that may have implications of religious practices taking into consideration the religion of the majority, consciously or unconsciously.[29]

The article addresses the community aspect of the rights of individuals as it states that persons belonging to religious minorities shall not be denied the right, in *community with the*

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[28] Patrick Thornberry ,*International Law and the Rights of Minorities* (1992),P.196. The issues regarding limitation will be discussed in section 2.4

[29] Id, P. 193

other members of their group, to enjoy their own culture, to profess and practice their own religion.

Only negative liberties seem to be recognized in the article since it talks about non-denial of rights by states. It looks as though the states are supposed to only tolerate them with out any need to give support. But some do not believe that it shall be interpreted as it looks. The Human Rights Committee asserted that not only negative but also positive measures shall be taken by states. In its General Comment No. 3(50) on article 27 of the ICCPR it stated,[30]

> *Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain culture, language and religion. Accordingly, positive measures by states may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion in community with members of their group.*

It is obvious that states are required to refrain from interference with the communities' initiatives to preserve and develop their culture, but it is further required that positive measures be taken in support of those who do not have the resource to take such initiatives. Taking positive measures would also be essential with regard to people whose lives are under the ordering of states like in the armed forces, in prisons, and institutions to which delinquent or dependent children are committed. In such cases the states' simple abstinence would seriously limit the religious freedom of citizens.[31]

The effectiveness of Article 27 in relation to religion depends on the interpretation of article 18 which is based up on the principle of non discrimination. Still the article gives no detailed guidance regarding specific measures to ensure rights of religious freedom. A clearer guidance is given in the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religious Belief. In the preamble of the Declaration, the

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[30] Johan Dewaal et al., cited above at note 26, P. 473.
[31] Wilber G. katz, cited above at note 25, P. 429.

International Covenants on Human Rights are referred to. The articles of the declaration describe the right to freedom of thought, conscience and religion on non discriminatory basis.

There are 8 articles in the declaration. Articles 1, 5, and 6 define specific rights and the rest are supportive outlining measures to promote tolerance and prevent discrimination. The Declaration identifies certain rights relating to states, religious institutions, parents, legal guardians, children and group of persons. It will be wise to examine the articles briefly to better understand the nature of the problems at hand and the duties of states in combating the problems.

Article one of the declaration repeats the rights mentioned under article 18 of the ICCPR. Right to thought, conscience, and religion or belief; right to have a religion or whatever belief of ones choice; right either individually or in community with others, in private or public to manifest a religion or belief through worship, observance, practice, and teaching; right not to suffer from coercion that impairs the freedom to choose a religion or belief; and possibility of limitation of the rights only based on law, and only as necessary to protect public safety, order, health, morals and fundamental rights and freedoms of others are included in the article.

Article five, which is dedicated to elaborate the specific rights on religious liberty focuses up on children, parents and guardians. Rights of parents or legal guardians to bring the child up in their religion or belief; right of the child to education in religion or belief in accordance with the wishes of parents and the right not to be compelled to receive education against their wishes; right of the child to protection from discrimination and to education for tolerance; right of the child's wishes when not under the care of parents or legal guardians are recognized. The possibility of limitation of the right by states if the practices are injurious to the child is also indicated.

The other article which most importantly identifies rights of religious freedom is article 6 of the declaration. It lists down different rights relating to manifestation of religion or belief as right to:

worship and assemble, and establish and maintain places of worship;

establish and maintain appropriate charitable or humanitarian institutions;

make, acquire and use materials related to rituals and custom;

write issue and disseminate relevant publications in the areas;

teach a religion or belief in places suitable for these purposes;

solicit and receive voluntary financial contributions;

train, appoints elect or designate appropriate leaders;

observe days of rest and celebrate holydays and ceremonies,

and establish and maintain communication with individuals and communities at national and international levels.

The second article identifies categories of potential discriminators affirming the right not to be subject to discrimination on the grounds of religion or belief by states, institutions, whether governmental, non governmental or religious, group of persons and persons.

The third article links religious freedom to other human rights. It declares that discrimination based on religion or belief constitutes disrespect to human dignity and a disavowal of the principles of the charter of the UN, and shall be condemned as violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and the two offshooting covenants.

Article four declares that all states including all sectors of civil society shall take effective measures to prevent and eliminate discrimination based on religion or belief through: actions in all fields of civil economic, political, social and cultural life; enacting or rescinding legislations where necessary to prohibit such discrimination; taking all appropriate measures to combat intolerance based on religious belief.

Article 7 also addresses measures that need to be taken by states. It declares that all the rights at stake listed in the declaration need to be incorporated in the national legislations in such a manner that every one can avail themselves of such rights and freedoms in practice. Though there are still detailed issues that remain unaddressed by the declaration, the lists of rights can be considered as yardsticks to measure how far a state is fulfilling the right to religious freedom.

Religious freedom is guaranteed in other international human rights instruments as well. To have a look at the most important ones:

-Convention on the Prevention and Punishment of the Crime of Genocide (1948) protects religious groups from destruction in whole or in part as discussed in the first chapter;

-Convention Relating to the Status of Refugees (1951) and Convention relating to the Status of Stateless Persons (1954) refer to refugees/ stateless persons being accorded the same rights as nationals, with respect to freedom to practice their religion and freedom as regards to religious education of their children under article 4, and articles 3 and 4 respectively;

-Convention Against Discrimination in Education (1960) states that establishment or maintenance of separate educational institutions for religious reasons is possible as long as it conforms to the wishes parents and legal guardians, it is accepted by the standards of the competent authorities, it is directed to the full development of the human personality and is in line with the fundamental freedoms and rights of human beings in its articles 1, 2, and 5;

-The International Covenant on Economic Social and Cultural Rights (1966) also ensures the religious and moral education of children for full development of human personality and respect for human rights in conformity with the wishes of parents or legal guardians;

-Convention on the Rights of the Child (1989) identifies the rights of the child to freedom of religion under the guidance of parents or guardians. Article 14 of the convention differs from the other articles (in other instruments) which talk about rights of parents to guide their children according to their conviction. Because of the principle of "participation of the child" in the CRC, it emphasizes on guidance to be given in accordance with the evolving capacity of the child. It calls up on states to limit religious exercises that may be injurious to the child;

-And regionally, the African Charter on Human and Peoples Rights (1981) under article 8 states that "freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may *subject to law and order* (emphasis added) be submitted to measures restricting the exercise of these freedoms. The limitation clause which does not specify any ground that necessitates the laws and orders to limit the right seems to negate the right recognized in the article. Any reason, as far as it is in the legislations of nation can be a valid ground of limiting religious freedom.

2.2.4. Implementation Mechanisms

As already indicated, the 1981 declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religious Belief is the most comprehensive international instrument regarding religious freedom though it is non binding. Still it has an extra conventional mechanism to monitor implementation of rights. The UN commission on Human Rights appoints special Rapporteurs with a mandate to report annually to the commission on the status of freedom of religion or belief worldwide.

International treaties have a mechanism to monitor implementation of the rights recognized under them. The mechanisms envisaged under the ICCPR, which is the most important instrument concerning religious freedom and rights of religious minorities, and the African Charter on Human and Peoples Rights, will be discussed below.

2.4.1. **At International Level (Under the ICCPR)**

The Human Rights committee which examines the periodic report of state parties to the ICCPR and gives recommendations is the major institution of enforcing Human Rights recognized under the instrument.

The committee neither has the power to force states to submit reports, nor are its recommendations binding. Yet, the invitation of active NGOs during the examination of the reports and the exposition of the states' acts has a good influence on it.

The other mechanism of enforcement invented by the Convention is inter-state complaint. A state which is party to the ICCPR and has declared to accept the competence of the committee to entertain cases can lodge a complaint for violation of Human Rights against another member state.

Individual complaint is also made possible under the Second Optional Protocol to the ICCPR. An individual who claims to be the victim of violation of Human Rights recognized under the instrument can file a complaint against a member state, which has accepted the optional protocol.

Individuals must exhaust all domestic remedies available to them before going to the Committee unless remedy is unduly prolonged. If similar complaint is pending with any other international organization, if complaint is anonymous, there is abuse of rights or incompatibility of complaint with the purpose of the ICCPR, it constitutes a ground for inadmissibility.

Although the views of the Human Rights Committee are not binding, they have hidden impacts on states since the committee prepares an annual report to the UN General Assembly which explains what states did with the views forwarded by it. And if there are lots of complaints against the same state, the implication will be that the state is not providing adequate laws and remedial mechanisms towards ensuring human rights.

2.4.2. At Regional Level (Under the African Charter of Human and Peoples' Rights)

The African Commission on Human and Peoples Rights and the recently established African Human Rights Court are institutions responsible for the enforcement of the rights at hand at regional level.

The Commission has promotional and Quasi-judicial functions. It promotes the protection of human rights through different mechanisms and in its judicial function it interprets human rights provisions of the African Charter on Human and Peoples Rights. It also adjudicates matters between states and others (which may include individuals) and between states.

Any state party to the charter having good reasons to believe that a state is not observing provisions of the charter can make communications to the state, secretary general, chairman of the Commission or may directly refer the matter to the Commission.

The Commission has to ascertain facts by communicating the states concerned, other states or other sources and try to find amicable solutions. The fact will be reported to the assembly of states and governments finally. Reports will be published upon the permission of the assembly. The function of the commission is limited to fact finding, negotiation, and recommendation and reporting.

The other mechanism is where those other than state parties can file a complaint. 'Other than state parties' can be interpreted to include individuals and they may lodge their complaints provided that they fulfill the admissibility criteria; compatibility of complaints with the OAU/AU Charter, non-use of abusive language, evidence not exclusively based on news, exhaustion of local remedies unless unduly prolonged, reasonable period of submission and the case being not *res-judicata.*

Since the Charter stipulates that cases to be entertained must involve a serious and massive violation, it precludes an isolated, single, individual violation of human rights from being considered.

The Protocol to the African Charter was adopted in June 1998 and came into force on 25th of January 2004 provides for the establishment of a separate Court of Human Rights. The judges are elected very recently in January 2006. The Court has two jurisdictions;

contentious and advisory. In its advisory jurisdiction, any organ to the AU and any African organization can seek for the Courts opinion which is not binding.

2. 5. Limitation on the Rights of Religious Freedom

Freedom of religion is a basic human right. However it is not an absolute right that is free from any limitation. Basically, freedom to believe may not be restricted as there can be no such thing as wrong belief and opinion and as it can cause no harm. However, the manifestation of such belief may be limited for good reasons. As already overviewed, the declarations and the conventions specify grounds when a state can impose limitations by law regarding the exercise of religious freedom. The grounds mentioned seem to be somewhat vague and broad and thus reconciling guarantee of religious freedom with the interest of civil societies and government has been and still is a difficult problem.

Drawing a line between violation of free exercise of religion and limitation of the right on legitimate and justifiable ground is not always easy. Governments mostly violate the rights of believers based on reasons like protection of true faith in religious states, or in communist countries the state's atheist ideologies may result in persecution of believers. And still in modern secular states believers may be denied the right to exercise their freedom because of neutral secular concerns which are insensitive to the needs of religious exercise. Neutral restrictions meaning those not favoring or disfavoring any religion are believed to be justifiable grounds of limitation as long as their primary concern is protecting public safety, order, health, morale and fundamental freedoms of others as indicated in the above instruments concerning religious freedom. Yet, however neutral rules may be, they may tend to favor religious practices of majority customs. For example, certain religious events like the Christmas holidays in Europe and the US, and taking Sunday as a rest day ultimately came from the religion followed by the majority while, the importance of other events and practices that may be observed by minority religions are often denied.

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In fact, disfavoring of religious minorities may be unavoidable consequence in certain situations as distinct rules for different religions can not be enacted in a state. This is where states need to allow some religious interests to prevail in the interest of free exercise of religion. Minority religions need to be accommodated as exceptions to the general rule. Again, exceptions are made only to the extent that the given practice is not against public safety, order, health, moral or fundamental rights of others.

In the US, if a law substantially burdens a religious exercise which is the central tenet of the religious belief, and there is no compelling interest on the side of the government, claimed religious exercises can be exempted from generally applicable rules on the basis of free exercise. Yet, if the law doesn't have any "religious bias" that is, it is neutral to religious and non religious acts, the fact that it incidentally burdens religious conduct has no problem with respect to free exercise of religion.[32] But sometimes rules that seem perfectly neutral and generally applicable may have masked hostility towards religions. Is it only when a law targets at a specific religious motivation and practice the protection of free exercise triggered? What does it take for a rule to be regarded as non neutral? Does it matter whether the reason for the discrimination is a religious reason or not?

Considering the case Church of the *Lukumi Babalu Aye, Inc.* vs. *City of Hialeah,*[33] will shed light on the above discussion. A City ordinance law in Florida prohibited animal cruelty because of public morals, peace and safety. It referred to animal sacrifice as "to unnecessarily kill, torment and torture or mutilate an animal for rituals the purpose of which is not food consumption." The Supreme Court annulled the enactment because of its hidden bias. It was stated that government in pursuit of legitimate interest can not impose burdens only on religiously motivated conducts. Compelling interest on the side of governments can be shown only when measures are taken on all other similar practices that entail similar hazard.

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[32]Laura S. underkuffler, *Thoughts on Smith and Religious Group Autonomy*, Duke Law School Working Paper Serious, 2005 http://lsr.nellco.org/duke/fs/papers/24 last visited on march 2/08

[33] _, Cited above at note 27.[Supreme Court (United States) 508 U.S. 520 (1993)]

Euthanasia of excess animals is justified for instance and where government doesn't take any measure on such acts, it can not restrict sacrifice for religious purpose. Even when there is compelling interest, laws restricting religious practice must be strictly tailored.

Other examples concerning the applicability of limitation on religious freedom based on rights of others can be viewed. Proselytizing, which is required in many religions may be restricted in the name of protecting other religions. Restricting such an act can be considered as violation of free exercise of religion. In *Kokkinakis vs. Greece* 17 EHRR 397 (1994) the conviction of a Jehovah's Witness, who was voluntarily invited in to the house of his audience for persuading others to change their faith was held to be a violation of religious freedom. As long as there was no coercion or manipulation and offensive nuisance, trying to convince and teaching others religious beliefs should be legally protected.[34]

On the other hand, in the famous *Tobacco Atheist case*, the German Constitutional Court refused to extend protection under religious liberty clause for the defendant who as accused of bribing his fellow prison mates to change their religion by offering them tobacco. [35] The court held that the act was morally wrong, an abuse and not worthy of protection.

To qualify for protection under religious freedom, religious practices must not cause emotional or physical harm to persons. Still the legitimacy of restricting some practices stating that they cause physical or emotional harm may be highly argumentative. For instance, protestant groups in Sweden who complained on the criminalization of physical chastisement of children which is believed to be a necessity in their religion were denied of special protection in the exercise of religious liberty. The European Human Rights

[34] Johan Dewaal et al ,cited above at note 26, P. 296.
[35] Ibid

Commission held that the limitation was legitimate as it was intended to prevent against physical harm to children who are weak and vulnerable.[36]

Determination of a "harmful practice" will be then the issue to be raised. What seems harmful may be useful in the eyes of the believer. In fact the writer is not saying that all practices that are accepted as important by the believers shall be accorded protection. The question of the Rastafarians to use Marijuana, which is scientifically and internationally recognized as a harmful substance may not raise much of a debate. But physical chastisement, which may not cause significant harm on the child and which is believed to contribute a lot in the permanent discipline of the child can raise issues as other forms of disciplining that can cause much severe psychological harms on the child are not regulated. Furthermore, the long term consequence of leaving children undisciplined can not be measured. Still abusing children physically in the name of chastisement may never be tolerated. Similar issues are raised regarding refusal of Jehovah's Witnesses to accept blood transfusions. Mostly the adults are allowed to do so while there are legislations which oblige treatment of children even if parents refuse to give consent. In such matters of life and death, it may be justifiable to restrict the autonomy of parents over their children. They may not choose for the minors what is worth to die for as this is a matter of personal belief and conviction.

A number of cases and theoretical examples may be raised regarding the applicability of limitation clauses on religious freedom. The most important principle to be taken in to account as some scholars argue is 'harm'. Only religious practices that impose harm shall be limited.[37]Even with this principle, there will be no easy solution since there will be difficulties in weighing considerations of faith against those of secular reasons. Though balancing the two sides remains a difficult task, it would be advisable to take in to account factors like the nature of the right to be limited, the purpose, nature and extent of the

[36] Ibid
[37]Id , P. 295

limitation, the relation between the limitation and its purpose and the question whether there are less restrictive means. [38]

To conclude, religious minorities are minority groups whose distinguishing marker from the rest of the population is their shared religion. It is difficult to define religion listing out definite elements since it may be exclusive of certain groups. Thus, analogizing the given belief with a pattern of recognized religions from different parts of the world may be the best way to determine status of religion.

The interaction between religion and state varies in different countries. Some may have an established church in the state while many modern liberal states adopt principle of neutrality. Still the ways they interact with religion are different depending on their specific policies. How the state interacts with religion can have a significant influence on the protection of the rights of religious minorities.

There are several international human rights instruments that recognize the rights of religious minorities, also providing implementation mechanisms. Nevertheless, they put grounds for the limitation of religious freedom. States shall take all the necessary considerations not to compromise the rights of religious groups and individuals under the pretext of limiting the rights.

[38] Ibid

Chapter Three

3. Rights of Religious Minorities in Ethiopia

The historical relation between religion and the Ethiopian state has much to do with the development of religious liberty and treatment of religious minorities in the country. Thus, it would be important to have a look at the historical backgrounds before examining the current legal system.

3.1. A Brief Historical Survey of Religion in the Ethiopian State

Ethiopia had no formal constitution i.e. a comprehensive document describing state structure and organization and fundamental rights and duties of citizens until 1931. But even before that, there were certain traditional legal documents like the Fetha Negest and Kibre Negest, playing somewhat similar role to that of a constitution setting out basic rules that govern the state and the civil life of the society. And after the first constitution, the country had been through different systems. The concept of religion is treated differently in the different systems as well. In the next sub sections, an overview of these different periods will be done.

3.1.1 Pre Constitutional Period

Ethiopia is one of the oldest countries in the world and there are evidences showing that a state called Ethiopia existed since the 4th century BC though the boundaries may not be the same. It is said that including the last reigning monarch His Imperial Majesty Haile Selassie I, 331 kings reigned in the country.[1] Even though it is difficult to talk about every different culture and political structure that existed in the country, it can be said that most of the nationwised rulers had strong affiliation with the Orthodox Jewish

[1] Kefyalew Mehari(Kesis), *The Contribution of the Ethiopian Orthodox Tewhado Church to the Ethiopian Civilization*(1999). p. 30-39

religion which later was transformed to the Christian Orthodox religion historically.[2]The legend of Minilik I, who is believed to be the son of the queen of Sheba (Makeda) and King Solomon of Israel, had a great significance regarding the country's polity formation. Although its veracity is contested by scholars because of discrepancy of timing in history, emperors used lineage in the Solomonic dynasty to legitimatize their thrones.[3] "The Conquering Lion of the Tribe of Judah and Elect of God, King of Kings, Emperor of Ethiopia" was the title used by the emperors. This dynastic claim was supported by the Ethiopian Orthodox Church, and absolute fidelity to the church and the faith was required from the emperors. There was strong link between the church and the State until the downfall of the last emperor.[4]

In this wide range of time, religious liberty of groups other than the majority i.e. the Orthodox Christians was hardly respected. Religious persecutions, forced conversions, and all kinds of violations of religious rights are recorded to have happened.[5]

The Council of Boru Meda (1878) can be cited as an example which shows the above assertion best. Its principal aim was to eliminate doctrinal disputes that distracted the clergy for centuries.[6] As they called out the community in Wallo, Yohannes and Menilik said to them:

> *...We are your apostles. All this used to be Christian land until Gran ruined and misled it. Now let all whether Muslim or Galla (Pagan) believe on the name of Jesus Christ! Be baptized! If you wish to live in peace preserving your belongings, become Christians...there by you will govern in this world and inherit the one to come.*[7]

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[2] Ibid, See also Tadesse Tamrat, *Church and State in Ethiopia 1270-1552* (1972), R.A Caulk, "Religion and State in Nineteenth Century Ethiopia", *Journal of Ethiopian Studies*, Vol. X, No. 1 (1972), P. 41.
[3] Marta Torcini Corazza, "State and Religion in the Constitution and Politics of Ethiopia", *European Journal for Church and State Research*, V. 9(2002) P. 352.
[4] This is an over all reflection, which does not examine each and every incident in the history of the country.
[5] See the references Cited above at note 2
[6] R.A. Caulk, cited above at note 2, P.23
[7] Id. P.24. [Gabra Sellasie, *chronique du regne de Menelik II, Roi des Roi de Ethiopie* (Paris 1930-31), chapter XXVII. Asume Walda Giorgis, "Ya Gala Tarik" Photocopy of unpublished manuscript in the Institute of Ethiopian Studies, Addis Ababa, ff 95-6

Then mass conversions took place forcefully under the threat of loosing land and property, and other measures that even entailed loss of life, while some had to be converted to hold power. They were forced to be baptized, fast, celebrate holydays and be engaged in similar practice of the Coptic Orthodox Church.[8]

3.1.2. The 19 31 Constitution

The 1931st Constitution was the first written constitution in the country. It makes mention of fundamental rights of citizens in a distinct section. Though articles 18-29 are dedicated to rights and freedoms, religious freedom is not mentioned tacitly or explicitly. From the fact that the Ethiopian Orthodox church was a constitutionally established church, and reference of other legislations[9] which prohibit mission works of other religions, it can be concluded that the policy followed regarding religious freedom was discriminatory.

3.1.3. The 1955 Revised Constitution

The constitution had a chapter dealing with rights but it was as much limitative as was protective. Article 40 of the constitution seems to guarantee freedom of religion stating that there shall be no interference, in accordance with the law, with the exercise of the rites of any religion or creed by the residents of the Empire provided that such rites be not utilized for political purpose or be not prejudicial to public order and morality.

First of all the article allows free exercise "in accordance with the law", which is so broad that it can undo the right itself. Secondly, the other grounds of limitation i.e. using religion for political purpose, public order and morality are not defined and could be interpreted to mean any thing that may go against the faith of the Ethiopian Orthodox Church from the outlook of the period. Even propagating ideas different from the faith of the Church may constitute grounds of limitation. Not only was the Church established

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[8] Id 24-41

[9] Regulation No. 3/12, 1944 prohibited propagating, teaching, and disseminating religious views to the Christian community. Concentration on the non Christian elements however was allowed.

and defended by the Emperor of the country, but there was a deep mutual relation between the Church and the State.

> *From the earliest times the unity between the Church and the State has been monolithic, their harmony and cooperation similar to mutual assistance between the right hand and the left hand or the right eye and the left eye...The Emperor is the unchallenged head of the Church ...the relationship between the church and state is that of a single moral being, an amphibious personality, which communicated movement to the national life as the motor does to a machine.*[10]

Those who are not members of the Ethiopian Orthodox Church were excluded from membership of the Imperial family according to article 16 of the constitution, which again shows the superior status of the religion in the country on the one hand and serious violation of freedom of religion on the other hand.

Generally, though the revised constitution was better in including the right to religious freedom and other several rights, because of the limitation clauses and the strong relation between the church and the state, it can hardly be said that minority religions were protected.

3.1. 4. The "Derg" Regime

The year 1974 was marked by the fall of the monarchical regime and power was overtaken by the Derg. Marxism- Leninism was the ideology of the new revolutionary government. Scientific socialism defined the new social order and any thing that contradicted with that was viewed as a threat to the revolution which shall be done away with. It is a known fact that Marxist ideology incorporates critics on religion, regarding it as the "opium of the people"

The revolution was followed by ruthless violations of human rights, particularly in relation to religious freedom. The atheist ideologies of the communist party were

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[10] Aymero Wondemagegnehu, and Joakim Motuvu, *The Ethiopian Orthodox Church*(1970), p.113.

imposed on the people, religious institutions were nationalized, religious leaders like Patriarch Tewoflos of the Ethiopian Orthodox Church and Reverend Gudina Tumsa of the Ethiopian Evangelical Mekane Yesus Church along with many others were executed, and mass persecutions happened in the country.[11]

Though the 1955 constitution was suspended by Proclamation No. 1 of 1974, there was no constitution in the country until 1987. The Constitution of the Peoples Democratic Republic of Ethiopia was then adopted. It declared that state and religion are separate. After a very long time of symbiosis between the Church and the state, the principle of separation was introduced in the country. The separation was more of hostile to religions from the facts indicated above.

The Constitution recognized the right of Ethiopians to freedom of conscience and religion. Still it limited the exercise of freedom of religion on the ground of interests of the state and *the revolutionary public morality* (emphasis added) or freedom of citizens. What was meant by interests of the state, especially the revolutionary public morality was not very clear. It was open to interpretation and abuse by officials. Furthermore the article seems to state that religious beliefs have to be in conformity with the revolutionary public morality (whatever that means) to be tolerated by the state.

Even though the constitution separated the relation between the Orthodox Church and the state, no legislation was enacted to replace Articles 398,399 and 407 of the Civil Code which gave special status to the Church as the only legally recognized church and left other religious institutions to be administered under laws that govern associations. It did not determine the status of churches as envisaged under its article 46.

To conclude, the "Derg" regime was known for violation of rights of religious freedom especially at the beginning of its power. Even after the adoption of the constitution which recognized the right of every citizen to freedom of religion, the limitative clauses and the political reality at the time restricted the practicability of the freedom.

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[11] For detailed facts, see Oynvid Eide, *Revolution and Religion in Ethiopia 1974-85* (2000)

3.1.5 The Transitional Charter of 1991

Before the adoption of the current constitution, the Transitional Charter was adopted as the Derg regime left power to the Ethiopian Peoples Revolutionary Democratic Front. The Charter introduced the concept of federalism in the country taking in to account the multi ethnic and religious background of the country. It also affirmed the principle of separation of religion and state.

The Transitional Charter invoked the Universal Declaration of Human Rights and guaranteed all the rights therein to every individual. Thus freedom of religion during this period was to be understood as indicated under article 18 of the Universal Declaration of Human Rights, and the limitations with in the meaning of article 29.

3.2. Freedom of Religion under the Current System (The Constitution of the Federal Democratic Republic of Ethiopia)

3.2.1. Principle of Separation of Church and State

Article 11 of the constitution which declares the separation between church and state is one of the fundamental principles of the constitution. It declares that State and religion are separated in the first sub article and further strengthens the idea by declaring that there shall be no state religion. In the third sub article, it is stated that the state shall not interfere in religious matters and religion shall not interfere in state matters. The article seems to protect both the state and religion from interfering in each other's affairs. The sub article is different from the usual trend of separation clauses like the first amendment of the US constitution which tend to protect religion from the stronger power of the state, as it protects the state from the interference of religion as well. This perhaps was necessitated from the long history of the country's ruling system which was under the influence of the Ethiopian Orthodox Church.

The declaration of the separation of church and state, and the prohibition of the existence of an established religion in the country implies that no religion would have preferential treatments to the other. In other words all religions including the minorities are equal before the law.[12] It may not be understood however, as the state shall not support any religious activity. The article only affirms the neutrality of the state towards any faith or religious belief. It is that states may make resources available to all the religions with out any discrimination. Especially regarding developmental and social activities both can support each other. Moreover, in cases where positive actions are required from the state to ensure the religious freedom of individuals or groups, the state needs to give support.

3.2.2 Religious Minorities

Similar to the international legal system, no where in the constitution or other legislations of the country is the term minority defined. For that matter, the term is not even mentioned in the constitution. The only proclamation that mentions and defines the term minority is the Electoral Proclamation no.111/95. It is only concerned with national minorities and defines them in a relative way, comparing them to the other nations and nationalities in population size. The definition takes only one element in to account, population size, and talks only about one of the kinds of minorities. Therefore, referring to the elements mentioned in chapter one will be a necessity to examine who minorities are in the Ethiopian context.

As numerical inferiority is one of the major factors in determining the status of minority, statistical data can be one form of evaluation. The major problem regarding this is unavailability of recent and reliable data because of lack of civil status registry offices in Ethiopia. Different information is forwarded by different groups concerning the size of religious or other groups. M. Torccini Corazza in her article 'State and Religion in the Constitution and Politics of Ethiopia' in the European Journal of Church and State shows the wide gap of estimation as she compares the estimation she had in the country which

[12] Issues regarding the practicability of this will be discussed under the next sub sections.

shows 49%of the population to be Coptic Orthodox believers, 47% Muslims and the rest 2% others including Catholics, protestants, Hebrew traditional; and a chart of the CIA published by "The Economist" Magazine short time after the 9/11 incident providing different percentage of Muslims amounting to 70% of the total population.[13] A more recent data released by the US Bureau of Democracy, Human Rights and Labor on September 15, 2006, estimated Ethiopia's population to be 74 million, and 40-45 % of the population belonged to the Ethiopian Orthodox Church. About 45% is estimated to be Muslims. The remaining 10-15% is shared between the Roman Catholics who are estimated to be more than 500 000, other Protestant Christians, and traditional beliefs that exist in the country.[14]

Speaking in terms of number, except for the Ethiopian Orthodox Church and the Muslims, all the rest religions can be categorized under religious minorities. This is factual only talking about the nation as a whole. If we take some areas and regions separately, the reverse may be true. For example if we go to the eastern Somali region or Afar, where most of the population belong to the Muslim religion, followers of the Orthodox Christianity come among the minorities. The Muslims also constitute minority groups even numerically in the northern regions of Tigray and Amhara where the Coptic Orthodox Church dominates.

A case that is pending in the Ombudsman shows this reality. A group of people were evicted by the order of the Illubabor zone, Dembi Woreda administration from the land where they settled some 15 years before. The majority (more than 90% according to Ato Biruk Belay[15]) of the people living there are Oromo Muslims, while the ones evicted are Orthodox Christians belonging to the Amhara ethnic group. The administration officer states that they are evicted justifiably as no government authority effected their settlement and they moved themselves to the place. But the fact is that the people have lived there for a long time and this measure is taken on them as a result of a conflict that was raised

[13] Martah Torccini Corzza, "State and Religion in the Constitution and Politics of Ethiopia", *European Journal of Church and State Research*(2002) P. 365.
[14] International Religious Freedom Report, September 15, 2006. The US bureau of Democracy, Human Rights and Labor
[15] A legal expert at the ombudsman, who is dealing with the case and gave all the information to the writer

during the celebration of 'Demera'(The finding of the True Cross in Ethiopia), a Christian holyday. It is observable that native people view the group as 'Christian Amhara people' who don't belong in the region. From such facts it can be concluded that it is an issue related both to the religion and ethnicity of the group rather than legal issues concerning settlement.

Number is not the only defining element of minorities. The non-dominance nature of the groups in power, opportunities, resources and so on which is usually but not always the result of numerical size is to be taken in to consideration. Traditionally, Ethiopia has been a Christian State meaning an Orthodox Christian. The Church and the state had been two faces of the same coin for more than a millennium. Although the "Derg" regime broke that relationship and neutrality of the state is confirmed in the current constitution, the traditional sentiment of the society could hardly be changed. Even up till now there is a tendency to refer Ethiopia as a "Christian Island". The Muslims are identified with Arabs and the non-Orthodox Christians with Westerns, not regarded as pure Ethiopians. Most of the culture of the country represents the beliefs of the Church and rules are influenced accordingly. Thus the writer dares to say that the Ethiopian Orthodox Church is still dominant in power in the nation. This, however, is with out reference to other dominant religions in specific regions as tried to be indicated above.

Though minorities particularly the religious ones are not mentioned neither in the constitution nor in other legislations of the country, there are provisions that can guarantee their rights in the constitution, which will be discussed in the next section.

3.2.3 Religious Liberty

The affirmation of the neutrality of state towards religion under article 11 of the constitution is an important factor in the protection of religious freedom. When a state favors one specific religion it is particularly dangerous to minority groups. The separation at least guarantees equal treatment of all religions.

Article 25 of the constitution also has an implication on treatment of individual members of religious minorities. It declares that every one is equal before the law and is entitled to equal protection of the law. The law shall guarantee to all persons equal and effective protection with out discrimination on grounds of religion. This prohibits enactment of laws or any acts requiring adherence to a certain faith or being barred from adhering to any religion so as to be employed or hold certain positions. Generally no discriminatory treatment of individuals or groups just on account of their faith is to be tolerated.

Article 9(4) of the constitution has a great significance regarding rights of religious minorities as it incorporates the international instruments ratified by Ethiopia to be parts of the law of the land. Thus, the relevant provisions in the international human rights instruments viewed in the preceding chapter: Convention on the Prevention and Punishment of the Crime of Genocide, Convention Relating to the Status of Refugees, the International Covenants on Civil and political rights and Economic Social and Cultural Rights, Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights are to be considered as if they were laws of Ethiopia.

The other article worth looking at is article 13, which prescribes for interpretation of the human right provisions in the Constitution in light of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments adopted by Ethiopia. Article 27 of the Constitution which recognizes freedom of religion, belief and opinion is to be seen in line with these instruments. It still spells out all the aspects of the freedom and grounds of limitation. The following sections are dedicated to discuss the elements of the article.

3.2.3.1. Freedom of Thought, Conscience and Religion

Article 27(1) states that:

Every one has the right to freedom of thought, conscience and religion.

And 27(3) reads as:

No one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.

The article recognizes that every one is entitled to think freely and hold his opinion with out the interference of others. In the process he can adopt a religion or belief of his choice. This freedom of choice involves the right of individuals or groups to acquire a new religion maintain previous religion or replace current religion with another religion. It also involves the right to disbelief or adopting atheistic views. This freedom is made practical in the current system as has never been before.

Today, there is no imposition of atheist ideologies or requirement of adherence to a specific religion as in the former regimes. Observing the overall situation, one can say that the freedom to choose ones own religious belief is respected. But this may not mean that it is respected every where in the country. There can be a number of violations in different places. An example can be cited in a complaint filed at the ombudsman where ten members of the Agazi Division stated that they were expelled from the army because of their protestant Christian faith. The response from the other side is too general and unspecific stating that the men had different kinds of problems like capacity, discipline, and excreta.[16]

3.2.3.2. Freedom to Manifest Religious Belief

> *...This right shall include the freedom to hold or to adopt a religion or belief of his choice and the freedom, either to individually or in community with others and in public or in private, to manifest his religion or belief in worship, observance, practice*

[16] Interview with Ato Deneke Shanko, a legal expert at the ombudsman, May 2008

and teaching. Parents or legal guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions. [Art. 27(1)]

Action is preceded by thoughts. Freedom of thought and conscious and the right to choose ones religion freely gives sense only when one can act in accordance with such thoughts and beliefs, of course subject to the limitations. Article 27 gives recognition to ones right to manifest his religion particularly in practice, worship, observance and teaching. There are also other acts related to these acts of manifestation. Having a look at the list under article 6 of the 1981 Declaration on the Elimination of All forms of Discrimination and Intolerance Against Religion and Beliefs will give a guide line in understanding the freedom better.

Practicing religion is broad to embrace worship, observance and teaching. There are different practices in different religions and it is possible to say that worship is the core of any religion. Worship can be done either alone or in community with others, in private or in public. For the purpose of worship in assembly, getting and maintaining a place to worship may be required, and believers may make, acquire or maintain articles related to rituals or customs.

Observance is the other form of manifesting one's belief which is explicitly mentioned in the article. It includes observing days of rest and celebrating holydays and ceremonies important in the religion. The Ethiopian government has become sensitive towards this issue nowadays. The long lunch break hours for workers in public institutions on Friday, in consideration of the Muslim Worship day has been the first major step in considering the observance of "others" in the Country. Problem of observance of days is usually encountered by the Seventh Day Adventist Church members who rest on the seventh day (Sabbath). In the academic year 2000 Eth. Calendar, major courses of the 10^{th} grade national exams were scheduled to be on Saturday. The Ministry of Education had been considerate enough to change the schedules of the exam up on the petition of the

Ethiopian Adventist Union.[17] This can be cited as a good model of respecting the observance rights of minorities. Even if it may be impossible to adjust every schedule in accordance with the need of every belief, in decisive instances such as this, and where the inconvenience in making the adjustments is minimal, considerations shall be made.

Teaching the believers themselves and others is usually an essential practice in religions. The possibility of teaching a religion or belief in places suitable for the purpose is declared in the article. Disseminating information through publications may be a means of teaching and propagating as well. The right of parents and guardians to teach their children their religious and moral values is also recognized under sub article 4 of 27. The Article seems to focus on the right of the parents rather than the children. In fact it can be justified since children are under age. Yet, if we consider the issue in light of the Child Right Convention, the teaching and training has to be in line with the evolving capacity of the child.

Believers shall be free from interference of the government as they manifest their religion. Non-interference on the side of the government is not enough to ensure such rights as repeatedly mentioned before. It also has to protect these rights from others in the society. Especially in dealing with minorities, their rights are mostly infringed by the majority in the community. Unless the government protects them from such acts, the respect on its side will be futile. Penalizing acts that would infringe such rights and providing for mechanisms of compensating the victim are the basic steps that can be taken.

To this end, the Revised Criminal Code of Ethiopia penalizes outrage on religious peace and feeling under article 492. Preventing the solemnization of or disturbing or scoffing at a religious ceremony or office is punishable with simple imprisonment not exceeding two months or fine not exceeding one thousand birr. In addition, whoever profanes a place, image, object used by religious ceremonies is punishable with the same. In fact, if the

[17] Interview with Ato Fanta Chelebo, Head of the education department in the Ethiopian Adventist Union. May 2008

acts of disturbance constitute crimes of grave nature like murder or arson, they will also be punishable according to those articles. One of the aggravation circumstances of punishment under article 84(E) is the victim's being a minister of any religion which can be seen as a special protection to religions. The Civil Code states that a person shall compensate for the damage he causes to another by an offense, under Article 2027.

It would not be enough just to make such acts punishable or to declare that it would entail liability to compensate for damages. The laws need to be properly enforced and even before punishing the criminal, proper method of preventing the crime shall be taken. Promoting tolerance between groups is also one of the positive measures governments can take in protecting the rights of minority groups. The mass killing and maiming that happened on March 3/2008 in Nensebo/ Bale[18] can be an illustration of how severely the majority can attack followers of the minority religions in the absence of such protections. According to the report, about 95 % of the native population is Muslim. The attack was on protestant Christians, some of whom are converts and some new settlers. The incident happened as the victims were assembling for their Sunday worship.

3.2.3.3. Freedom to Propagate and Organize Religion

With out prejudice to the provision of sub article 2 of article 90, believers may establish institutions of religious education and administration in order to propagate and organize their religion. [Art 27(2)]

The other wish of believers is growing and expanding their religion. That is why freedom to propagate and organize religion is part of the freedom. For this purpose, Article 27 (2) recognizes the right of religious denominations to establish and administer religious institutions, educational or other humanitarian or charitable for example, in accordance with their belief. In the process of establishing and administering the institutions different acts are involved. Soliciting and receiving financial contributions, maintaining or

[18]Tsegab Bekele, Progressive Report on Persecution of Christians in Bale Ethiopia/specific place Nensebo, 2008. See the Annex for stories by the victims(Unpublished Report)

establishing communication with individuals or groups both at the national and international level, electing and appointing leaders and the like are to be covered under this freedom.

In discussing about establishment of religious institutions, raising the issue of their legal status in the Ethiopian law is essential. By religious institutions it may be meant faith based organizations different from the religion itself or the institution representing the religion like churches. It is notable that both kinds of institutions are legally and formally considered only with respect to their social work, for which they are subject to the rules of the Ministry of Justice, which are put in to effect to regulate Non Governmental Organizations (NGOs).This does not recognize churches or other similar institutions with their pastoral (spiritual) activities. The non recognition of these institutions with their distinctive features causes serious impairments on their rights, and contradicts with the principle of separation of religion and state, and freedom of religion specified in the constitution, as government intervenes with the structure and administration of these institutions.

To acquire legal personality, religious institutions have to be registered in accordance with rules that determine their internal regulations, structures, and functions just like any other NGO. But religious institutions have their own ways of administering matters which are usually different from the temporal norms. Apart from limiting their acts if it threatens one of the elements mentioned in the limitation clause, giving them each and every rule that governs them internally is not appropriate.

Furthermore, categorizing them with other Non Governmental Organizations creates problems regarding issues related to workers. It is obvious that the nature of the relation between the employer and its workers is very different in case of religious institutions. There have been lots of controversies on the jurisdiction of regular courts to see the cases of church employees in the past.

The Labor Proclamation 377/2003, under Article 3(3) b states that the Council of Ministers may determine by a regulation the applicability of the proclamation on religious institutions and other charitable institutions. Since there is no regulation issued by the Council of Ministers, courts assumed jurisdiction on such cases. After many controversies around courts, the Federal Supreme court on its Cassation Division has given a binding decision on the issue of religious workers.[19]

In the decision the Court stated that it would be against the principle of church-state separation to interpret the article as if the Council of Ministers would determine the applicability of the proclamation on religious workers. The relation between such workers and institutions is directly related to the rules of the religion and it is impossible to regulate it under secular laws. Thus, workers who are engaged in direct religious activities like priests, deacons, preachers and...are out of the scope of the labor proclamation. Yet, there are lots of complaints at the Human Rights Commission regarding this issue.[20]Hence the government shall consider having a distinct legislation that clearly establishes the autonomy of religious institutions regarding their internal matters.[21]

Coming to the educational institutions, Article 27(2) states that educational institutions may be established for the purpose of organizing and propagating religions with out prejudice to the national policy and principles outlined under article 90. Article 90(2) reads as *"[e]ducation shall be provided in a manner that is free from any religious influence..."* It seems to prohibit religious influence not only from education given in public institutions but also in private ones.

Regarding public institutions, the prohibition is a normal consequence of separation between religion and state. From both aspects of political and economic neutrality it is

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[19] Haregework St. Mary's church vs. Deacon Mihret Birhan and others (Supreme Court, Addis Ababa, Appeal No.18419, 1998Eth.Cal)(Unpublished)

[20] Interview with Ato Terefe Wondimu, Legal advisor and investigation expert at the HRC, The kind of complaints filed yet relating to religious issues are only those related to employee employer relation in churches May 2008

[21] See Annex 2 for a model legislation drafted by the Ethiopian Christian Lawyers Fellowship

clear that public education shall be free from influence of any religion. Government can not lend its political power to any religion through whatever mechanisms including the educational system and tax money collected from all the citizens can't go to propagating certain religions in the neutral state. However, coming to the private schools, especially the religious ones mainly aim to propagate their religion. So, recognizing their right to establish educational institutions and restricting them from propagating their religion through education may seem non-sense.

Nevertheless, the limitation may be understood in light of the national policy principles and objectives under chapter 10 of the constitution. Education is a matter of public interest whether given in private or in public and the state reserves the right to regulate it and ensure that it will be free from religious or other unwanted influences. This may be done through giving standards to be followed. Banning religious classes completely from religious schools will not be compatible with the principle of freedom of religion incorporated in the constitution. Education is mostly a matter of family interest. The family has the right to influence children on religious matters, and if so chooses, shall be able to send them to schools where they will be religiously influenced.

There are different practices with the religiously affiliated schools in the country. For example the Catholic schools like the St. Joseph and Nazareth schools give religious classes not as purely as it used to be. The "Bible" classes are changed to classes of "Moral Values" in Nazareth and "Community Living" in St. Joseph. In some schools like the Akaki Adventist School, there are no religious or ethical classes given but students are required to attend religious services in chapels out of the school ours.

Religious freedom recognized under article 27 of the constitution is highly linked with other rights. Article 29 freedom of expression, article 30 the right to assembly and demonstration, article 31 the right to association and article 32 freedom of movement may be applied to freedom of religion. Receiving and imparting religious information, worshiping in assembly and getting organized and founding associations, traveling for missionary activities are covered by these provisions.

3.2.3.4 Limitation

Freedom to express or manifest one's religion or belief may be subject to such limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others and to ensure the independence of the state from religion. [*Art.* 27(5)]

It is already discussed in the previous chapter that freedom of religion is not absolute. The exercise of the freedom may be limited while the personal and internal conviction of the individual can not be touched. Article 27(5) lists seven grounds of limitation that should be prescribed by law and imposed by necessity.

All the grounds listed in the article are similar to the limitations specified under the international instruments and other jurisdictions as already discussed in the previous chapter, except for the last one i.e. ensuring the independence of the state from religion. It seems that the provision assumes a religious practice that would interfere with the autonomy of the state. It has somehow similar tone with Article 11(3) discussed in section 3.2.1. This shows that the dominance of the Ethiopian Orthodox Church still threatens the Ethiopian State.

Regarding the application other grounds of limitation, all the necessary considerations[22] shall be made not to compromise the rights of religious persons or groups, especially of minorities whose freedoms are usually infringed consciously or unconsciously.

[22] Principles to be followed in limiting religious liberty are discussed under Section 2.5.

3.2.4. Other Constitutional Rights

3.2.4.1 Recognition of Religious courts

Basically, recognizing religious courts is aimed at strengthening the internal cohesion of the religious group, helping them establish their socio-religious characteristics and identity. This is especially important to minority groups since one of their goals is maintaining their identity which is usually threatened by the majority in the community.

Pursuant to article 78(5) of the constitution, the establishment or official recognition of religious and customary courts by the House of People's Representatives and State Councils is allowed. And the already existing courts prior to the adoption of the constitution should be organized in accordance with the recognition they got by the constitution. The disputes to be resolved by these courts are those specified under article 34(5) of the constitution i.e. personal and family matters.

It is to be noted that the power to establish and organize religious tribunals is given to state organs. It is not mentioned whether it is done up on a request from the religious authorities. The House of People's Representatives and the State Councils seem to be free to assess the communities' need to establish a new religious court as well as organize and recognize the existing ones. It is not up to the religious communities to decide when they need to establish them. This may amount to interference of states in religious matters, which is against the principle of neutrality.

The establishment of such tribunals raises different questions. What is the effect of decisions given by these courts? Can they be enforced by the enforcement authorities of the state? If so, does it mean that these tribunals are state organs? If not, what is the remedy available to the concerned parties?

The other issue is how the constitutionality of the decisions given by these religious courts is to be checked. Is the principle of supremacy of the constitution to be applied if the decisions by these courts are against the rights recognized in the constitution?

It is specified that cases are brought to these courts with the consent of the parties to the dispute. How can their consent to be brought before such tribunals be checked? In a country where the legal system is not strong enough to protect rights, (especially of women and children in the country side) and where the community including the law enforcement authorities share similar patriarchcal views, how can it be made sure that the case is brought with free and full consent of all the parties?

Such and other similar controversial issues may be raised concerning the constitutionally recognized religious courts. To examine how these issues are dealt with, it would be worthwhile having a look at the only religious courts in the country, the Shari'a courts. They existed even before the adoption of the constitution and they are reorganized by the Federal Courts of Shari'a consolidation proclamation no.188/1999 at the federal level. Pursuant to the constitutional provisions, states are free to organize and give recognition to the Shari'a courts in their jurisdiction too.

The Proclamation establishes the courts in hierarchy from Federal First Instance Court of Shari'a to Federal Supreme Court of Shari'a under article 3. It also makes the courts answerable to the Federal Judicial Administration Commission, which is a state organ, concerning their activities. This puts the applicability of the separation principle entrenched in the constitution under a question mark. Furthermore, the application of the disciplinary rules applicable to the judges of regular courts, to the judges of Shari'a courts (Art.18), the provision of budgetary subsidy by the federal government, the execution orders given to the executive organs or individuals to cause executions of the decisions of the tribunals, and the provision of penalties for contempt of Shari'a courts which is applied by state authorities (at least concerning imprisonment) to whom penal matters are reserved all make the Shari'a courts look like a state organ.

Article 5 of the proclamation deals with determination of consent of the parties to the dispute. When a case is brought before a Shari'a court, the court will issue summons to the other party asking for his consent on a form included in the proclamation. The consent of the summoned party is presumed if he appears before the registrar of the court. Apart from the influence of the community which may seriously affect the will of the party, the procedure seems to have limitations in establishing full and free consent. There is no requirement to inform the party of his alternative choice to bring the case before regular courts, or there is no such indication in the form. What makes the issue serious is that once the phase of preliminary objection is passed, a case can not be transferred to regular courts under no circumstance. No legal redress seems to be available in case of judicial mistake. It is indicated in the research of M. Torccini Corazza that it is possible to ask for cassation of sentences of Shari'a courts only on procedural matters affected by serious judicial error. [23] She has also indicated that the procedure can hardly be considered as a remedy since very few cases have ever been presented from the time the Proclamation is issued until that time and all of them were rejected for lack of jurisdiction as establishing a "serious judicial error" is a very difficult task.

Article 6 of the Proclamation allows courts to adjudicate cases under their jurisdiction according to Islamic Law. Even though the Islamic law is said to be applied with the consent of the parties, what happens if it contradicts with fundamental rights of individuals is not clear. The autonomy given to the courts appears to put individual liberty at risk. The argument that the jurisdiction of the courts is based up on the will of the parties doesn't hold water, as the independence of individuals from the social and religious pressures is very weak in the country especially in the rural areas. A case reported in Mekele illustrates the difficulty of rejecting the authority of the tribunal (unavailability of choice)[24]

> *The wife called for divorce in front of the Shari'a court because her husband for unknown reasons did not want her to work as an employee in the local Kebele, did refuse the Shari'a court's jurisdiction, and the case was brought before the*

[23] M. Torccini cited above at note 13 , P. 379
[24] Ibid, P.380

regular court. The reaction of the Islamic community was very strong; they neglected her and she became deeply depressed and seriously lost her mental balance. She regained her sanity only after many months.

Although the ultimate goal is respecting the autonomy of the religious groups, all the above facts show that there are some serious issues involved in the constitutional recognition of religious tribunals. The fact that the courts are organized and established by the state and the structures are so linked with state organs is against the principle of mutual exclusion of state and religion. On the other hand the unavailability of clear mechanisms that check up on the non infringement of the fundamental rights of individuals threatens the personal liberties of members of the religion. It is also to be noted that the only religion with such formally established courts is the Islam, and it can be said that the regulation is discriminatorily applied.

3.2.4.2. Constitutional Recognition of Religious Marriages

Marriage and family units are considered to be of central value in many religions. They are sacred institutions which have both temporal and spiritual importance. Because of that religions have their own ways of concluding them, and the recognition of religious marriage has a positive implication for the individual believer as well as the religious group in exercising their religious freedom.

Article 34sub-art 4 states that a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted. Adjudication of disputes relating to personal and family matters in accordance with customary or religious laws with the consent of the parties to the dispute is also allowed according to sub-article 5 of the same article. Pursuant to this, the Revised Family Code of Ethiopia article 1(2) declares that marriage may be concluded in accordance with the religion or custom of future spouses. Among the elements of a valid marriage, those listed under Articles 6-14 of the code are the most important ones regarding this issue. Full and free consent (Art. 6, 13and 14), attainment of 18 years, which can be reduced to 16 by the minister of justice for

"serious cause" (article 7), being unrelated in direct line either by consanguinity or affinity, and in collateral lines being not sister and brother or uncle and aunt, or brother and sister in laws to each other, (Art.9), having no other bond of marriage (Art 11) are essential to conclude marriage under any of the systems. (Sub-art 2 of 26 and 27)

The recognition of religious and customary marriages raises some issues related to the essential elements of marriage. Early marriages, and bigamy and polygamy, arranged marriages (with out the consent of the spouses) and marriage between relatives are among the main problems related to religious marriages. (for e.g. in Islam)

3.3. Institutions Responsible for the Enforcement of the Rights

Different institutions regarding the enforcement of religious freedom (of minorities) may be mentioned regarding different aspects of the freedom. Institutions responsible for the justice administration system are common to the enforcement of any Human Rights and they are the most important ones.

Ordinary Courts, the House of Federation as a body assigned to interpret constitutional matters, prosecutors as those who bring the violators of rights before justice and the police may be considered as the essential bodies towards the enforcement of any human rights including the one we are concerned with.

In addition to these, the Human Rights Commission which is duty bound to insure human rights and freedoms recognized by the constitution of the FDRE pursuant to Proc. No.210/2002 , by checking the compatibility of laws , regulations and directives as well as government decisions with the protection of human rights, educating the society towards awareness regarding human rights, translating human rights instruments ratified by Ethiopia in to the local language, undertaking investigative measures in respect of violation of human rights, making recommendations for the revision of laws and formulation of policies, providing consultancy service on matters of human rights, providing opinions for the report to be submitted to international organs and so on.

The other important institution is the ombudsman, which has the power and duty of checking the acts of the executive to be in line with the realization of human rights. To this end, it supervises administrative directives issued and decisions given by the executives, receives and investigates complaints in respect of mal administration, seeks remedies for mal administration, undertakes researches on such issues, makes recommendations for the revision of legislations with a view to bring about better governance, and other similar activities as per proc. 211/2000.

Other institutions like the Ministry of Justice regarding the recognition aspect of religious association, the City municipality regarding permissions of assembly and demonstration (ordinary assemblies of churches are not required to obtain prior permit) and many more institutions may be faced with implementing religious rights in the carrying out of their regular functions.

Conclusion

Telling who religious minorities are may be a complex task as both Minority and religion do not have accepted definitions. Still, there can be agreeable approaches that would enable the rights of these groups to be protected best.

The basic elements in the definition of minorities are that: (1) they share characteristics and traditions i.e. ethnicity, religion, or language, which make them distinct from the rest of the population, (2) their wish to preserve this character and (3) their non dominant position in the in the population.

Determining what constitutes religion may be contentious, and due regard shall be had not to exclude those unfamiliar minor religions from the scope. Having a distinct definition of religion is not advisable as it narrows down the meaning restricting the rights of certain groups. Thus, analogical approach may be followed having a pattern that considers the different kinds of religions recognized in different parts of the world (the nation in case of multi-cultural states) as far as possible.

Religious minorities are the most vulnerable groups to violent acts because of their weaker nature and the sensitivity of issues involved in religious matters. And for this reason, they have been subjects of protection under treaties from early periods in history. The protection mechanism developed in time and currently there are internationally accepted legal instruments which guarantee the protection of rights of religious minorities, and provide for enforcement mechanisms as well. As minorities, the basic rights they claim are right to exist, meaning to be free from elimination by the majority in the population, right to preserve their identity that is their religion, and right to get equal treatment with others.

The relation between a state and religion can have an impact on the protection of religious minorities. There are different models of interaction between religion and state, and the best models in the modern liberal society are those in which the state is neutral

towards religions. Though not always true, in states where there is an established church the rights of religious minorities in threatened. But even with out having an established religion some states may be hostile towards religion because of the ideologies they follow, as in the former socialist states.

In preserving their religion, minorities have rights with individual and collective aspects. Freedom of conscience, thought and religion, which is about the internal conviction of a person is simply an individual right while freedom to manifest the religious beliefs may involve simply individual rights or individual rights requiring a community to exercise with. They also include rights that can not be exercised by the individual but collectively.

Coming to Ethiopia, the country has a long history with an established religion that is the Ethiopian Orthodox Church. The religion was accepted as the only true faith for the people and clear violations of rights of those who are members of minority religions have happened. The Church was separated from the state by the 'Derg' which followed socialist ideologies and the hostility was towards all kinds of religions. Still it could not kill the Christian orthodox values of the society. Even until now, the Orthodox Church remains holding the dominant position in the country because of the larger number of its members and the long established tradition of the country.

Currently, the FDRE constitution affirms the principle of neutrality regarding the relation between state and religion. It also recognizes all the different aspects of freedom of religion. But neither the constitution nor any other legislation say any thing about minorities. Nevertheless, it is stated in the constitution that all the ratified international instruments are parts of the law of Ethiopia, which would enable to take concepts from international laws and authors in the field regarding the meaning and rights of religious minorities. Moreover, there are different provisions relevant for the protection of religious minorities in the law of the land.

Even if it can be concluded that the current system protects the rights of religious minorities better that the previous regimes in the country, there are still legislative gaps and practical problems. The major problems identified in this work are:

-Unavailability of meaning of terms: - The concepts of neither minorities nor religion are dealt with in the Ethiopian legal system apart from the common understanding that can be reached to use explanations of international instruments and authors which may create differences and controversies in implementation of the rights. Thus, it may be important to have a domestic law that specifically deals with these issues.

-Non recognition of Religious Institutions distinctly: - The fact that churches and other religious institutions are not separately treated from other Non Governmental Organizations has problems regarding their internal administration including labor management and unnecessary interference of the government in their matters. Having a separate rule for religious institutions as indicated in the model draft proclamation would be preferable for best protection of religious rights.

-Prohibition of Religious Education: - The Prohibition of religious teachings in any educational institutions is also an infringement of religious freedom recognized in the constitution itself. While religious views might be banned in public education, religious institutions should be free to propagate their religion through teachings.

-Problems Related to Religious Courts: - While recognition of religious courts is beneficial to the preservation of the identity of religious minorities, the ways of establishment and recognition designated the constitution have problems. The fact that the Council of Peoples Representatives or the State Councils establish and recognize them takes away the religious autonomy of the institutions. Furthermore, Considering the Sheri'a court which is one of its kinds in the country, it has too much interaction with state organs that it can be considered itself as a state organ. This wouldn't make it free to achieve the goal of preserving the identity of the group. On the other hand, there are no clear mechanisms of checking the non violation of fundamental rights of individuals by

the decisions of the courts. And at last, it is a discriminatory treatment between the Muslims and other religions to recognize only the courts of Shar'a.

Problems Related to religious Marriage: - In recognizing religious marriages, what is to be done in case of acts that contradict with the state laws, especially the ones recognizing fundamental freedoms, is not clearly identified. Thus, having clear rules regarding the issue may be needed.

Infringements of Rights of Minorities in practical Cases: - There are indications of serious violations, though there are several noticeable measures taken by the government for the enjoyment of rights of religious minorities. The eviction in Illubabor shows how government officials themselves are biased when it comes to "other people" who do not have the same character as theirs. The mass persecution in Bale is in fact not an act of the government but the majority in the population. Still it is the duty of the government to take protective as well as rectifying measures. Researches may be done by the already existing responsible institutions like the Human Rights Commission and the Ombudsman, concerning measures to be taken in protection of religious minorities from the majority in the population, and actions of government bodies.

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Interview with Ato Biruk Belay, Legal Expert at the Ombudsman, May 18, 2008

Interview with Ato Deneke Shanko, Legal Expert at the Ombudsman, May 18, 2008

Interview with Ato Terefe Wondimu, Legal Advisor and investigation Expert at the Human Rights Commission, May 20,2008

Interview with Ato Fanta Chelebo, Head of the Education Department in the Ethiopian Adventist Union, May 15, 2008.

Case

Haregew Work St. Mary's church vs. Deacon Mihret Birhan and others(Supreme Court, Addis Ababa, Appeal No.18419, 1998Eth.Cal)(Unpublished)

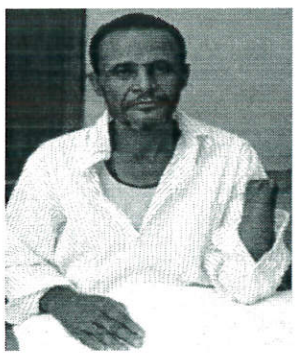
NORU MIDESA

Name – Noru Mldesa
Age – 45
Occupation – Farmer
Denominations – Berhane Christos
Family man – with 7 children
Brith place – Ambo zone – Ginche
Living place – Bale zone, Worka woreda Nesebo village.

Noru on the hospital bed

He said "we came here seven years ago, more than three thousands people from Ambo zone resettled by the government resettlement program because here there is enough fertile land for the new comers and the natives.

95% native populations in the area are Muslim and are very aggressive and full of hatred even to see Christians.... Among the new comers the born again Christians are less than 300 hundred souls. After we were resettled by the government we planted three local small churches and continued worshiping King Jesus in the midst of great resistance. We tried to approach people in our surrounding with friendly and open heart but they react negatively just because of our faith in the living Jesus. Always we are praying for them. We are opposed by unbeliever crew those who come to the land and the fanatic Muslim's in the ground. Harassment, blasphemy and giving warring is our daily gifts from them for last six years.

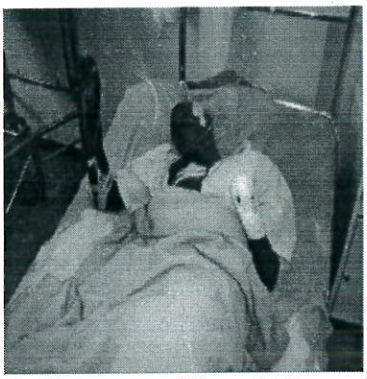


Noru after Medical treatment

Sunday March 3, 2008 at 12:30 PM. we were conducting our Sunday regular worship service. On our benediction last season we heard strange mob voices in the surrounding of the church and two young men entered with swords in their hands. They were very irritated, and shouting hastily "Allah Wakubar" and closed two doors. Immediately many of them entered into the church through windows with sword. All of them said hurriedly "Allah Wakubar" and directly started to attack any body in the church. One young man come direct to me and stretched his hand to cut of my neck and I just raise my hand and he cut immediately my left hand. I saw with in a minute my hand near the pulpit...

According to Noru eight people are highly injured and lost a part of their body in the church. He said lastly, "Tulu Mosesa 45 years old, a friend of mine, the father of 4 children cut off his head in the church by Muslim radicals."

DAFA GUDATA

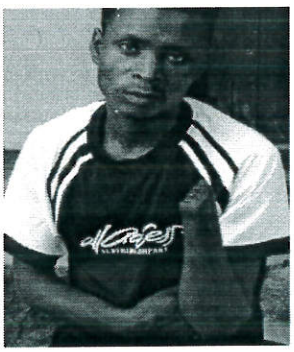


Dafa on the Hospital bed

Name – Dafa – Gudata
Age – 30
Occupation – Farmer
Family man – 4 children
Birth place – Ambo zone
Living place – Nensebo
Denomination – Kale Hewote church

Dafa is one of the victims of the March 3, 2008 persecution which took place in Nensebo. He was in the same area with Noru but in a different local church. He is a member of Kale Hiwot local church in the Nenesbo.

He said, "praise God for is great an opportunity to lose my hand for the sake of Christ. This is not the first attempts for the Muslim fanatics in the area. They had burnt our church three times in the area, harassing our members always and giving us warring to clear off from the land one day. We had prayed for them and showed them the love of cross always. They are very zealous for their religion and don't give any permission for any body to worship except their Allah in their land and surroundings.



Dafa after Medical treatment

March 3, 2008 at 12:30 pm they invaded the innocent people in the prayer service by sword. Two of the murderers entered into the congregations and closed the two doors and rapidly declaring "Allah wakubar." The second aggressive blood hungered groups entered into the church through windows and started to cut hands and legs of the innocent kids, young men, old etc in the church. Really, human word can't explain their brutal actions in the name of religion and God. One of our village young men whom I knew very well stretched his sword to cut off my neck and I asked him "what is wrong?" He replied "this is the last day of the pagan people." I tried to protect just my neck and he cut of my hand and left side of my head and other three places in my body. I was totally enveloped with blood and I was in the state of death. I don't know how but by the grace of God I am alive to give this testimony for the people of God

around the world. From our church around 14 people lost part of their bodies and are under medication in various hospitals.

The mark in his left head

DEREBA GUTU

Dafa's Biological brother

Name – Dereba Guta
Age – 20
Occupation – student 8th grade
Birth place – Ambo zone
Living place – Nensebo
Denomination – Kale Hewote church

Still he is under medication in Awassa Referral hospital.

BEKE ABERA

Name – Beke Abera
Age – 5

Really, I couldn't control my self when I took this picture. Beke, was in such a pain, agony and tears with out knowing why sword cut his hand I don't know why they did such a horrendous thing for this small kid…

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የሃይማኖት ተቋማት ሕግ

መግቢያ

የሀይማኖት ተቋማት ከሌሎች ተቋማት ባላቸው የተለየ ባህሪ (distinctive nature) ህገመንግስቱ የሰጣቸውን ጥበቃ ተግባራዊ ለማድረግ የሚያስችል የራሳቸው የተለየ ህግ ማውጣት አስፈላጊ ሆኖ በመገኘቱ፣

በህገመንግስቱ የተረጋገጠው የማንኛውም ሰው የማሰብ እና የህሊና ነፃነት ያለው መሆኑን፣ የየትኛውም እምነት ተከታይ መሆን አድሎ ሊያስከትል እንደማይገባ፣ ማንኛውም ሰው በሀይማኖቱ የተነሳ ስራውን ሊያጣ፣ ከህዝብ ተመራጭነት ሊወገድ፣ ከሙያው እና ከእንቅስቃሴው ሊገደብ እንደማይገባ በማመን፣

በአጠቃላይ ኢትዮጵያ ያላትን የዘመናት የእምነት ታሪክ በማስታወስ ያፀደቀቻቸውን አለም አቀፍ ስምምነቶችን እና በህገመንግስቱ የተረጋገጠውን የመንግስትና የሀይማኖት መለያየት፣ የሀይማኖት ነፃነት መብትን መሰረት በማድረግ፣

በኢትዮጵያ ፌዴራላዊ ዴሞክራሲያዊ ረፐብሊክ ሕገመንግስት አንቀጽ 55(1) መሰረት የሚከተለው ታውጇል።

ክፍል 1

ጠቅላላ

አንቀጽ 1. አጭር ርዕስ

ይህ አዋጅ የሀይማኖት ተቋማት አዋጅ ቁጥር ..... ተብሎ ሊጠቀስ ይችላል።

አንቀጽ 2. ትርጉም

በዚህ አዋጅ የቃሉ አገባብ ሌላ ትርጉም የሚሰጥ ካልሆነ በስተቀር፡

1. **'የሀይማኖት ነፃነት'** ማለት በግል፣ በቡድን እንዲሁም በውጭ ሀገር ተቋቁመው የስራ ፈቃድ የተሰጣቸው አካላት የእምነትን አስተምህሮአቸውን ለመግለጥ፣ ለመከተል፣ ለማስተማር እና ለመተግበር በህግ በግልፅ ከተቀመጠው ውጪ አለመገደብ ማለት ነው።

2. **'መደራጀት'** ማለት ሁለት ወይም ከዚያ በላይ የሆኑ ሰዎች የሀይማኖት አስተምህሮውን ለመግለጥ የሚያደርጉት ስብስብ ነው።

3. **'መንፈሳዊ አገልጋይ'** ማለት በሀይማኖት ተቋማት የአደረጃጀት እርከን ስርአት ውስጥ የሀይማኖትን አስተምህሮ እና ሌሎች መንፈሳዊ አገልግሎቶችን ለመፈጸም በክፍያ ወይም ያለክፍያ ራሳቸውን የሰጡ የሀይማኖት ተቋማት አባላት የሆኑ ሰዎችን ያጠቃልላል።

4. **'ድጋፍ ሰጪ ሠራተኞች'** ማለት መንፈሳዊ አገልጋይ ያልሆኑ ነገር ግን የሃይማኖቱን ተቋም በተለያዩ ሙያዊ እና የጉልበት ሥራ በቅጥር ላይ በተመሠረተ ላይ የተመሠረተ የሥራ ግንኙነት ያሉትን ሠራተኞችን ይመለከታል።

አንቀጽ 3፡ የእምነት መገለጫዎች

1. ማንም ሰው በሕገ መንግሥት በተገለጸው መሠረት የሚከተሉትን በማድረግ እምነቱን መግለጥ ይችላል፡፡

   ሀ. የትኛውንም ሃይማኖት የመከተል ወይም ያለመከተል ወይም ሃይማኖትን መለወጥ፣

   ለ. የራስን ሃይማኖት በነፃነት ማራመድ፣

   ሐ. በሃይማኖታዊ ሥርዓቶች መካፈልና ለእምነቱ ድጋፍ መስጠት፣ ሃይማኖታዊ በዓላትን ማክበር እንደ ጋብቻና የቀብር ሥነ ሥርዓት እንዲሁም ሌሎች መሰል የሀይማኖት ስርአቶችን በሃይማኖቱ ደንብ መሠረት መፈፀም፣

   መ. በጽሑፍ ወይም በቃል ወይም በሌላ መንገድ የሚሰጡ የሃይማኖት ትምህርቶችን መቀበል ወይም ማስተላለፍ፣

   ሠ. ሃይማኖታዊና ሞራላዊ ትምህርቶችን መማርና ማስተማር፡፡

   ረ. አቅመ አዳም ላልደረሱ ልጆች የሚከተሉት ሀይማኖት የወላጆች ምርጫ መሆኑን ማረጋገጥ፣

   ሸ. አማኞች በሃይማኖታቸው ቀኖና መሠረት የተለያዩ የኃላፊነት ቦታዎችን በመያዝ አስፈላጊውን እና ሚጠበቅባቸውን ግዴታ መፈፀም፣

2. ከላይ የተጠቀሰው እንደተጠበቀ ሆኖ ሀይማኖትን እና እምነትን የመግለጽ መብት ሊገደብ የሚችለው የሕዝብን ደህንነት ሰላምን፣ ጤናን፣ ትምህርትን፣ የሕዝብን የሞራል ሁኔታ፣ የሌሎች ዜጎችን መሰረታዊ መብቶች፣ ነፃነቶችና መንግስት ከሀይማኖት ነፃ መሆኑን ለማረጋገጥ በሚወጡ ህጎች ይሆናል፡፡

ክፍል 2

ሃይማኖታዊ ተቋማት

አንቀጽ 4፡ የሃይማኖት ተቋም

1. የሃይማኖት ተቋማት በዜጐች ወይም ኢትዮጵያ ውስጥ በተወሰነ ወይም ላልተወሰነ ጊዜ በሚኖሩ ሰዎች በጐ ፈቃደኛነት የተመሠረተ ተቋም ሲሆን በጋራ ለማምለክ፣ ለመፀለይ እንደዚሁም እምነትን ለማስፋፋት ዓላማ ያደረገ ሆኖ የእምነቱን ተከታዮች በአንዱ ዓይነት ሃይማኖታዊ አስተምህሮ ለመከትከትና ለማሳደግ የተደራጀ አካል ነው።

2. ሃይማኖታዊ ተቋማት የራሳቸው እምነት የሚያካሂዱበት የአምልኮ ቦታ፣ ሃይማኖታዊ ማህበረሰብ፣ ወይም ለሃይማኖት ዓላማ የተሰበሰበ ጉባዔ ሊኖራቸው ይችላል።

3. ሃይማኖታዊ ተቋማት በራሳቸው መተዳደሪያ ደንብ መሰረት የራሳቸውን መዋቅርና የሥልጣን ተዋረድ ይወስናሉ። መንግስት በሀይማኖታዊ ተቋማት የውስጥ መዋቅርና የአመራር ተዋረድ ውስጥ ጣልቃ አይገባም።

4. ሃይማኖታዊ ተቋማት የተማከለ ወይም በቦታ የተከፋፈለ አደረጃጀት ሊኖራቸው ይችላል።

5. የተለያዩ ሃይማኖታዊ ተቋማት የየራሳቸውን ሕጋዊ ሰውነት በመያዝ ጥላ ማህበር ወይም አንድ አስተባባሪ አካል መፍጠር ይችላሉ። ዝርዝሩንም አባል የሀይማኖት ተቋማት ይወስናሉ።

6. የሃይማኖት ተቋማት በማረሚያ ቤቶችና ከህክምና ተቋማት በስተቀር በመንግሥት መሥሪያ ቤት፣ በመከላከያ ሠራዊት፣ እና በመሳሰሉት ውስጥ ተቋማዊ ሕልውና ሊኖራቸው አይችልም።

አንቀፅ 5፡ ሕጋዊ ሰውነት ማግኘት

1. ማንኛውም የሃይማኖት ተቋም የራሱን የመመስረቻ ፅሁፍ እና መተዳደሪያ ደንብ በማቅረብ ብቻ መመዝገብና ሕጋዊ ሰውነት ማግኘት ይችላል።

2. የሃይማኖት ተቋማት ለምዝገባ የሚያቀርቡት መተዳደሪያ ደንብ የሃይማኖት ተቋሙን ዓላማ፣ የሃይማኖትን ስም፣ ተወካዮችን፣ አወቃቀሩንና ኃላፊነታቸውን የሚገልጽ ሊሆን ይገባል።

3. ሕጋዊ ሰውነት ያገኙ የሃይማኖት ተቋማት በበኩላቸው የራሳቸውን ሕጋዊ አካላት ሊፈጥሩና ሊያስመዘግቡ ይችላሉ። እናት የሀይማኖት ተቋማት በጽሁፍ ለመዝጋቢው አካል ካልገለጠ በቀር ቅርንጫፍ (Subsidiary) ዘርፎች ሊከፈቱ አይችሉም።

4. የሃይማኖት ተቋማትን ምዝገባና ይህን ሕግ በማስፈጸም ረገድ አመቺ ሁኔታዎችን የሚፈጥር እና የሚያግዝ የሃይማኖት ኮሚሽን መንግሥት ሊያቋቁም ይችላል። ዝርዝሩ በሕግ ይወሰናል።

አንቀጽ 6፡ የሕጋዊ ሰውነት ውጤት

1. ሕጋዊ ሰውነት ያገኙ የሃይማኖት ተቋማት በእምነታቸው መሠረት ዓላማቸውን ለማስፈፀም የተለያዩ ማህበራት፣ አገልግሎቶች፣ የትምህርት ተቋማት ሊመሠርቱ ይችላሉ።

2. ሕጋዊ ሰውነት ያገኘ የሃይማኖት ተቋማት ያለመከልከል በውጭ ሀገር ከሚገኙ ተመሳሳይ የሃይማኖት ተቋማት ጋር የስራ ግንኙነት ይፈጥራሉ።

3. ሕጋዊ ሰውነት ያገኙ የሃይማኖት ተቋማት በመረጡት ቋንቋ የሃይማኖት መጽሐፍት፣ በራሪ ጽሑፍ፣ መዝሙር፣ በአጠቃላይ የተለያዩ ሕትመቶችን ለማሳተም በሃገር ውስጥና በውጭ ሀገር ለማሰራጨትና ወደሃገርም ለማስገባት መብት አላቸው።

አንቀጽ 7. ንብረት

1. ማንኛውም የሃይማኖት ተቋም ማንኛውንም የሚንቀሳቀስና የማይንቀሳቀስ ንብረት መሸጥ፣ መለወጥ፣ መግዛት፣ በዋስትና ማስያዝ፣ ስጦታ መቀበል፣ መወረስ፣ ስጦታ የመስጠት መብቱ የተረጋገጠ ነው። አፈፃፀሙ የሃይማኖት ተቋሙ በሚያወጣው ዝርዝር የውስጥ ደንብ መሠረት ይፈፀማል።

2. ለሃይማኖት ተቋማት የሚደረግ የባለቤትነት ዝውውር ከማዘጋጃ ቤት ክፍያ ነፃ ይሆናል።

3. ከላይ በን.ቁ.2 የተጠቀሰው እንደተጠበቀ ሆኖ የአምልኮን ቦታ በዋስትና ማስያዝ እና ብድር ማግኘት አይችልም።

4. የአምልኮ ቦታዎች የተከበሩና የተፈሩ በመሆናቸው ያለሃይማኖት ተቋሙ የበላይ አመራር ግልጽ ፈቃድ የመንግስት የፀጥታ አካላት በቅጥር ግቢው ውስጥ መግባት አይችሉም።

5. ማንም ሰው የሌለውን የአምልኮ ሥርዓት ማወክ ወይም የአምልኮ ቦታውን ክብር ያወከ ወይም የደፈረ እንደሆነ በኢትዮጵያ የወንጀል ሕግ መሠረት ይቀጣል።

አንቀጽ 8. ገቢ የሚያስገኙ ሥራዎችና ታክስ

1. የሃይማኖት ተቋማት ለትርፍ ያልተቋቋሙ ቢሆኑም ራሳቸውን ለማስተዳደር እንዲችሉ የሚያደርጓቸውን የገቢ ማስገኛ እንቅስቃሴዎች ሊያደርጉ ይችላሉ። ይሁን እንጂ ገቢው በሙሉ ለሃይማኖቱ ሥራ መዋል ይኖርበታል።

2. የሃይማኖት ተቋማት ማህበረሰባዊ /Communal/ እንደመሆናቸው መጠን ከንኡስ ቁጥር አንድ ከተመለከተው ውጪ ከአባላት መዋጮ፣ መባ፣ አስራት፣ ስጦታ እና ከሌሎች ምንጮች የሚያገኙት ገቢ ከማናቸውም ታክስና ግብር ነፃ ይሆናሉ።

3. የሃይማኖት ተቋማት ለሃይማኖት ተግባራቸው ከውጭ ወደ ሃገር ውስጥ የሚያስገቡአቸው ቁሳቁሶች፣ መጽሐፍትና የኤሌክትሮኒክ ሕትመቶች ከጉምሩክ ታክስ ነፃ ይሆናሉ።

አንቀጽ 9፡ የሃይማኖት ተቋማት ገንዘብ

1. የሃይማኖት ተቋማት በአምልኮ ቦታቸው ወይም በማናቸውም ሌላ ሥፍራ ሕዝባዊ መዋጮ መሰብሰብ ይችላሉ።
2. የእምነቱ አባላት በማናቸውም ጊዜ የአባልነት መዋጮም ሆነ ልግስና በራሳቸው በጐ ፍቃድ በግልፅም ሆነ ማንነታቸው ሳይገለፅ ማድረግ ይችላሉ።

አንቀጽ 10. የሥራ ግንኙነት

1. የሀይማኖት ድርጅቶች ከመንፈሳዊ አገልጋዮች ጋር የሚፈጥሯቸው የሥራ ግንኙነቶች በሀይማኖቱ ደንብ መሠረት የሚወሰኑ በመሆኑ የአሠሪና ሠራተኛ ጉዳይ ሰሚ ችሎቶች ክርክሮችን ለማየትና ለመወሰን ሥልጣን የላቸውም።

2. ከላይ የተቀመጠው እንደተጠበቀ ሆኖ ሌሎች ድጋፍ ሰጪ ሠራተኞችና ባለሙያዎች በሃገሪቱ የሠራተኛ ሕግ መሠረት የሚስተናገዱ ይሆናሉ።

አንቀጽ 11. ክርክርን ስለመፍታት

1. የሃይማኖት ተቋማት የአንድን ማህበረሰብ ባህሪ የሚቀርጹ እንደመሆናቸው አማራጭ የክርክር ፍቺ አካልነታቸው ታውቆ ክርክርን በሰላምና ከፍርድ ቤት ውጭ የመፍታት መብት አላቸው።

2. የእምነቱ ተከታዮች አንድን ክርክር በሃይማኖት ተቋም የዳኝነት አካል ፊት ለመፍታት ስምምነት ካደረጉ በስምምነቱ መሠረት የሃይማኖት ተቋሙ ውሳኔ ይሰጣል። አስፈላጊም ሲሆን ውሳኔው እንደማንኛውም የግልግል ውሳኔ በመደበኛ ፍ/ቤት ሊፈጸም ይቻላል።

3. የሀይማኖት ተቋማት የሚፈጥሯቸው ጥላ ማህበራት ይኸው በአንቀጽ 11(2) የተጠቀሰ የዳኝነት ስልጣን ተሰጥቷቸው በቤተ እምነቶች ወይም በሃይማኖት መሪዎች መካከል የሚነሱ አለመግባባቶችን ይፈታሉ። እንደተከራካሪዎች ምርጫም የግልግሎችን ውሳኔ የመጨረሻ ማድረግ ወይም ወደ መደበኛ ፍ/ቤት በይግባኝ እንዲወሰድ ማድረግ ይቻላል።

አንቀጽ 12. ስለወንጀል ተጠያቂነትና ስለመሰረዝ

ማናቸውም ሀይማኖት የሕዝብን ሰላም፣ ጤንነት እና ጥቅም የሚጥስ ወይም የሀገርን ሉዓላዊነትና ደህንነትን የሚነካ ወይም በሕገ መንግሥትና በሰው ልጆች መብትና ነፃነት የተደነገጉት የሚቃረን በሆነ ጊዜ በሃገሪቱ የወንጀል ሕግ መሠረት ተጠያቂ ይሆናል የተቋሙ ሕጋዊ ሰውነት ይሠረዛል።

ክፍል ሶስት

ልዩ ልዩ ድንጋጌዎች

አንቀጽ 13. አዋጁን የሚያስፈጽመው አካል

1. ይህንን አዋጅ የሚያስፈጽም የሀይማኖት ኮሚሽን ይቋቋማል።
2. ዝርዝሩ በሕግ ይወሰናል።

አንቀጽ 14. የመሸጋገሪያ ደንብ

የሀይማኖት ኮሚሽኑ ተቋቁሞ ሥራውን እስኪጀምር ድረስ በኢፌዴሪ ፍትህ ሚኒስቴር ሥር የሚገኘው የማህበራት ምዝገባ ጽ/ቤት ይህን አዋጅ ያስፈጽማል።

አንቀጽ 15. ስለሚሻሩ ሕጎች

በፍትሐብሔር ሕጉ ስለ ሀይማኖት ተቋማት የተደነገጉት አንቀጽ 404 እና ተከታዮቹ እንዲሁም ማናቸውም ከዚህ አዋጅ ጋር የሚቃረኑ ሕጐችና ደንቦች አዋጁ በሥራ ላይ ከዋለበት ቀን ጀምሮ ተፈፃሚነት አይኖራቸውም።

I the undersigned declare that this thesis is my original work and all the sources of materials used for the thesis have been duly acknowledged.

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Date June 16 2008	Date 16th June, 2008