

**THE RIGHT TO PROSELTIZE IN A RELIGIOUSLY
DIVERSE SOCIETY: THE CASE OF ETHIOPIA**

BY: GEDION SISSAY

ADVISOR: YARED LEGESSE

(S.J.D CANDIDATE)

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Acronyms

1. ICCPR – International Covenant on Civil and Political Rights
2. UDHR - Universal Declaration of Human Rights
3. FDRE- The Federal Democratic Republic of Ethiopia
4. UN- United Nations
5. ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms
6. EKHC- Ethiopian Kale Hiwot Church

Bibliography

Books

- Abraham, Hennerly J. and Barbara A. Perry, *Freedom and the Court: Civil Rights in the United States*, New York, Oxford University Press, (6th ed.) (1994)
- Baderin, Mashod A., *International human Rights and Islamic Law*, Oxford, Oxford University Press (2005)
- Barendt, Eric, *Freedom of Speech*, Oxford, Oxford university Press (2007)
- Boyle, Kevin and Juliet Sheen, eds., *Freedom of Religion and Belief, A World Report*, London, Routledge (1997)
- Cohen, William and John Kaplan, *Constitutional Law: Civil Liberty and Individual Rights*, Mineola, New York, the Foundation Press, Inc., 2nd ed. (1982)
- Edge , Peter W., *Legal Response to Religious Difference*, Kluwar Law International, London (2002)
- Ernst, Carl W. *Rethinking Islam in the Contemporary World*, Edinburgh University Press (2004)
- Evans, Carolyn, *Freedom of Religion under the European Convention on Human Rights*, Oxford University Press (2003)
- Hammer, Leonard M. *The International Human Rights To Freedom of Conscience, Some Suggestions for its Development and Application*, Ashgate, Dartmoth (2001)
- Nowak, Manfred, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, N.P. Engel, Kehl, (1993)
- ‘Oudah, Abdul Qadir, *Criminal Law of Islam*, (Vol.3), translated by S.Zakir Aijaz, International Islamic Publishers (2000)
- Pfeffer, Leo, ‘*Church, State and Freedom*, (Rev. ed.), Beacon Press, Boston (1967)
- Pfeffer, Leo and Anson Phelps Stokes, *Church and State in the United States*, New York, Haper & Row Publishers, New York (1964)
- Poole Hilary, ed. *Human Rights: The Essential reference*, Oryx Press (1999)

Schroeder, Theodore, *Constitutional Free Speech Defined and Defended In an Unfinished Argument In a Case of Blasphemy*, the law book exchange, LTD, Union, New Jersey (2001)

Tahzib, Bahiyyah G., *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*, The Netherlands, Kulwar (1996)

Thiemann, Ronald F., *Religion in Public Life: A Dilemma for Democracy*, George Town University Press, Washington (1996)

University of Minnesota, *Lifting the Spirit, Human rights and Freedom of Religion or Belief*, Human rights Education Series Topic, Book 5

Articles

Koldner, Eric, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislations*, *Human Rights Quarterly*, Vol. 16, No. 3 (1994)

Lerner, Natan, *Proselytism, Change of Religion and International Human Rights*, *Emory International Law Review* (1998)

Nicholas, Joel A., *Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions as reflected in Church Documents*, Emory University School of Law, (1998)

Smith, Perry S., *Speak No Evil: Apostasy, Blasphemy and Heresy in Malaysian Syariah Law*, 10 U.C., *Davis Journal of International Law and Policy* 357 (2004)

Stankle, Tad, *Proselytism and Freedom to Change Religion in International Human Rights Law*, *Birgham Young University Law Review*, Volume 1999, No. 1, (2001)

Vermeulen, Ben, *The Freedom of Thought, Conscience and Religion, Reflections on of the European Convention On Human Right:, in Particular with regard to the Position of Minorities*, *International protection of Human Rights*, SIM Special No. 15, Netherlands institute of Human Rights, Utrecht (1995)

Walilegne, Yeheneu Tsegaye *state of emergency and human rights under the 1995 Ethiopian constitution*, *Journal of Ethiopian Law*, Vol. 21, No.1 (2007)

Cases

Buscarini v. San Marino, App. No. 24645/94 (Eur. Ct. H.R.), 30 E.H.R.R. 208 (2000)

Cantwell v. Connecticut, Sup. Ct U.S. 310 U.S. 296 (1940)

Church of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773

Davis v. Beason 133 U.S. 333 (1890)

Employment Division Department of Human Resources of Oregon v. Smith, U.S. Sup Court 494 U.S. 872 (1990)

Fowler v. Rhode Islands, 345 U.S. 68 (1953)

Hasan and Eylem Zengin v. Turkey. Application No.1448/04

Jamison v. Texas, 318 U.S. 413 (1943),

Jewish Liturgical Association Cha'ar Shalom Tsadek v. France ,Application No. 27417\95

Kokinnakis v. Greece European Court of Human Rights 260-A Eur. Ct. H.R. (Ser. A) (1993), 17 E.H.R.R. 397 (1994)

Kunz v. New York, 340 U.S. 290 (1951)

Larissis and Others v. Greece1998 (140/1996/759/958–960)

Martin v. City of Struthers, 319 U.S. 141 (1943)

Minersville School District v. Gobitis, 310 U.S. 586 (1940)

Neimotko v. Maryland, 340 U.S. 268(1951)

Otto-Preminger-Institut V. Austria, European Court of Human Rights No. 13470/87 (1994)

Sherbert v. Verner, Sup.Ct.374 U.S. 398(1963).

Torcaso v. Watkins, 367 U.S. 488 (1961)

United States v. Seeger, 380 U.S. 163 (1965)

Welsh v. United States, 398 U.S. 333 (1970)

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)

Wisconsin v. Yoder, 406 U.S. 203,220 (1972)

X and Church of Scientology v. Sweden (1978)

Domestic Legislations

The Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995 (August 21, 1995)

Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960 , (entered into force may 5, 1960)

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414\ 2004 (Enter in to force May 9, 2005)

International Instruments

Declaration on the Elimination of Religious Intolerance and of Discrimination based on Religion or belief, GARes.36/55,36UNGAORSupp.No.51 at 171, UN Doc. A/36/51 (1981).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities *Adopted by General Assembly resolution 47/135 of 18 December 1999*

International Covenant on Civil and Political Rights, G.A. res2200A (XXI), 21U.N.GAORSupp. (No.16) at 52, U.N.Doc.A1616 (1966), 999, U.N.T.S.171 (entered in to force Mar. 23, 1976)

The African Charter on Human and People's Right, OAU Doc. CAB7/leg/67/3rev.5,21ILM.58,Adopted 27 June 1981, (entry into force 21 October 1986)

The European Convention for the Protection of Human Right and Fundamental Freedom, ETS No.5 (entered in to force Sep.3 1953)

Universal Declaration of Human Rights G.A. res217 (III), U.N.DocA1810at71 (1948)

Electronic Sources

A project Group in Missionary Activities and Human Rights, *Code of Conduct for Missionary Activities*, The Oslo Coalition on Freedom of Religion or Belief, Oslo, Available at <http://beta.religlaw.org/document.php?documentID=4088> (March 2009) (27/11/09)

Bureau of Democracy, Human Rights and Labor, International Freedom of Religion Report, October, 2009 <http://www.state.gov/g/drl/rls/irf/2009/index.htm>(6/1/10)
Garteth Anver Prince v. South Africa 1474\2006 <http://sim.law.uu.n1\sim\Dochome.nsf>
General Comment No. 22: *The right to freedom of thought, conscience and religion*, CCPR/C/21/Rev.1/Add.4, available at

<http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563004d8f15> (9/24/2009)

General Comment 23, Article 27(Fiftieth Session,1994),Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/Gen/Rev.1 at 38(1994) available at

<http://www1.umn.edu/humanrts/gencomm/hrcom23.htm> (20/11/2009)

Glas Nadezhda Eood and Elenkov v. Bulgaria. Application no.14134\02,
[http://beta.religlaw.org/document.php? Document ID=4281](http://beta.religlaw.org/document.php?DocumentID=4281)

Jahangar, Asma Jahangar , *Report of the Special rapporteur on Freedom of Religion or Belief*, UN A\HRC\10\8\Add.1 16, available at <http://www.ohchr.org> (11/12/09)

Jihad Against Danish Newspaper, 2005-10-22,<http://www.brusselsjournal.com>
www.religlaw.org

Raihon Hudoyberganova v. Uzbekistan (UNHRC, 2004)

<http://sim.law.uu.n1\sim\Dochome.nsf> (21/1/10)

The Case of Abdurrahman, an Afghan Citizen. Available
at http://www.religioustolerance.org/isl_aposl.htm

www.ekhc.org.et/mission/htm

www.eecmy.org

www.csa.org

Others

Macmillan English Dictionary for Advanced Learners, International Student Edition,
Bloomsbury Publishing Plc (2002)

Tekaligne Fanta, *Managing Religious Conflicts: A Study of the Legal Framework With
particular Reference to the 2006 Muslim-Christian Conflict in Oromiya*, Unpublished
LLM Thesis, Addis Ababa University, pp. 115-126(2008)

Time magazine, July 29-6, 2009

Chapter one

Introduction

1.1 Background of the Study

The creation of human rights regime at both the international and regional level signaled the acceptance by states of legal norms that guarantee freedoms based on human dignity. Freedom of expression and freedom of religion are some of the major achievements. Both found their places in Universal Declaration of Human Rights (UDHR), International Covenant on Civil Political Rights (ICCPR) and Regional human right instruments like the European Convention on Human Rights and the African Charter on Human and People's Rights (Herein after called the African Charter).

The religious freedom clauses of the major human rights instruments are virtually identical. Article 18 of UDHR and ICCPR as well as Article 9 and 12, respectively, of the European Convention and the American Convention on Human Rights closely parallel each other. The similarity in parlance indicates textual consensus on the scope of religious freedom.

When one unpacks these provisions, one discerns the universality of the freedom as it applies to everyone. Furthermore, an important cleavage can be seen in the religious freedom clauses. On the one hand, internal freedom of religion relates to freedom to think and believe as one wills as well as freedom to change ones belief, *Forum Internum*. On the other hand, religious freedom incorporates manifestation of ones religion, *Forum Externum*. While the former relates to individual's irremovable psychological set up, the latter deals with religion in action. The content of the freedom extends beyond the apparent division shown above. According to General Comment No. 22 of the Human Rights Committee; the freedom incorporates non theistic as well as atheistic beliefs.

The interdependence of rights becomes more visible as far as the external aspect of religious freedom is concerned. Freedom of speech is an indispensable correlative for a manifestation of religion in teaching.

Even though apostasy (changing ones religion) is clearly permitted under the human right instruments, the place of proselytism is contentious in the continuum of religious freedom. Proselytism generally refers to attempt by means of persuasion to convert others to one's religious belief. Major human right instruments like the ICCPR proscribe against forced conversion of religion. The perennial query is whether there is limitation on religious right to proselytism. In this respect the international practice largely varies. Most states with predominant Muslim population prohibit proselytizing Muslims under pain of penalty.¹ The states suppress proselytism mainly to discourage conversion from Islam which is adamantly objected to apostasy in most cases. The European Court of Human Rights, which had dealt with the issue in a number of cases, rendered decisions that range upholding proselytism as a right to denying it under certain circumstances.²

1.2 Statement of the Problem

Ethiopia is a federal polity which displays diversity in many aspects of life. One important feature is ethno-linguistic diversity. The Constitution endorses ethnic federalism. At the heights, it guarantees the right to self determination up to secession of ethnic and linguistic groups.

Religious pluralism is the other significant feature of the country. Followers of various Christian denominations, Islam and traditional religions live in Ethiopia. The constitution enshrines fundamental rights and freedoms. Freedom of religion and secularism form part of the core tenets of the Constitution. In addition the Constitution recognizes religious

¹ See generally Kevin Boyle and Juliet Sheen, eds., *Freedom of Religion and Belief, A World Report*, London, Routledge, (1997)

² See *kokinakis v. Greece* 17 E.H.R.R. 397 (1994) and *Larisissus and others v. Greece* 1998 (140/1996/759/958–960)

laws and courts to operate. This aspect of legal pluralism can be taken as extension of religious freedom.

In the context of religious pluralism and possibility of conflict between different religious groups or their members the issues around proselytism can be portrayed in a triangular framework that involves the proselytizer, the target of the proselytism and the state. Under International Human Right Instruments coercive forms of persuasion are clearly prohibited even though what forms of conducts constitutes coercion remains illusive.³ However as far as proselytism is concerned the views and practices vary. Some states, even though religiously diverse, place a total ban on proselytizing activities. Some scholars reject the activity on the ground that it is not covered by religious freedom clauses.⁴

The other view upholds the right to proselytism with a certain margin of appreciation towards the state. The state will not ban it but can limit it based on certain grounds such as protecting the rights and freedoms of others. For instance the United States Supreme Court in *Cantwell v. Connecticut* (1940) upholds the act as part of exercise of religious freedom while recognizing certain latitude of state regulation⁵. In addition, the Court invalidates unnecessary state interference against public evangelism or proselytizing in *Douglas v. City of Jeanette* (1943).⁶ Similarly, in *Kokinakis v. Greece* the European Court of Human Rights favored the right and held that Greece's anti proselytism ordinance violated religious freedom under European Convention for the Protection of Human Rights and Fundamental Freedoms.⁷

Proselytism is not merely part of religious manifestation or generally *Forum Externum*. It is an important element within the continuum of religious freedom. Proselytizing

³ General Comment No. 22 : *The right to freedom of thought, conscience and religion*, Art.18 ; CCPR/C/21/Rev.1/Add.4, available at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563004d8f15> (9/24/2009)

⁴ See *Larissius and others v. Greece supra note 2*

⁵ 310 U.S. 296 (1940)

⁶ 319 U. S. 157 (1943)

⁷ 17 E.H.R.R. 397 (1994)

activities mostly emanate from the genuine conviction or internal belief of believers of different religions to act in that manner. In other words it is an expression of the right to conscience or *Forum Internum* aspect of religious freedom. In this connection, most religious beliefs instill duty on their believers to engage in proselytizing activities. In addition, proselytizing activities augment the exercise of the right to change ones religious belief. Further more proselytizing activities greater than mere exchange of ideas but not tainted with coercion or manipulation helps to maintain a fair social divide that provides for the existence of diverse religious beliefs while preventing imposition of the beliefs of one on another.

Therefore the research addresses the following problems:

1. Whether the right to proselytize is a guaranteed within the continuum of religious freedom.
2. Whether the right to proselytize is part of the forum internum or forum externum aspects of religious freedom or both
3. Whether the right to proselytism can be restricted to balance the interests of others in the context of religious diversity

1.3 Objective of the Study

As has been briefly described above, proselytism refers to the right to encourage persons to convert from one religion to another. In other words; it stands for advocacy of abandonment of a religion. Basically, it is about persuasion and contrary to forceful conversion. Cognizant of the Ethiopian religious diversity the study mainly endeavors to unpack the ramifications of proselytism in the interaction of religions. The study has the following main objectives

- To identify the place of proselytism within the religious freedom clauses of the relevant human rights instruments
- To examine whether proselytism poses a threat to religious tolerance

- To identify whether there exists a compelling state interest that justify the state to restrict the right to proselytism in Ethiopia

1.4 Significance of the Study

The study as stated above delves into ramifications of rights to proselytism in the context of religious diversity. It draws a balance that provides for the existence of diverse beliefs while improper imposition of one belief on the other is prevented. In so doing it provides information that could help to deal with causes of religious intolerance. In addition, it may motivate other researchers to conduct further studies. Furthermore, it will hopefully make contributions to the existing literature in the area.

1.5 Methodology

The main objective of the study is to look into the exercise of proselytism in the context of religious diversity. To that end, relevant international and regional human rights instruments as well as constitutional provisions will be analyzed. Comparative work on a theoretic basis will also be conducted. The study also intends to examine leading cases from major constitutional systems.

1.6 Limitation of the Study

This study is delimited to an examination of the normative standards and the practical implications of proselytism. Owing to the normative similarity among the religious freedom clauses of the Ethiopian Constitution and the various international human right instruments relevant foreign case laws are used extensively. Ethiopian cases are not included in the study due to the absence of reported cases in the area of the study. Research methods such as interviews and questionnaires are not pursued.

1.7 Organization of the Thesis

Chapter one- This is an introductory part of the thesis and includes background of the problem, objective of the research, statement of the problem, research questions, methodology, significance and limitation of the study.

Chapter Two- This Chapter discusses how religion or belief is defined and the related issue of justification of religious freedom. In addition, it presents overview of the concept of religious freedom from the perspective of relevant international and constitutional documents.

Chapter Three- The chapter examines the content of religious freedom from the stand point of view of relevant human rights instruments, constitutional articulations, authoritative interpretations and decided cases.

Chapter Four- This chapter analyzes the place of the right to proselytism within the continuum of religious freedom. It analyzes the surrounding arguments and views forwarded by religious organizations in Ethiopia. It also examines judicial views on the issue. Most importantly it examines the limits on proselytism from comparative perspectives.

Chapter Two

General Overview of Religious Freedom

2.1 Definition of Religion or Belief

The issue of defining religion and belief is a threshold question in the study of religious freedom. The issue remains vexing as it has been difficult to achieve any viable definition of the terms.⁸ The meaning is context bound as “one can not understand religion in a timeless sense or through an abstract definition.”⁹ Nevertheless, it is essential to define religion and belief in order to apply protection of religious freedom to the religious and not to the irreligious as well as non religious. In other words, attempts to define the terms helps to figure out exercise or activities of religion or belief that deserve protection under religious freedom guarantees in the international and domestic human rights instruments.

The relevant human rights instruments do not define the terms.¹⁰ But they define freedom of religion to encompass freedom of thought, conscience and religion as well as the right to change, to have to adopt, to manifest and to practice religion or beliefs. To some extent the authoritative interpretation of ICCPR’s article 18 rendered by the Human Rights Committee propound broader understanding of the term.¹¹ Theoretically, religion or

⁸ Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights*, Oxford University Press, p.51 (2003)

⁹ Carl W. Ernst, *Rethinking Islam in the Contemporary World*, Edinburgh University Press, pp.38-39 (2004)

¹⁰ See article 18 of Universal Declaration of Human Rights G.A. res217(III),U.N.DocA1810at71(1848) and International Covenant on Civil and Political Rights, G.A. res2200A(XXI),21U.N.GAORSupp.,No.16 at 52, U.N.Doc.A/616(1966),999,U.N.T.S.171 (entered in to force Mar. 23, 1976) Article 9 of the Convention for the Protection of Human Right and Fundamental Freedom, ETS No.5 (entered in to force Sep.3 1953) (*herein after* called the European Convention)etc

¹¹ General Comment 22, Supra Note 3

belief encompasses “theistic, non theistic and atheistic beliefs as well as the right not to profess any religion or belief.”¹²

Furthermore, the General Comment treats religion or belief as dynamic phenomenon since traditionally known religions or beliefs as well as newly established beliefs fall within the purview of protection of religious freedom.¹³ Despite the Human Rights Committee’s official position that freedom of religion applies to new religious movements, some religions have led to a debate over recognition. In Germany for instance scientology has been subjected to official policy of repression that has drawn the attention of United Nations Special Rappourter on Religious Intolerance.¹⁴ Scientology has been regarded as “most dangerous sect” for a long time.¹⁵

Some consider the absence of formal definition of the terms religion or belief as a blessing in disguise. Donna Sullivan mentions two reasons on the advantages of the lack of definitions. First, a definition might detail too many or too less descriptions (might be over inclusive or under inclusive) opening up room for states to make reservation that would adversely affect the protection of the right.¹⁶ In other words, activities and affairs of human beings that ought and ought not to be considered as religious can not easily be delineated. Second, states might be tempted to treat beliefs that do not conform to the details of a definition as false religious expressions.¹⁷

Hammer attributes the omission of formal definition of religious belief in the international instruments either to the fear of unduly narrowing the right or the impossibility of coming up with a formal definition.¹⁸

¹² Id.

¹³ Id.

¹⁴ Kevin Boyle and Juliet Sheen, eds., *Supra Note 1* pp. 312-13

¹⁵ Id.

¹⁶ Donna Sullivan , *Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination* , Am .J. Int. Law, Vol.82, No. 3, p.492(1988)

¹⁷ Id.

¹⁸ Leonard M. Hammer, *The International Human Rights To Freedom of Conscience, Some Suggestions for its Development and Application*, Ashgate, Dartmoth, p.5(2001)

Traditional religions and beliefs with institutional character include, inter alia, Judaism, Hinduism, Buddhism, Christianity, and Islam.¹⁹ But these represent the fraction of the inventory of religions with long standing history and institutional character. Some times problems arise in recognizing any one of these faiths as religion or belief. States can use the power to define religion in a number of ways, resulting in endorsement or exclusion. For example, a state can define one form of religion as legitimate while criminalizing or discriminating against all others. Iran does not recognize belief systems other than Islam and to a lesser extent it recognizes “Religions of the Book” namely Judaism, Christianity, and Zoroastrianism as a legitimate religion or belief.²⁰

Apart from the General Comment 22, other treaties of international stature fail to offer definition of the terms. The UN Declaration on the Elimination of Religious Intolerance and Discrimination (1981), which is more detailed than any other instrument on religious freedom, does not define the terms.²¹

Judicial endeavor to define religion or belief in both international and domestic arenas compensated for the lack of definition of the terms. In Europe the European Court of Human Rights offered definitions to religion or belief in a number of cases. In *X v. Germany* a desired action driven by a “strong personal motivation” is not sufficient to be accorded protection on the basis of religion. Instead the desired action must express “coherent view on fundamental problems”.²² The Court reiterated the above position in *Campbell and Cossans v. the United Kingdom*, and which it concluded that a belief had “to attain a certain level of cogency, seriousness, cohesion and importance to be protected”.²³ The Court has accepted the claims of the church of Scientology as falling under the protection of religious freedom.²⁴

¹⁹ Bahiyyah G. Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection*, The Netherlands, Kulwar, pp.15-16 (1996)

²⁰ Kevin Boyle and Juliet Sheen, *supra* note 1, p.420

²¹ Declaration on the Elimination of Religious Intolerance and of Discrimination based on Religion or belief, GA Res.36/55, 36 UNGAOR Supp.No.51 at 171, UN Doc.A/36/51 (1981). See also European Convention on Human Rights, etc

²² Carolyn Evans, *supra* note 8, p.54

²³ *Id.*

²⁴ *X and Church of Scientology v. Sweden* (1978)

In the case where the appellant and others challenged a criminal sentence passed against them for violation of a state statute that rendered ineligible a bigamist or a member of an association that advocated bigamy from voting at any election, the United States Supreme Court incidentally defined the term religion.²⁵ The Court stated “the supreme Court of the United States held that the term ‘religion’ has reference to one’s view of his relations to his creator, and to the obligations they impose of reverence for his being and character, and obedience to his will”.²⁶ According to the Court’s understanding religion constitutes a belief in a creator or deity and commitment to revere the obligation imposed on the believer.

In *Torcaso v. Watkins*, the Supreme Court implicitly overturned the definition it had used in *Beason*, recognizing in a footnote the existence of “religions in the country which do not teach what would generally be considered as a belief in the existence of God” explicitly identified “Buddhism, Taoism, Ethical Culture, and Secular Humanism” as religious beliefs.”²⁷

In other cases in connection with the issue of conscientious objections to military draft the Supreme Court further gave wider reach to the meaning of religion. In *United States v. Seeger*, the petitioner applied for an exemption to a military draft on the basis of a statute that defined religious training and belief as "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."²⁸ His stated belief was “a belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed." He did not state that he had a belief in a Supreme Being which was a benchmark requirement for the purpose of exemption from a military draft in the above definition. However, the Court

²⁵ *Davis v. Beason* 133 U.S. 333 (1890)

²⁶ Leo Pfeffer, *Church, State and Freedom*, Rev. ed., Beacon Press, Boston, p.607 (1967). See also Hennery J. Abraham and Barbara A. Perry, *Freedom and the Court: Civil Rights in the United states*, Oxford University Press, New York, 6th ed. p. 226 (1994)

²⁷ Hennery J. Abraham and Barbara A. Perry, *supra note 26*, p. 226

²⁸ *United states v. Seeger*, 380 U.S. 163 (1965)

concluded that the subject's belief constituted a religious belief making him eligible for exemption. In effect the Court broadened the meaning of religion by considering sincerely held ethical belief of the petitioner to be parallel to a belief in a Supreme Being or theistic belief as was required in the statute.²⁹

Sometimes adherence to beliefs on objects whose use are generally considered illegal is not taken as a religion or belief. For instance, in *M.A.B.W.A.T and J.A.Y.T v. Canada*, the applicants representing an organization named Assembly of the church of the universe alleged that their rights under article 18 were violated when the authorities prosecuted them for possession, distribution, and cultivation etc. of marijuana.³⁰ The Human Rights Committee held "a belief consisting primarily or exclusively in the worship and distribution of a narcotic drug cannot be brought within the scope of article 18 of the Covenant (freedom of religion and conscience)."³¹

2.2 Brief Historical Development of Religious Freedom

Historical antecedent to religious freedom are intolerance and persecution. In ancient Hebrew state monotheistic worship to God was commanded under penalty of death. The severity of persecution can be seen by the massacre of 3000 men who worshiped the golden calf.³² In ancient Greece, even though polytheists, the state imposed duty to partake in the worship of Zeus and Apollo upon its citizens.³³ Early Christians suffered heavily in the hands of the Roman rulers. During the second and third century, Christianity was officially outlawed and any person belonging to Christian faith and refusing to recant would be punished.³⁴

The history of persecution on the basis of religion continued unabated even after Christianity became a favored religion in Europe. By this time it was the Christian church

²⁹ See *Welsh v. United States*, 398 U.S. 333 (1970)

³⁰ Bahiyah G. Tahzib, *supra* note 19, p. 278

³¹ *Id.*

³² Leo Pfeffer, *supra* note 26, *Exodus 32 : 28*, p.6

³³ *Id.* p.9

³⁴ *Id.* p.12

which commanded the persecution of heretics or unorthodox Christians. Persecution for heresy and forced conversions to Christianity, otherwise known as benevolent compulsion, were some of the methods used to preserve Christianity.³⁵ The persecution of alleged heretics was formalized by instituting³⁶Inquisitions in many parts of Europe which led to the torture and killing of masses.

Similarly religious intolerance among non-Christian societies had led to persecution of religious minorities in various parts of the world. In the Middle East, North Africa and present day Persian Gulf as Islam became a dominant religion intolerance against minority religions was at its highest between Eleventh and Fifteenth century.³⁷

2.3. Justifications of Religious Freedom

Moving from the issue of defining religion, this section makes a brief survey of reasons raised in defense of freedom of religion. The justifications for religious freedom as illustrated in this section are varied.

Carolyn Evans identifies certain arguments as a rational for religious freedom. The first argument which she calls “instrumental argument” justifies the importance of religious freedom as a means of achieving religious tolerance.³⁸ This practical approach or justification may be acceptable to society where the existential reality involves co existence of various religious beliefs. According to Evans, in this approach freedom of religion is considered merely as a means to an end or not as an independent value that might not work in a relatively religiously homogeneous society where overwhelming majority dislike a religious minority.³⁹

The historical justification mentioned by Evans attempts to justify freedom of religion from a historical perspective. In due course of history persecution on the basis of religion

³⁵ Leonard M. Hammer *supra* note 18, p.10

³⁶ Leo Pfeffer, *supra* note 26, p. 21

³⁷ Leonard M. Hammer *supra* note 18, p.10

³⁸ Carolyn Evans, *supra* note 8, p.22

³⁹ *Id.* p.23

had served as a main cause for general human rights abuses.⁴⁰ Therefore, it has been deemed necessary to guarantee free exercise of religion or belief in order to protect historically oppressed groups.

Leo Pfeffer identified two general perspectives that led to freedom of religion in America. In what he called “practical considerations,” he identified religious pluralism as one major factor influencing religious freedom.⁴¹ According to him religious diversity influenced religious freedom in three ways. First, it forced the various religious sects of the society to live together. In other words, it forced religious tolerance. Second, daily exposure to different religious believers lessened hatred against other religious followers. Third, the growing diversity rendered state establishment of religion less likely attainable.

Another perspective which he called “ideological consideration” involves John Locke’s view on religious toleration. In the case for religious freedom Locke argued that the state authorities are not any more competent or qualified than individuals in matters of religion.⁴² Therefore, tolerance and respect of religious minorities stabilizes a state than having established state religion.⁴³

2.4. Overview of International Human Rights Instruments

This part of the chapter addresses the most significant developments in international and regional human right instruments in respect to freedom of religion. The first section treats provisions pertaining to freedom of religion in the UDHR and ICCPR. The second section surveys provisions of regional human right instruments.

⁴⁰ Carolyn Evans, *supra* note 8, p.24. See also Leo Pfeffer, *supra* note 26

⁴¹ Leo Pfeffer, *supra* note 26, p.95

⁴² *Id.* p.102

⁴³ *Id.*

2.4.1 Universal Declaration of Human Rights (UDHR)

The relevant parts of the UDHR that concern freedom of religion or belief include the preamble and Articles 1, 2, 16, 18 and 26. In the part of the preamble which states the basis for the protection of human rights, specifically second paragraph, it is stated “The advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”. From the above excerpt one can infer that freedom of belief or religion is one of the motivations for the enactment of the Declaration.

Article 1 of the UDHR partly states, “[human beings] are endowed with reason and conscience.” Initially, it was drafted as being endowed by nature with reason and conscience.⁴⁴ But nature as source of reason and conscience has religious overtone as it apparently alludes to God as the basis of human rights.⁴⁵ The drafters decided to keep out the word nature to avoid controversy.⁴⁶ This part of the provision has religious overtone that gave rise to considerable debate during the drafting process.⁴⁷

Article 2 stipulates non discrimination guarantee based on religion, inter alia. The application of non discrimination principle on religious grounds presupposes historical backdrop of religious persecution.⁴⁸ It was only a few years back where people were killed due to their religious identity among other things.⁴⁹ Again the significance of non-discrimination is further buttressed by the application of article 7 which prescribes equality before the law.

⁴⁴ Hilary Poole, ed. *Human Rights: The Essential reference*, Oryx Press p.75(1999)

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id. p.76

⁴⁹ Id.

The most pertinent provision, which is article 18, reads “[e]veryone has the right to freedom thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, in public or private, to manifest his religion or belief in teaching, practice, worship, and observance”. The provision guarantees the salient aspects of religious freedom: freedom to maintain or change and freedom to exercise or manifest religion or belief.

The right to change a religion or otherwise known as apostasy had been subject of debate during the drafting process.⁵⁰ Representatives of some states proposed for the deletion of the clause that permits the right to change religion or belief.⁵¹ The objection was also based on the contention that the inclusion of the freedom to change religion encourages proselytizing activities by missionaries.⁵² Despite the supposed implications and registered objections the clause was adopted.

The UDHR stipulates general limitation clause that incorporate limitation grounds such as rights and freedoms of others, morality and public order.⁵³ The Declaration is not revealing as to the precise definitions of the grounds of restriction. In connection with this, some argue that the ambiguity of grounds for instance morality “potentially licenses a government to prohibit any religious system whose moral tenets diverge from the majoritarian values.”⁵⁴

⁵⁰ Id. p.98

⁵¹ The objection to the terminology of freedom to change a religion or belief was propounded by Muslim States such as Saudi Arabia and Egypt. Basically these states contended that conversion conflicts with the tenets of Islam and rejected the adoption of the term “change”. While the UDHR explicitly refers to the freedom to change, under Article 18 of ICCPR freedom “to have or to adopt” was adopted instead due to compromise. For detailed discussion see Bahiyyah G. Tahzib, *supra* note 12, pp. 85 and 168 , see also Natan Lerner, *Proselytism, Change of Religion and International Human Rights*, Emory International Law Review, p.503(1998) Available on the Internet at www.religlaw.org Last Visited (December2009)

⁵² See Hilary Poole, *supra* note 44, p.98; see also Carolyn Evans, *supra* note 8, pp. 35-36

⁵³ Article 29 (2) reads “ in the exercise of his rights and freedoms every one shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality public order and the general welfare in a democratic society .”

⁵⁴ Eric Koldner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislations*, *Human Rights Quarterly*, A comparative and International Journal of Social Sciences, Humanities and Law, Vol. 16, No. 3, p.460 (1994)

2.4.2 International Covenant on Civil and political Rights (ICCPR)

The text of Article 18 of ICCPR which covers freedom of religion draws from the UDHR but in an elaborated manner. The content of the right includes freedom “to have or to adopt a religion or belief of his choice” and “to manifest his religion or belief in worship, observance, practice and teaching”. The former corresponds to *forum internum* of religious freedom.⁵⁵ The formulation of the clause different from the UDHR’s “freedom to change” is a result of a compromise during the drafting process. Some drafters objected to the inclusion of the clause based on the assumption that it alluded to proselytizing activities.⁵⁶

In spite of the difference in the wording, the freedom “to have or adopt” a religion or belief virtually conveys a similar meaning to freedom to change religion or belief. According to paragraph 5 of General Comment 22, freedom to have or adopt a religion or belief “necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief, with another or to adopt atheistic views....” In addition, Article 18(2) accords specific protection to freedom to change a religion by way of prohibiting coercion.⁵⁷ Besides, freedom from coercion cannot be restricted.⁵⁸

This part of the text is accorded absolute protection beyond any restriction.⁵⁹ This marks significant distinction between the Declaration and the Covenant religious freedom texts since the former subjects freedom to change a religion or belief to a general limitation clause while the latter does not.

Article 4 of ICCPR excludes any derogation from the rights guaranteed under Article 18 during a state of emergency making it more fundamental right. Derogation generally

⁵⁵ Bahiyah G. Tahzib, *supra* note 19, p.87

⁵⁶ *Id.* pp.85-86

⁵⁷ General Comment 22, *supra* note 4, para. 5, according to this document, coercion involves “use of or threat of physical force or penal sanction to compel believers or non believers to adhere to [a] religious belief...”

⁵⁸ See General Comment, *supra* note 3, para. 8

⁵⁹ *Id.*, para. 3

refers to abrogation of rights upon the occurrence of exceptional situations or emergencies that threatens the existence of a nation.⁶⁰ It is usually more severe measure than limitation because it can go as far as total banning of rights. While all aspects of freedom of religion are exempted from such a sweeping measure, some aspects can be limited in order to advance certain interests such as public safety and order.

Article 27 of ICCPR contains important additional protection for freedom of religion or belief. The provision is not designed for everyone but to protect the rights of persons belonging to religious minorities, inter alia, whether they are nationals of the state or not.⁶¹ Importantly, the provision buttresses individual's right to manifestation of religion protected under article 18 with an overtone of protecting minority religions.

2.4.3 Declaration on the Elimination of All forms of Intolerance and of Discrimination based on Religion or Belief (1981 Declaration)

The Declaration even though not legally binding had been enacted on the basis of Article 18 of ICCPR after a protracted drafting process.⁶² It is an important document because it has more detailed provisions than any other instrument in the evolution of freedom of religion or belief in the UN framework.⁶³ Basically, the Declaration propounds tolerance and prevention of discrimination based on religion or belief.

Articles 1, 5 and 6 of the Declaration elaborate on the scope of freedom of religion or belief. Article 1 draws in various salient concepts from ICCPR's Article 18. It spells out the two dimensions of religious freedom embedded in the UDHR and ICCPR : forum internum and forum externum. However, the former aspect or the freedom to change ones

⁶⁰See generally Yehene W Tsegaye Walilegne, *state of emergency and human rights under the 1995 ethiopian constitution*, Journal of Ethiopian Law, Vol. 21, No.1 pp.78-80(2007)

⁶¹ General Comment 23, Article 27(Fiftieth Session,1994),Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc.HRI/Gen/Rev.1 at 38(1994) available at <http://www1.umn.edu/humanrts/gencomm/hrcom23.htm> (11/20/2009)

⁶² University of Minnesota, *Lifting the Spirit, Human rights and Freedom of Religion or Belief*, Human rights Education Series Topic, Book 5, p.1. see also Donna Sullivan, *supra* note 16, p.488

⁶³ University of Minnesota, *supra* note 62, p.12

religion has not been stated explicitly. Some suggest that the absence of clear reference to freedom to change or adopt a religion or belief was motivated by the desire to avoid implicit approval of proselytism.⁶⁴ Others consider the absence of this aspect of the freedom from the declaration as regression from the standards set under UDHR and ICCPR.⁶⁵

Nevertheless, it is plausible to suggest that the freedom to change or adopt a religion or belief is implied in the clause “freedom to have a religion or belief” since the Declaration should be interpreted in conformity with UDHR and ICCPR.⁶⁶

Article 6 illustrates nine specific dimensions of the forum externum. The list includes

1. To worship and assemble in connection with a religion or belief, and to establish and maintain places for this purpose;
2. To establish and maintain appropriate charitable and humanitarian institutions;
3. To make, acquire and use to an adequate extent necessary articles and materials related to the rites and customs of a religion or belief;
4. To write, issue and disseminate relevant publications in these areas;
5. To teach a religion or belief in places suitable for these purposes;
6. To solicit and receive voluntary financial and other contributions from individuals and institutions;
7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief, and
9. To establish and maintain communications with individuals and communities in matters of religions or belief at national and international levels

⁶⁴ Donna Sullivan, *supra* note 16, p.495

⁶⁵ Bahiyyah G. Tahzib, *supra* note 19, p.168. Note that UDHR specifically guarantees freedom to change ones religion or belief whereas ICCPR makes an implicit reference.

⁶⁶ See article 8 of the UDHR

The list is enumerative. It only consists of those rights which the United Nations thought essential at the time.⁶⁷ Hence, there is a room to expand the list to include practices implicated by manifestation of religion or belief.

2.4.4 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

Article 9(1) of the ECHR is identical in every aspect with the corresponding provision of the UDHR. It consists of both forum internum and forum externum aspects of freedom of religion.⁶⁸ Article 9(1) reads, “ everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” While the forum internum is not subject to restriction, Article 9(2) specifies grounds of limitation that apply to the forum externum. The essential difference with UDHR is that specific limitation clause incorporated under the European Convention. In addition, unlike the ICCPR, under the ECHR freedom of religion or belief is not included in the list of non-derogable rights in times of public emergency.⁶⁹

2.4.5 American Convention on Human Rights

Another significant regional human rights instrument in which freedom of religion or belief is incorporated is the American Convention on Human Rights. Article 12 constitutes both internal and external aspects of religious freedom. Article 12(1) reads, “Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or

⁶⁷ Bahiyyah G. Tahzib, *supra* note 19, p.183 suggests other protection s such as to teach and learn sacred language. See also Natan Lerner, *supra* note 51

⁶⁸ Ben Vermeulen, *The Freedom of Thought, Conscience and Religion, Reflections on Article 9(1) of the European Convention On Human Right.*, in *Particular with regard to the Position of Minorities*, International protection of Human Rights, SIM Special No. 15, Netherlands institute of Human Rights, Utrecht , p.104 (1995)

⁶⁹ See article 15 of European Convention.

disseminate one's religion or beliefs, either individually or together with others, in public or in private.”

Out of the two aspects of freedom of religion, the forms of external manifestation of religion or belief are less scantily pronounced than both UDHR and ICCPR. However, especially the term “disseminate” particularly describes the right to proselytism which is an important right within the continuum of freedom of religion.⁷⁰

2.4.6 African Charter on Human and People Right (Banjul Charter)

Unlike the preceding instruments, the African Charter's religious freedom clause is terse. Article 8 reads “freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.” The text of the provision does not contain freedom to change or adopt religions. The focus seems to be on the external aspect of religious freedom as “profession” and “free practice” is specifically guaranteed.

Permissible grounds of restriction are law and order. These are less elaborate than, for instance, American Convention on Human Rights where the list of grounds is long. On the other hand the peculiar provision that imposes duties on the individual and the general limitation clause broadens the possibility of restriction.⁷¹

3. Overview of FDRE Constitution

The abovementioned instruments do not require or endorse any pattern of relationship between state and religion. They do not particularly demand separation of state and religion as guarantee to religious freedom. Nonetheless the Ethiopian Constitution incorporates the principle of secularism as well as guarantee of religious freedom. It is

⁷⁰ Leonard M. Hammer *supra* note 18,p.259

⁷¹ Article 27 of the African Charter

clear from the wording of Article 11 that the Constitution envisages strict secularism.⁷² The state is not supposed to favor or disfavor any religion nor interfere in matters of religion. To discuss whether the government fully respects this provision or not is beyond the purpose of this paper.

Article 27 of the Ethiopian Constitution which guarantees religious freedom is a substantial replica of Article 18 of the ICCPR.⁷³ The main part of the religious clause reads: “Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice, and the freedom either individually or in community with others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” It not only protects religion but also thought and conscience. The provision is generally considered to protect the right not to believe.

It protects both internal and external aspects of freedom of religion. Limitation of the right extends only to manifestation of religion or belief. But it is subject to derogation at the time of state of emergency making it less fundamental at least than freedom of equality and prohibition of inhumane treatment.⁷⁴

The Constitution permits religious laws and courts to operate in so far as personal and family matters are concerned.⁷⁵ In addition prohibits unjustified discrimination inter alia based on religion.⁷⁶ In addition, it protects related rights such as freedom of expression and freedom of assembly.⁷⁷ In light of these protections and the principle of separation between state and religion one can see how far the Constitution entrenches freedom of religion.

⁷² The Constitution of The Federal Democratic Republic of Ethiopia Proclamation No. 1/1995(August 21, 1995) (herein after called the Constitution), Article 11 reads “1. State and Religion are separate.

2. there shall be no state religion

3. The state shall not interfere in religious matters and religion shall not interfere in state affairs.”

⁷³ Article 27

⁷⁴ Article 93(4)

⁷⁵ Article 34(4) and (5)

⁷⁶ Article 25

⁷⁷ Article 29 and 30, respectively

Chapter Three

Extent of Religious Freedom

3.1. Introduction

As it has been discussed in the previous chapter freedom of religion clauses of the various International Human rights Instruments mainly includes freedom of thought, conscience and religion and freedom to change a religion or belief as well as freedom to manifest ones religion. The division is usually called the Forum Internum and Forum Externum aspects of religious freedom.⁷⁸ This chapter explores these two aspects closely.

According to Tahzib, in her analysis of Article 18 of the UDHR, the right to freedom of thought, conscience and religion consists of two major constitutive elements.⁷⁹ “Forum internum” concerns the freedom to change one’s religion or belief, whereas the “Forum Externum” makes reference to the freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.⁸⁰

Manfred Nowak calls the distinctions “private and public spheres of freedom of religion” in the context of Article 18(1) of the ICCPR.⁸¹ The private sphere covers “freedom of thought and conscience as well as freedom to have or adopt a religion or belief of one’s choice, as well as the freedom to practice one’s religion or belief in private.”⁸² On the other hand, the public sphere division involves “manifestation of a religious belief or

⁷⁸ Bahiyyah G. Tahzib, *supra* note 19 p. 50, See Carolyn Evans, *supra* note 8, pp 72-102

⁷⁹ Bahiyyah G. Tahzib, *supra* note 19, p. 73

⁸⁰ *Id.*

⁸¹ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, N.P. Engel, Kehl, p.314 (1993)

⁸² *Id.*

non-religious conviction.”⁸³ Unlike Nowak’s division, Tahzib does not make mention of freedom of thought and conscience as parts of the forum internum. She considers solely freedom to change one’s religion or belief as an essential component forum internum.⁸⁴

In some constitutional systems similar division is acceptable by way of understanding the religious freedom clauses. In the United States, “the free exercise” prong of the first amendment has been construed in a “belief” and “action” dichotomy.⁸⁵ The court in the dicta part of the decision said

[The first amendment] safeguards the free exercise of the chosen form of religion. *Thus the Amendment embraces two concepts,—freedom to believe and freedom to act.* The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, by statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment.⁸⁶(Emphasis added)

However, subsequent decision like *Wisconsin v. Yoder* (1972), have put the above dichotomy in question. The case arose when certain followers of the Amish religion were

⁸³ Id. p.319

⁸⁴ Bahiyyah G. Tahzib, *supra* note 19, p.75

⁸⁵ *Cantwell v. Connecticut*, Sup. Ct U.S. 310 U.S. 296 (1940)

⁸⁶ Id.

fined for refusal to send their children to secondary school saying that the act contravenes their Amish belief.⁸⁷ The Court commenting on the assertion of Wisconsin said “belief and action cannot be neatly confined in logic tight compartments.”⁸⁸ Herein, the Court underlines the difficulty of placing belief and action in a clear cut dichotomy.

3.2. Forum Internum

This section deals with the aspect of religious freedom that lies in the “Forum Internum,” that sphere of religious freedom that cannot legally be limited. For example, according to Article 18 of the International Covenant on Civil and Political Rights (ICCPR), this aspect of religious belief is not subject to restrictions: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice. . . .” Article 9 of the European Convention on Human Rights (ECHR) follows the same pattern.

Basically, this aspect of the freedom encompasses the right to freedom of thought and conscience and freedom to maintain or to change one’s religion or belief. The right to freedom of thought and conscience means “the right of everyone to develop autonomously thoughts and a conscience free from impermissible external influence.”⁸⁹ In this sense, belief is totally free from outside influence. In connection with this requirement to make a religious oath and compelled patriotic observance are issues treated as a matter of Forum Internum.

3.2.1 Requirement to Make Religious Oaths

States require making an oath in different settings. Sometimes oaths in the name of a deity or swearing in a religious book are requirements to assume a political office or in

⁸⁷ Wisconsin v. Yoder, 406 U.S. 203,220 (1972)

⁸⁸ Id. Wisconsin asserted “under the religious clauses religious beliefs are absolutely free from the State’s control, but...”action, “even though religiously grounded, are outside the protection of the First amendment.”

⁸⁹ Manfred Nowak, *supra* note 81, p.314

other settings. At other times mere affirmation to act in a certain manner or to tell truth is an acceptable form of oath.

Article IV of the United States constitution provides “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” This constitutional stipulation marks a ban against a historical religious test oath that was otherwise applied to disqualify, for instance, Jews from public office under the federal government.⁹⁰ Nevertheless, the states were disqualifying candidates for public office using a religious test oath, specifically a belief in God.⁹¹ Such trend was overturned in *Torcaso v. Watkins*.⁹² Mr. Torcaso was refused state office of notary public because he refused to declare in the existence of God, he was an atheist. The Supreme Court invalidated a requirement that candidates for public office profess a belief in God declaring that it constituted an invasion of freedom of religion or belief.⁹³ Hence, when a person is compelled to make an oath in the name of God, while he or she is not a believer in a Deity, it is considered as a violation of the Forum Internum.

In *Buscarini v. San Marino*, the European Court of Human Rights declared that the San Marino government breached Article 9 of the European Convention on Fundamental Rights and Freedoms newly elected members of its parliament to take an oath on the Holy Gospel.⁹⁴ The court held that the obligation imposed by San Marino government was contrary to Article 9 of the Convention “as it required them to swear allegiance to a particular religion.”⁹⁵ Even though the outcome of the case was agreed upon, the Court’s method of looking at the issue from the perspectives of Article 9(2) instead of a violation of the Forum Internum was criticized.⁹⁶

⁹⁰ Hennery J. Abraham and Barbara A. Perry, *supra note 26*, p. 222

⁹¹ *Id.*

⁹² *Torcaso v. Watkins*, 367 U.S. 488 (1961)

⁹³ Leo Pfeffer, *supra note 26*, pp. 255-56

⁹⁴ *Buscarini v. San Marino*, App. No. 24645/94 (Eur. Ct. H.R.), 30 E.H.R.R. 208 (2000)

⁹⁵ Carolyn Evans, *supra note 8*, p.73

⁹⁶ *Id.* The court considered the oath requirement as unnecessary action in a democratic society

3.2.2 Compelled Patriotic Observance

Compelled patriotic observance, like forced religious oath is another typical case that arises in connection with the violation of a person's Forum Internum Rights. Compelled patriotic observance mainly involves requirement of saluting the flag and singing the national anthem of a state.

In *Minersville School District v. Gobitis*, the Supreme Court of the United States upheld a requirement of flag salute in school grounds despite the religious based objection raised by Jehovah Witness parents.⁹⁷ In the opinion of the Court, "the mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities."⁹⁸ The Court considered the state as an appropriate step to instill patriotism in children.⁹⁹

It only took a few years for the Court to change its mind. In 1943 the Court overturned the *Gobitis* decision.¹⁰⁰ In this landmark case a West Virginia Board of Education Resolution that forces students to salute the American flag under pain of penalty against those who disobey was rendered unconstitutional.¹⁰¹ The Court reasoned that compulsion to achieve national unity through forced flag salute violates the First Amendment of the Constitution and contravenes "the sphere of intellect and spirit of individuals."¹⁰² Although the case arose in the context of freedom of religion, the opinion of the court touched upon matters beyond religion, most importantly freedom of expression.¹⁰³

⁹⁷ *Minersville School District v. Gobitis*, 310 U.S. 586 (1940)

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See William Cohen and John Kaplan, *Constitutional Law: Civil Liberty and Individual Rights*, Mineola, New York, The Foundation Press, Inc., 2nd ed., pp. 421-22, (1982). Justice Jackson writing for the majority said " [i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force ,exception, they do not now occur to us."

3.2.3 Freedom to Change Religion or Belief

The freedom to change religion or belief is an important aspect of religious freedom which essentially protects one's freedom to determine his or her religion or belief.¹⁰⁴ The freedom to change one's religion or belief either is clearly stipulated or implied in the religious texts of different instruments. While Article 18 of UDHR and Article 9 of the ECHR stipulate "freedom to Change his religion or belief", Article 18 of ICCPR says "freedom to have or to adopt a religion or belief. And again Article 1 of the 1981 Declaration says "freedom to have religion or whatever belief" further debilitating the clause. According to Tahzib, this articulation is a typical retrogressive step in the development of the freedom.¹⁰⁵

Despite dissimilar articulation under Article 18 of the ICCPR," the right to have or adopt a religion or belief" conveys similar meaning as the right to maintain or change one's religion or belief. This assertion is based on the official interpretation of the clause endorsed by the Human Rights Committee.¹⁰⁶ By the same token, the concept of the right to change one's religion or belief is implied under Article 1 of the 1981 Declaration.¹⁰⁷

Likewise, the interpretation of the relevant part of Article 27(1) of the FDRE Constitution cannot be any different from the above instruments. The clause freedom to hold or to adopt under Article 27(1) is not only substantially similar with "the right to have or to adopt" but by virtue of Article 13(2) of FDRE Constitution its interpretation should conform to the interpretation of the relevant part of the ICCPR.¹⁰⁸

¹⁰⁴ Carolyn Evans, *supra* note 8, p.97

¹⁰⁵ Bahiyyah G. Tahzib, *supra* note 19, p.168

¹⁰⁶ See General Comment No. 22, *supra* note 3, para. 5, which says "freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief including, inter alia, the right to replace one's current religion or belief with another."

¹⁰⁷ Bahiyyah G. Tahzib, *supra* note 19, p.168 and see also Carolyn Evans, *supra* note 8, pp.493-94

¹⁰⁸ Article 13(2) reads "the fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International Instruments adopted by Ethiopia."

The freedom to change one's religion or belief is an unqualified right. In other words, the state cannot limit or for that matter derogate the right in order to serve another interest.¹⁰⁹ However, in practice this is not always the case. Most Muslim states based on traditional interpretation of Islamic jurisprudence do not acknowledge the freedom to convert from Islam.¹¹⁰ On the contrary, the other aspect of religion or belief i.e. freedom to manifest one's religion may be subject to restrictions.¹¹¹

The restriction based distinction between the freedom to change one's religion or belief and freedom to manifest it, is rooted in the assumption that it would be impossible to breach freedom to maintain or to change religion or belief.¹¹² Arcot Krishnaswama contends "freedom to maintain or to change religion or belief falls primarily within the domain of the inner faith and conscience of an individual, viewed from this angle, one would assume that any intervention from outside is not only illegitimate but impossible."¹¹³

However, according to Tahzib, the state could interfere with the freedom to maintain or to change one's religion in various ways, which include:

"discrimination on the basis of having, or not having a certain religion or belief; proscription of membership of certain religions or beliefs under law; coercion to reveal one's religion or belief or to have it revealed without one's consent; and use of threat of physical force or penal sanction to compel individuals to adhere to their religions or other beliefs and congregations, to recant their religion or belief or to convert."¹¹⁴

¹⁰⁹Peter W. Edge, *Legal Response to Religious Difference*, Kluwar Law International, London, pp 47-53 (2002), see also Bahiyyah G. Tahzib, *supra* note 12, pp 87-88

¹¹⁰ Mashod A. Baderin, *International human Rights and Islamic Law*, Oxford University Press, pp. 118-124 (2005). For traditional as well as contemporary understanding of conversion among Islamic Scholars, See also, Tad Stankle, *Proselytism and Freedom to Change Religion in International Human Rights Law*, Birgham Young University Law Review, pp. 258-59 (1999), available at www.religlaw.org

¹¹¹ See Article 18(3) of ICCPR and 9(2) of ECHR, respectively

¹¹² Carolyn Evans, *supra* note 8, p.68

¹¹³ Id. p.68

¹¹⁴ Bahiyyah G. Tahzib, *supra* note 19, p. 26

Evans suggests that use of invasive mind altering techniques such as brainwashing or systematic indoctrination can be used to interfere with the forum internum.¹¹⁵ Nowak buttresses the obligation of the state to refrain from interfering with an individual's spiritual moral existence. More specifically, he mentions "indoctrination, brainwashing, influencing of the conscience and subconscious mind with psychoactive drugs or other means of manipulation" as actions that breach the forum internum.¹¹⁶

The content of the right encompasses the opportunity to choose from among existing religions or belief as well as freedom not to belong to any such group.¹¹⁷ In effect "every individual must have the right and the *defacto* possibility to join a religious society or to leave it."¹¹⁸ People, prompted by reason or emotion, may conclude that their religion or belief is unsatisfactory or unworthy; hence, they recant their religion or belief in favor of another or remain without a religion.¹¹⁹ However, it is not always intellectual or emotional processes that lead to change of religion or belief. At times, the ramifications of the freedom to change religion or belief involve decisive external factors such as missionary activities or proselytism, coercion and enticement.¹²⁰ As I discuss below, Article 18(2) prohibits coercion to change a religion or belief. The European Court of Human Rights, in *Kokinnakis v. Greece*, stressed on the obligation of the state to protect individuals from improper influence to change their beliefs.¹²¹

3.2.4 Freedom From Coercion

As discussed above, freedom to change ones religion or belief is a basic religious freedom that is accorded absolute protection under the major human rights instruments. A positive correlation exists between freedom to change religion or belief and protection from compulsory conversion of religion or belief. Compelling an individual to adopt or

¹¹⁵ Carolyn Evans, *supra note* 8, p.68

¹¹⁶ Manfred Nowak, *supra note* 81, p.314

¹¹⁷ *Id.* p.317

¹¹⁸ *Id.*

¹¹⁹ Natan Lerner, *supra note* 51, p.494

¹²⁰ Bahiyah G. Tahzib, *supra note* 19, p.75 see also Natan Lerner, *supra note* 51, p.494-95

¹²¹ *Kokinnakis v. Greece*, *supra note* 2

join some organized religion or belief or preventing an individual from abandoning or recanting his religion or belief violates freedom to maintain or change ones religion or belief.¹²²

John Locke in a writing entitled “A Letter Concerning Toleration (1689)” wrote:

“[B]ecause, the care of souls is not committed to the civil magistrate, any more than to other men. It is not committed unto him, I say, by God; because it appears not that God has ever given any such authority to one man over another as to compel anyone to his religion. Nor can any such power be vested in the magistrate by the consent of the people, because no man can so far abandon the care of his own salvation as blindly to leave to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace.”¹²³

Locke rightly pointed out that the determination of religious affiliation of individuals is no more or no less a matter to be determined by the state or other individuals but an individual affair.

James Madison in his famous article entitled, *Memorial and Remonstrance Against Religious Assessment (1785)*, written in opposition to the proposed use of Virginia Public Funds to pay teachers of the Christian religion in his famous article entitled observed that, "that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence."¹²⁴ The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as his conscience may dictate.

¹²² Natan Lerner, *supra note 51*, p. 505

¹²³ Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States*, Haper & Row Publishers, New York, pp.55-60 (1964)

¹²⁴ Id, p. 20, see generally Ronald F. Thiemann, *Religion in Public Life: A Dilemma for Democracy*, George Town University Press, Washington (1996)

Article 18(2) of the ICCPR reiterates the guarantee under Article 18(1) emphasizing on the significance of having or adopting a religion or belief free of coercion.¹²⁵ However, the wording of the provision does not elucidate on conducts that constitute coercion. The provision intends to prevent compulsion of individuals to adopt or convert to a religion or belief as well as to retain their beliefs or religious traditions.¹²⁶ Briefly, use or threat of force or penal sanctions of believers or non-believers to stick to their belief or to abandon their belief or to convert to another belief constitute coercion.¹²⁷ Other major relevant instruments do not explicitly mention coercion as constituting infringement against freedom to maintain or change religion or belief nor do they mention other conditions that violate the freedom. Nonetheless, for instance, it is tenable to conclude that UDHR and ECHR impliedly prohibit coercion for they proscribe acts aimed at the destruction of any rights or freedoms.¹²⁸

Nowak commented that the prohibition of coercion under article 18(2) of ICCPR “was directed less at the protection against the impermissible intellectual, moral or missionary influence as at protection against legal barriers to a change of religion itself.”¹²⁹ However, the European Human Rights Court interpreted Article 9(1) of the Convention to proscribe against improper influence to change ones religion or belief.¹³⁰ Arcot Krishnaswami also argued that freedom to change religion “does not constitute a license to proselytize by offering attractive social and material benefits and by exerting undue pressure upon persons in a vulnerable position.”¹³¹

Article 27(3) of the FDRE Constitution provides “no one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.”

¹²⁵ Article 18(2) reads “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Article 1 of the Declaration on the Elimination of All Forms of Discrimination and Intolerance Based on Religion or Belief adopts similar language.

¹²⁶ See General Comment No. 22, *supra note 3*, para.5

¹²⁷ *Id.*

¹²⁸ See Article 30 and 17 of UDHR and ECHR, respectively.

¹²⁹ Manfred Nowak, *supra note 81*, pp 317-18

¹³⁰ See *Kokkinakis v. Greece*, *supra note 2*

¹³¹ Krishnaswami study, *noted in Donna Sullivan*, *supra note 16*, p.494

The provision clearly guarantees protection for the freedom to maintain or to change or to protect this guarantee and other one's religion or belief. In a bid to protect this guarantee and other human rights the Criminal Code Penalizes unlawful restraints on the free exercise of civil liberties. Article 601 of the Criminal Code partly reads "whoever by intimidation, violence, fraud or any other unlawful means: a. prevents a person from exercising his civil rights granted by the constitution or other laws. B. compels him to exercise such rights in a particular way is punishable with simple imprisonment"¹³²

There are instances of prosecution of coercive conversion of religion or belief. Following clashes among religious groups in South Western parts of the country, the state prosecuted a group of persons for forcing certain Christians to convert to Islam.¹³³ It was reported in the cases that the defendants used swords, arrow and knife to compel the victims to recite *Allahu w akber* allegedly compelling the conversion. The defendants were convicted and sentenced under article 601 of the criminal code. The cases vividly portray typical instance of forced conversion of religion that both the international human right instruments and the FDRE Constitution want to prohibit.

Unlike the corresponding provisions of international instruments the Constitution broadens the sphere of qualification by adding "other means" under Article 27(3) which is open to interpretation. Although there is no specific legislation that expounds what kind of acts the term "other means" encompasses, the criminal code is of some help. Ostensibly, other means covers acts of fraud. Fraud generally refers to any sort of misrepresentation. In this context it could mean misrepresenting a religion or belief of others for the purpose of converting them.

But the controversial method is inducing others with material or other benefits to turn them away from their faith. As discussed above, Krishnswami is of the opinion that

¹³² The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414\2004, Article 601(1) (Entered in to force 9 may, 2005).

¹³³ Public prosecutor v. Shehi Mohammed Sani Usman et al. and Public Prosecutor v. Yasin Husen et al. noted in Tekaligne Fanta, *Managing Religious Conflicts: A Study of the Legal Framework With particular Reference to the 2006 Muslim-Christian Conflict in Oromiya*, LLM Thesis, Addis Ababa University, pp. 115-126(2008) (Unpublished)

alluring people with benefits is not an acceptable form of conversion. But any of the international instruments do not convey the idea that any charitable activity related with conversion is wrong. Since the relevant provisions focus only on coercion and do not stipulate inducement or any identical term, there is no basis to suggest that attaching benefits with conversion is prohibited under international human rights law.

Similar conclusion can be made with respect to Article 27(3) of FDRE Constitution since interpretation of the human rights part of the constitution must conform to the international human rights instruments particularly ICCPR and UDHR.¹³⁴ The similarity of Article 27 with the above instruments generally warrants similar interpretation that conforms to the latter. But the term “other means” provides additional margin of appreciation for the state which arguably extends to include inducement as prohibited method of conversion. Although there is no specific law that forbids inducement, there is ample room for forbidding such means.

Particular issues arise in connection with compulsion directed against conversion or change of one’s religion or belief in some religious traditions. Interpretation of Islamic tradition and laws make a typical case in this respect.¹³⁵ According to traditional interpretation of Islamic Laws abandoning Islam entails punishments that range from capital punishment to confiscation of property.¹³⁶ It is said that the purpose of severe punishment is to protect Muslim population and state from unrest.¹³⁷ Under the Shari’ a, Islam is a religion, a nationality and a state; adherents of Islam are members of the Islamic State.

In contemporary world, some state parties adamantly disregard the unqualified freedom to change ones religion or belief.¹³⁸ Typically, states coerce individuals to retain their

¹³⁴ See Article 13 (2) .

¹³⁵ Whereas conversion from Islam raises problems of religious and legal nature, Hindu tradition does not accept conversion to Hindu belief.

¹³⁶ Abdul Qadir ‘Oudah, *Criminal Law of Islam*, Vol.3, translated by S.Zakir Aijaz, (International Islamic Publishers, p.56 (2000.)

¹³⁷ Id.

¹³⁸ See generally, Kevin Boyle and Juliet Sheen, *supra note* 1. Most Predominantly Muslim States prohibit conversion from Islam. See Bahiyyah G. Tahzib, *supra note* 19, pp 76-86 to see the objections raised by

faith under pain of criminal sanction. It suffices to mention a few cases in order to show violation of freedom to change ones religion or belief is entrenched.

In one case a Jordanian who was converted to Christianity from Islam was charged with apostasy and subsequently lost his parental rights over his children had been brought to the attention of the UN Special Rappourter in 2008.¹³⁹ However, the Special Rapporteur pointed out in her observation that the action of the state was in direct contradiction with article 18 of UDHR and General Comment No.22 of the Human Rights Committee.¹⁴⁰

A recent sensational case which caused international stir involves the prosecution of an Afghan citizen, Abdul Rahman, for conversion to Christianity.¹⁴¹ He was converted to Christianity some 16 years ago but was exposed during a child custody proceeding. The prosecution was denounced by the western world. Owing to the pressure the case was dismissed on the grounds of mental unfitness of Abdul Rahman to stand trial.

In another notable case a Malaysian named Lina Joy who was converted to Christianity from Islam was refused to have her new religious status written on her identification paper and her name changed.¹⁴² As it can be seen from the above instances while some states completely forbid conversion from Islam, others like Malaysia make it difficult to renounce Islam in favor of another religion by refusing to acknowledge new religious status. Malaysian government responding to the Special Rapporteur said:

“Ms. Lina Joy was not prevented from renouncing her religion, Islam. However, because a Muslim is subject to the Islamic Law in Malaysia Ms. Lina Joy had to go through the proper Islamic Religious Authority for the purpose of renunciation of her Islamic faith. Once she would obtain an

Saudi Arabia and Egypt against the inclusion of freedom to change ones religion or belief in the religious clauses of UDHR and ICCPR.

¹³⁹ Asma Jahangar, *Report of the Special rapporteur on Freedom of Religion or Belief*, UN A/HRC/10/8/Add.1 16, available at <http://www.ohchr.org> (February 2009)

¹⁴⁰ Id.

¹⁴¹ The Case of Abdurrahman, an Afghan Citizen. Available at http://www.religioustolerance.org/isl_aposl.htm.

¹⁴² Id. p.36

order or a letter of confirmation of her renunciation, she would then be able to proceed to get the National Registration Department to delete the word from her identity card.”¹⁴³

The Special Rapporteur in her observations consistently refers to paragraph 5 of the HRC General Comment 22 to underscore that the right to change ones religion ought not to be subject to limitations.¹⁴⁴

In *Raihon Hudoyberganova v. Uzbekistan*, the HRC considered a petition under the optional protocol from a female student who was expelled from a university for wearing a hijab and refusing to remove it.¹⁴⁵ The student complained that her right to freedom of thought, conscience and religion was violated. The state argued that the expulsion was due to a regulation that bans wearing of religious attire in public places. In assessing the merits of the case, the committee hinted that it was not only the right to manifest a religion at stake but also freedom from coercion within the meaning of Article 18(2) of the ICCPR. The view of the Committee is unusual because it considered as a violation of forum internum aspect of religious freedom what was normally considered within the purview of manifestation of religion or belief.

Laws and practices that prohibit conversion principally infringe the freedom to have or to adopt a religion or belief. But they do not only prevent individuals from adopting particular religions or beliefs but also from manifesting those religions or beliefs.

3.3. Forum Externum

The other aspect of religious freedom that pertains to the forum externum incorporates freedom to manifest religion or belief.¹⁴⁶ It is accorded protection both by constitutional bill of rights and international human rights. Commenting on the religious clauses of the

¹⁴³ Id.

¹⁴⁴ Asma Jahangir, *supra* note 139

¹⁴⁵ *Raihon Hudoyberganova v. Uzbekistan* (UNHRC, 2004) <http://sim.law.uu.nl/sim/Dochome.nsf>

¹⁴⁶ See Bahiyyah G. Tahzib, *supra* note 19, p. 71

First Amendment of United States Constitution Justice Scalia said “the ‘exercise of religion’ often involves not only belief and profession but the performance of (or the abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation.¹⁴⁷ These and other activities performed in furtherance of a religion or belief are protected under freedom of manifestation of religion or belief.

The major human rights instruments elaborate the modes or forms of manifestation of religion or belief precisely using the same language. All except the African Charter on Human and Peoples Rights and the American Convention on Human Rights list down “worship, observance, practice, and teaching” as permitted forms of manifestation.¹⁴⁸ On the other hand, the African Charter on Human and Peoples Rights and the American Convention on Human Rights stipulates different clauses--- the former guarantees “profession and free practice of religion or belief” while the latter affirms the freedom to “to profess or disseminate” religion or belief.¹⁴⁹ In the opinion of the author the religious clauses of these instruments are less verbose so much so that the need for deliberation is minimal.

In the same vein, the manifestation aspect of freedom of religion or belief under Article 27(1) of the FDRE Constitution parallels the above instruments. It is reasonable to argue that Article 27(1) embraces activities that constitute manifestation of religion under the above instruments by virtue of its similarity with the latter. In addition, when the provision is interpreted international law particularly UDHR and ICCPR must be considered by virtue of Article 13(2) of the Constitution.

It would be reasonable to wonder whether the above terms common to the relevant religious clauses of UDHR, ICCPR and ECHR embrace all possible manifestations of religion or belief. This inquiry begs the question: whether the list is inclusive or

¹⁴⁷ Employment Division Department of Human Resources of Oregon v. Smith, U.S. Sup Court 494 U.S. 872 (1990)

¹⁴⁸ See Article 18 of UDHR, 18(1) of ICCPR, 9(1) of ECHR and 1(1) of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief

¹⁴⁹ See Article 8 and Article 12, respectively

exhaustive. Krishwanswami commenting on UDHR Article 18 said that the terms were intended to be seen in expansive manner.¹⁵⁰ Likewise Bahiyyah G. Tahzib argued that these are not the only ones of freedom of manifestation.¹⁵¹

On the other hand, the European Human Rights Court jurisprudence depicts a tendency to consider the list in restrictive manner. In *Arrowsmith v. UK*, the applicant argued that her act of distributing leaflets containing “pacifist views” to soldiers soon to be sent to Northern Ireland was a practice of religion or, alternatively, an act covered by Article 9(1) of the European Convention on Human Rights.¹⁵² Although presented with the opportunity, the Commission had not found it necessary to reflect on the inclusive or exclusive nature of the form of manifestations of ones religion or belief. Instead, the Commission simply analyzed the case on the basis of practice of her pacifist belief and found against her.¹⁵³

In *Glas Nadezhda Eood and Elenkov v. Bulgaria*¹⁵⁴, the applicants complained to the European Human Rights Court against the refusal by the state to grant them a broadcasting license for radio station with Christian religion. They complained that the refusal infringed their freedom to manifest religion. However the court scrutinized the petition based on the alternative submission that said the acts of the state violated their freedom of expression and concluded that the state’s action violated the applicants’ freedom of expression. The court expressly waived the opportunity to scrutinize the case in light of freedom to manifest religion. Since the issue involves denial of religious broadcast, a fortiori, it would have been scrutinized in light of freedom of manifestation of religion.

The list under Article 6 of the 1981 Declaration shades some light on the uncertainty as regards the scope of freedom to manifest religion or belief. The list definitely broadens

¹⁵⁰ Carolyn Evans, *supra note* 8, p.105

¹⁵¹ Bahiyyah G. Tahzib *supra note* 19, p.76

¹⁵² Carolyn Evans, *supra note* 1, p.106

¹⁵³ *Id.* The commission stuck to the contention of the applicant that she practiced her belief by distributing leaflets

¹⁵⁴ *Glas Nadezhda Eood and Elenkov v. Bulgaria*. Application no.14134\02, <http://beta.religlaw.org/document.php? Document ID=4281>

the contours of freedom of manifestation to embrace broader range of conducts than the terms “worship, observance, practice and teaching” stand for. In this sense the Declaration is more comprehensive than the corresponding provisions of UDHR, ICCPR, and ECHR.¹⁵⁵

Freedom of manifestation of religion or belief is subject to restriction. Hence, all sorts of conducts motivated by religion or belief cannot be considered bona fide manifestations. In other words, there are certain acts that can legitimately be subject to state imposed restrictions. Generally, inquiry into the religious nature and significance of a conduct facilitates to identify whether a restriction is legitimate or not.¹⁵⁶ It is obvious that certain acts such as “human sacrifice, self-immolation, mutilation of oneself and reducing others to slavery or prostitution” are contrary to morality, public order or general welfare of society.¹⁵⁷

3.3.1 Worship

None of the relevant human right instruments define the term worship. Macmillan English Dictionary defines worship as “the activity of showing love and respect for a god for example by singing and praying.”¹⁵⁸ The Human Rights Committee ascribed “ritual and ceremonial acts giving direct expression to beliefs as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest.”¹⁵⁹

But not all ritual acts can be considered as manifestations of religion or belief in worship. In one case the European court of Human Rights rejected the argument of the applicants that said personal performance of ritual slaughtering of animals would be considered an

¹⁵⁵ See the extensive list of activities implicated by freedom of manifestation under Article 6 of the Declaration in chapter one

¹⁵⁶ Donna Sullivan, *supra note* 16, pp.510-11, see also Peter Edge *supra note* 109, p.48

¹⁵⁷ Donna Sullivan, *supra note* 16, p.511

¹⁵⁸ Macmillan English Dictionary For Advanced Learners, International Student Edition, Bloomsbury Publishing Plc., Macmillan Publishers Ltd (2003)

¹⁵⁹ See General Comment 22, *supra note* 3, para. 4

outright freedom of manifestation of religion.¹⁶⁰ In another case lodged before the Human Rights Committee, the complainant referred to the concept of worship under Article 18 of the ICCPR and General Comment No.22 to justify the use of cannabis in a religion so called Rastafarianism.¹⁶¹ The committee concluded that the prohibition of cannabis did not breach manifestation of religion.¹⁶²

The right to set up a place of worship is an important issue of manifestation of religion or belief in worship. In the main, manifestation of religion or belief has a communal dimension. Most of the relevant instruments guarantee freedom to manifest religion or belief in community with others.¹⁶³ In *Manoussakis v. Greece* the European Court of Human Rights treated the question of obtaining a place of worship essentially as matter falling under manifestation of religion or belief in worship.¹⁶⁴

3.3.2 Observance

The term has not been defined by the human right instruments. The 1981 Declaration Shades some light on what the term observance actually involves. Article 6(h) of the Declaration provides “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief.” In *Sherbert v. Verner* the appellant who was a Seventh Day Adventist follower was denied unemployment compensation under Unemployment Compensation Act by the state because she would not work on Saturdays.¹⁶⁵ The United States Supreme Court reversed the interpretation of the state’s legislation by the lower courts saying that it unduly burdens free exercise of religion by the appellant.¹⁶⁶

According to Peter Edge, observance, in the context of manifestation of religion or belief, mean more than keeping days of rest; including dress, grooming customs such as the

¹⁶⁰ Jewish Liturgical Association Cha’ar Shalom Tsadek v. France , Application No. 27417\95

¹⁶¹ Garteth Anver Prince v. South Africa 1474\2006 <http://sim.law.uu.nl/sim/Dochome.nsf>

¹⁶² Id.

¹⁶³ See Article 18, 18(1),9 of UDHR,ICCPR and ECHR

¹⁶⁴ Manousakis and others v. Greece, ,*noted in* Carolyn Evans, *supra note* 8, pp.107-8

¹⁶⁵ Sherbert v. Verner, Sup.Ct.374 U.S. 398(1963).

¹⁶⁶ Id.

cutting of hair or the growing of beards, and special diets.¹⁶⁷ The Human Rights Committee considers that the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion.¹⁶⁸

3.3.3 Practice

Literally, practice means "a way of doing something especially as a result of custom, habit or tradition."¹⁶⁹ The term signifies wider conducts that fall within the purview of observance and teaching of religion or belief.¹⁷⁰ In other words, it sometimes encompasses conducts ranging from distribution of leaflets to requirement to wear religious apparel and special diets.¹⁷¹

In *Arrow smith v. United Kingdom*, the European Human Right Commission reasoned that practice does not cover each and every act that is motivated or influenced by religion or belief.¹⁷² In order to get protection as practice a given act must be required or mandated by religion or belief.¹⁷³

However, sometimes religiously mandated activity can be denied under certain circumstances. For instance, in one case to the Human Rights Committee a Sikh who objected to wearing protective helmet in workplace instead of his turban was dismissed from his job.¹⁷⁴ He complained to the Committee that Canada violated his freedom of religion and the Committee approached the issue under Article 18 of ICCPR.¹⁷⁵ The Committee did not find violation of manifestation of religion.¹⁷⁶

¹⁶⁷ Peter Egde, *supra note* 109, p.36

¹⁶⁸ Raihan Hudoyberganouva v. Uzbekistan UNHRC ,2004, see also Layla Kahin V. Turkey ECHR 2005

¹⁶⁹ Macmillan Dictionary, *supra note* 158

¹⁷⁰ General Comment 22, *supra note* 3, para. 4

¹⁷¹ See Carolyn Evans, *supra note* 8 p. 106 , see also Peter Edge, *supra note* 109, p.36

¹⁷² Carolyn Evans, *supra note* 8, p.116

¹⁷³ Id.

¹⁷⁴ Karnel Singh Bhinder v. Canada 208\1986 <http://sim.law.uu.nl/sim/Dochome.nsf>

¹⁷⁵ Id.

¹⁷⁶ Id.

3.3.4 Teaching

Teaching of religion or belief includes “...the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts and publications.”¹⁷⁷ Basically, two different but complementary activities are embedded in the above explanation. On the one hand, it involves “formal religious education for adherents of the same faith.”¹⁷⁸ On the other hand, it encompasses proselytism, including the distribution of texts and publications to outsiders.¹⁷⁹

While establishing of religious schools for the purpose of teaching adherents does not present much of a controversy, the status of religious education in public schools needs certain qualifications. This is especially pressing because Article 18(4) of ICCPR guarantees the rights of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.¹⁸⁰

According to the Human Rights Committee Article 18(4) permits “public school instruction in subjects such as the general history of religions and ethics.”¹⁸¹ Religious education in schools may be protected only if “it is given in a neutral and objective manner”.¹⁸² Teaching of the tenets of a particular religion in public schools is not protected under the Convention “unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.”¹⁸³

In *Hasan and Eylem Zengin v. Turkey*, the applicants alleged that the religious, culture and ethics course which was not thought in pluralistic, objective and critical manner

¹⁷⁷ General Comment 22, *supra note 3*, para. 4

¹⁷⁸ Peter W. Edge, *supra note 102*, p. 36

¹⁷⁹ Id. see also Tad Stankle *supra note*, 110, p.251

¹⁸⁰ See Article 5 of the 1981 Declaration that deals in length about the rights of parents to raise their children in accordance with their religion or belief and the corollary right of children to get religious education in accordance with the wishes of their parents .

¹⁸¹ See General Comment 22, *supra note 3*, para. 6

¹⁸² Id.

¹⁸³ Id.

infringed their freedom of religion under Article 9 of the Convention.¹⁸⁴ The investigation of the relevant syllabus led the European Court of Human Rights to conclude that the manner the course was taught lacks objectivity and pluralism.¹⁸⁵ In addition, it noted the absence of exemption that provides sufficient protection for the children of the applicants.¹⁸⁶ It then concluded that Turkey breached Article 9 of the Convention.¹⁸⁷

As discussed above, one observes similar understanding on the issue of religious education in public schools. While the state is not under any obligation to provide for religious education in public schools, once it decides to do so it must be neutral or provide for an exemption procedure that allows students, whose parents do not wish them to study, to opt out.

Proselytism is defined by Tad Stankle as “expressive conduct undertaken with the purpose of trying to change the religious beliefs, affiliation, or identity of another.”¹⁸⁸ It is interchangeably used with the terms missionary activity or propagating a religion or belief.¹⁸⁹ From all relevant Human Right Instruments the American Convention on Human Rights Contain terminology that is closer in meaning to the term proselytism.¹⁹⁰

The right to Proselytism as a manifestation of religion or belief through “teaching” was considered in two leading cases before the European Court of Human Rights.¹⁹¹ In both cases the Court alluded to proselytism as the right to try to convince ones neighbor

¹⁸⁴ Hasan and Eylem Zengin v. Turkey. Application No.1448/04

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ Id.

¹⁸⁸ Tad Stankle *supra note* 109, p. 255. See also Joel A. Nicholas, *Mission, Evangelism, and Proselytism in Christianity: Mainline Conceptions As reflected in Church Documents*, Emory University School of Law, (1998) available at www.religlaw.org

¹⁸⁹ A project Group in Missionary Activities and Human Rights, *Code of Conduct for Missionary Activities*, The Oslo Coalition on Freedom of Religion or Belief, Oslo, (March 2009) Available at <http://beta.religlaw.org/document.php?documentID=4088>

¹⁹⁰ The relevant words of Article 12 reads “...freedom to profess or disseminate one’s religion or beliefs...”

¹⁹¹ Kokinakis v. Greece, *supra note*, 2 and Larissis and Others v. Greece 1998(140/1996/759/958-960) Even though General Comment 22 makes no mention of proselytism, it can be argued, *mutatis mutandis*, that the right is also grounded in Article 18(1) of the ICCPR since the term teaching is stipulated in there

through teaching as a manifestation of religion or belief.¹⁹² Nevertheless, the right to proselytism is not exclusively a matter falling under freedom of religion or belief. Equally, it is grounded in freedom of expression. The connection between proselytism and expression is taken up in the next chapter.

¹⁹² Id.

Chapter Four

Right to Proselytism and Its Limits

4.1. Introduction: Definition

Before proceeding to discuss the place of proselytism in the human rights context, it is essential to state what the term conveys. The purpose is not to arrive at a definitive definition of the term but to illuminate the general concept of the term the study pursues. In the absence of legal definition by the human right instruments, it is beneficial to resort to general definitions of the term.

In a more general manner to proselytize means “to try to persuade people to share your religious or political beliefs.”¹⁹³ This definition indicates that the term denotes an activity that is done with a particular goal in mind i.e. conversion. Some other definitions that are given by religious groups attach negative connotation to it. For instance, a document prepared by the Catholic church and world Church Council describes proselytism as an act that “violates the right of the human person, Christian or non-Christian, to be free from external coercion in religious matters, or whatever, in the proclamation of the Gospel, does not conform to the ways God draws free men to himself in response to his calls to serve in spirit and in truth.”¹⁹⁴ In addition the term has been associated with improper practices that have been described as a “kind of evangelical malpractice.”¹⁹⁵

¹⁹³ Macmillan Dictionary, *supra note* 158

¹⁹⁴ Common witness and proselytism, 23 *Ecumenical Rev.* 9 (1971) *noted in* Tad Stankle, *supra note*, 110 p.255

¹⁹⁵ Natan Lerner, *supra note*, 51 p.495, see also Joel A. Nicholas, *supra note*, 188 p.567

Scholars admit that the negative connotation is basically the result of the assumption that proselytism involves illegitimate methods of propagating a religion or belief.¹⁹⁶ Intimidation, coercion, bribery, etc are usually associated with it.¹⁹⁷ This is typically a narrow understanding of the term which this study does not intend to pursue.

Conversely, the term has been consistently used just as an alternative terminology to describe missionary undertakings that are akin with the terms mission and evangelism.¹⁹⁸ In this context, proselytism means “activity of communicating a religion or worldview through verbal communication or through various related activities as an invitation to others to adopt the religion or worldview.”¹⁹⁹ In this sense proselytism embraces a general meaning of spreading a faith with the view to convert others.

The right to proselytism is part of the two most fundamental freedoms: freedom of expression and freedom of religion. No one disputes that proselytism taken as an expression of religious opinion is a matter of freedom of expression. The fact that it involves dissemination of information is the main consideration that grounds proselytism in freedom of expression. Although the religious clauses of the relevant human right instrument do not explicitly mention the concept of proselytism, the fact that it involves dissemination of religious information makes it part of freedom of religion.²⁰⁰ Besides, proselytism is intertwined with the related issue of conversion or change of religion or belief.

The language of Article 27 of the FDRE constitution does not explicitly stipulate the right to proselytism. But this does not mean that the right to proselytism is not guaranteed under the constitution. Since the freedom of religion clause of the Constitution is formulated in consonance with the international human rights standards, the right to proselytism is virtually recognized in the Constitution. In real life, proselytism takes a

¹⁹⁶ Id. see also Tad Stankle, *supra note* , 110 pp. 254 -256

¹⁹⁷ Id.

¹⁹⁸ A project Group in Missionary Activities and Human Rights, *supra note*189

¹⁹⁹ Id.

²⁰⁰ It is only in Article 12 of the American Convention on Human Rights that one finds terms akin to the concept of proselytism. The relevant part reads “freedom to disseminate...”

centre stage in exercising religious rights, for instance, in different Christian denominations within Ethiopia. This chapter explores the place of proselytism within the continuum of freedom of religion or belief and freedom of expression mainly referring to the jurisprudence of the European Human Rights Court and United States Supreme Court. In addition it tries to analyze the right to proselytism within the Ethiopian context.

4.2. Proselytism and the Right to Change Religion or Belief

As discussed above in chapter two despite the opposition against explicit inclusion of the freedom to change ones religion or belief, one finds the concept of conversion stipulated in UDHR is carried on with the terms ‘to have or adopt’ in article 18 of the ICCPR. It has been further buttressed by the Human rights committee “ the freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”²⁰¹ According to Lerner, the general comment not only addresses conversion but also corresponds to the position of the Committee on the question of proselytism.²⁰²

Naturally, people adopt the faith of their parents or guardians at the early stage of their lives. But, choice of religion or belief is not always a one off exercise that people get during their life time. People, at some time in their life, may decide to change their religion or belief prompted by their own reasoning. Sometimes the intervention of others is a decisive factor that drives people to change their religion or belief.²⁰³ Mostly the intervention comes in the form of proselytism.²⁰⁴

²⁰¹ General Comment 22, *supra note 3*, para. 6

²⁰² Natan Lerner, *supra note 51* p.480

²⁰³ *Id.*, p. 495

²⁰⁴ *Id.*

Although international jurisprudence on the issue of proselytism is rare, there are a few cases that addressed the implication of proselytism on conversion. The first and foremost of such cases is *Kokinakkis v. Greece* which was decided by the European Human Rights Court. To discuss the case briefly, the Mr. kokinnakis who was a Jehovah Witness actively engaged in a door to door proselytism was convicted with a law that makes proselytism an offence and his conviction upheld all the way by the upper courts of Greece. Finally the case came before the European human Rights Court through the Commission.

During the deliberation of the case the Court considered myriad of opinions regarding proselytism. The majority made a distinction between “bearing Christian witness” and “improper” proselytism. In the view of the Court “the former corresponds to true evangelism The latter represents a corruption or deformation of it [and it takes] the form of activities offering material or social advantages to wit a view of gaining new members of a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brain washing.” The Court stated that the Greek Courts had not shown that Mr. Kokinnakis had engaged in improper proselytism and there is a “pressing social need” to convict him. Besides, the court held that the conviction was not necessary in a democratic society for the protection of the rights and freedoms of others. Hence it concluded that the conviction was contrary to article 9 of the European Convention.

In a partly concurring opinion one justice without endeavoring to make any distinction rejected the Greek law on proselytism as contrary to Article 9 of the Convention. On the contrary, one justice opined that proselytism was not protected under the convention.

The majority pointed the relevance of proselytism in the exercise of one’s freedom to change religion or belief. It observed:

According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of

those whose faith one shares, but can also be asserted "alone" and "in private"; *furthermore, it includes in principle the right to try to convince one's neighbor, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter.(emphasis added)*

Theoretically, the opinion of the court shows how much the freedom to change one's religion or belief and proselytism are interconnected. It is true that people may choose to abandon their religion or belief and embrace another without intervention from others by way of preaching. But, for stronger reason, people opt out of their religious association in favor of another religion or belief or for that matter atheistic belief when they are influenced by the teaching or preaching of others.

According to traditional Islamic rules conversion or change of religion is prohibited under pain of penalty. Similarly, any form of proselytism within Islamic society is not welcome.²⁰⁵ The rejection presumably emanates from a religious conviction to protect Islam and its adherents. In some predominantly Muslim states propagation of a religion among Muslims is legally restricted.²⁰⁶ In such circumstances the state may not simply set aside Islamic rules against conversion and proselytism in favor of the right to proselytize. There is ample evidence that Islamic states give precedence to Islamic rules than international human rights standards.²⁰⁷ The question is whether there is any room to accommodate such rules in multi religious state where Muslims do not constitute majority.

In Ethiopia according to the 2007 census the Muslim population constitutes 34% of the total population making it the second largest religious group.²⁰⁸ Supposedly any sincere

²⁰⁵ Tad Stankle, *supra note* 110 , p.258

²⁰⁶ See Malaysian Constitution article 11(4) , *noted in* Perry S. Smith, *Speak No Evil: Apostasy, Blasphemy and Heresy in Malaysian Syariah Law*, 10 U.C. Davis Journal of International Law and Policy 357 Regents of the University of California, p.380 (2004)

²⁰⁷ See chapter two above

²⁰⁸ Bureau of Democracy, Human Rights and Labor, International Freedom of Religion Report, October, 2009 <http://www.state.gov/g/drl/rls/irf/2009/index.htm> last accessed 16-1-2010

belief based on Islamic rules against conversion from Islam and proselytism of other religions among the followers of Islam may be raised to set aside the right to proselytism of other religions. However, any action that discredits the right to proselytism on the basis of the above claim would violate the constitution and international human rights standards enshrined therein. First, it would be inconsistent with the principle of separation of state and religion as the action would implicate state preference of particular religion. Second, the action would contravene Article 27 of the Constitution since it must be interpreted in line with international human right standards that protect the right to proselytism.

For that matter any religious basis should not be by itself a consideration that influences state's outlook or policy on proselytism. Any dissatisfaction by Ethiopian Orthodox Church, dominant religious group in Ethiopia, on the missionary activities of evangelical Protestants or Jehovah witnesses cannot be a valid consideration to limit proselytism.²⁰⁹ The status of the Church is in a way privileged in that it is not required to register while other religious groups except the Ethiopian Islamic Affairs Supreme Council are required to register and renew their license.

The numerical dominance as well as the privileged status of the two religious organizations should not lead the state to adopt a policy of restricting proselytism. In other words, Ethiopian government cannot legitimately burden the right to proselytize in response to certain religious views. As important as the right to proselytize is to the Ethiopian Orthodox Church or Ethiopian Islamic Affairs Supreme Council, they cannot call on the state to restrict others the exercise of the right. Hence, any direct action such as enacting laws that regulate proselytism or indirect action like refusal to register a religious group which is likely to engage in proselytizing the public will not be a valid limitation.

²⁰⁹ According to 2007 census followers of Ethiopian Orthodox Church constitute 44% of the total population

4.3. Proselytism and Freedom to Manifest Religion or Belief

Arcot Krishnaswami has best explained the link between proselytism and freedom to manifest religion or belief. He said: “While some faiths do not attempt to win new converts, many of them make it mandatory for their followers to spread their message to all, and to attempt to convert others. For the latter, dissemination is an important aspect of the right to manifest their religion or belief.”²¹⁰ The above claim is practically true when one considers the views of different Christian denominations pertaining to proselytism.

The Bible verse Matthew 28:19 “Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost” inspires many Christian denominations to engage in proselytism.²¹¹ This command is often referred to as “The Great Commission” and it is central to Christianity. To Christian denominations that choose to adhere to the above stipulation in the Bible, it is clear that proselytism is one of their ways of manifesting their religion. The Ethiopian Orthodox Church has a department that is tasked with evangelism. It is specifically given responsibility “to preach the gospel in the language of the community with the view to increase adherents of the Ethiopian Orthodox Church.”²¹² Similarly, evangelical protestant churches take very seriously the Great Commission of Christ. For instance, the Ethiopian Kale Hiwot Church declares “The very existence of EKHC is for the purpose of declaring the Good News of the Lord Jesus Christ so that the Kingdom of God might be advanced throughout different nations, colors and languages in accordance with the Great Commission given by the Lord Jesus Christ.”²¹³ Similarly the Ethiopia Evangelical Church of Mekane Yesus aims “to spread the Gospel to those whom are not reached.”²¹⁴ From the perspectives of these denominations proselytism is the primary task of their believers.

²¹⁰ Tad Stankle, *supra note* 110 p. 276

²¹¹ Joel A. Nicholas, *supra note* 188 , p.564

²¹² Ethiopian Orthodox Church, Kale Awadi, Yesebeka Menfesawi Gubae Deneb, Article 18(4) (1999)

²¹³ See www.ekhc.org.et/mission/htm last accessed, 29-12-09

²¹⁴ See www.eecmy.org last accessed, 29-12-09

In some jurisdictions, proselytism is not perceived as a basic right of manifestation of religion. The Indian constitution guarantees “[s]ubject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”²¹⁵ In *Stainslaus v. State of Madaya Pradesh*, the appellant argued that the term propagate means the right to convert others to one’s religion and signified fundamental right to convert others.²¹⁶ But the court rejected the contention saying “for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets.”²¹⁷ In my opinion, there is no better word than “propagate” to alternatively lay out the concept of proselytism. The narrow understanding of the term only as an act of transmission of religion is unjustified to preclude proselytism from the exercise of religious freedom. Any form of transmission of ideas naturally intends to have some kind of impact on the receiver or the target. Obviously, in propagation of religious message to others one of the intended impacts is conversion of the latter.

4.4. Proselytism and Freedom of Expression

Both the UDHR and ICCPR affirm freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers. The African Charter affirms the right to express and disseminate opinions within the law. Article 29 of the FDRE constitution guarantees freedom of expression in the same manner. None of the instruments pre-determines the category of information or expressions that are accorded protection. In other words, any kind of information or opinion is protected subject to prescribed limitations.

The nexus between freedom of expression and the right to proselytize arises not necessarily when the latter is perceived as a religious speech or opinion. Freedom of

²¹⁵ Article 25

²¹⁶ *Stainslaus v. State of Madaya Pradesh*, AIR 1977 SC 908

²¹⁷ *Id.*

expression protects the right to proselytism without questioning the religious nature of the expression.²¹⁸ In this sense right to proselytism lies at the heart of freedom of expression. It promotes both the rights of the proselytizer and the target of proselytism. It entrenches the right to proselytize irrespective of whether or not the proselytizer is driven by a religious obligation or conviction to convert the target.²¹⁹

Equally, freedom of expression asserts the rights of the target to seek and receive information of a religious nature. In *kokinakis v. Greece* and *Larsissus and others v. Greece*, it was argued that the absence of the right to try to convince one's neighbor would render the freedom to change one's religion or belief "a dead letter." Denial of religious information not only denies the freedom to change or to choose one's religion or belief. But also, it tramples the broader right to seek and receive information.²²⁰

Expression does not only pertain to oral communication of ideas or information. It also includes communication of ideas "in writing or in print, in the form of art, or through any media of choice."²²¹ Likewise proselytism takes various forms of expressions. In some religious groups the activity takes the form of door to door solicitation and sale of religious reading materials.²²² This form basically involves visitation of people at their home to attempt to convert them.²²³ Distribution of religious literature otherwise known as tracts is another form of the activity.

²¹⁸ Tad Stankle, *supra note* 110, p.280

²¹⁹ Tad Stankle, *supra note* 110, p.280

²²⁰ In *Arrowsmith v. United Kingdom*, the applicant has argued that her actions were designed to implement the rights of those who receive the leaflet effectively to have 'freedom to hold opinions and to receive . . . information and ideas without interference by public authority.'

²²¹ Article 29 of FDRE Constitution

²²² See *kokinakkis v. Greece*, *supra note* 2, see also *Cantwel v. Connecticut* *supra note*

²²³ Tad Stankle, *supra note* 110 p. 277

4.5. Limitations on the Right to Proselytism

Article 18 of the Universal Declaration of Human Rights, as well as later human rights instruments, contains express provisions that define the limits of religious freedom. These provisions are carefully drafted to constrain permissible limitations on religious freedom so that these limitations do not unduly narrow religious freedom protections. Article 18 of the UDHR is subject to the general limitations clause of Article 29(2) of the UDHR, which provides that “[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Subsequent international human rights treaties typically have distinctive limitation clauses that are specifically tailored for freedom of manifestation of religion or belief. Under Article 18(3) of ICCPR legitimate grounds of limitations include “public safety, order, health, or morals or the fundamental rights and freedoms of others.” In addition, Article 20 protects religious groups, *inter alia*, from “advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”. The limitation clause of the European Convention on Human Rights and Fundamental Freedoms similarly provides “public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” as grounds of limitation.²²⁴ The African Charter on Human and People’s Rights scantily provides for law and order as grounds of limitation of freedom of exercise of religion.²²⁵

The limitation clause under Article 27(5) of the FDRE Constitution closely parallels the language and structure of Article 18 of ICCPR. However, “peace” and “the independence of state from religion” are additional grounds of restriction under Article 27 of FDRE

²²⁴ Article 9(2)

²²⁵ Article 8

Constitution. The latter ground is typical to FDRE Constitution. Separation of state and religion is one of the fundamental tenets of the Constitution. But in practice one does not observe strict secularism in action. For instance, the state run television and radio stations occasionally air live broadcast of religious celebrations and sermons.

This section discusses circumstances that warrant valid limitation of the right to proselytism. The circumstances do not concern direct regulation of proselytism but indirect restrictions that are purported to balance the rights and interests of others.

4.5.1 Blasphemy

Even though there is no universally applicable meaning of blasphemy it is appropriate to consider different conceptions. For Plato the concept of blasphemy involves “denying the being of God, denying his providence, pretending that by gifts and sacrifices he may be bribed into a toleration of wickedness”.²²⁶ Broadly, it has also been defined as “malicious reviling of God or Religion.”²²⁷ The problem with this type of definition is the difficulty of determining whose conception of God or deity that a given law protects against blasphemy. For instance, in the United Kingdom the Common Law of blasphemy protects only Christian religion.²²⁸ A prosecution against the Author of *The Satanic Verses* which allegedly contains blasphemous contents against God and the Prophet Muhammad had failed for lack of coverage of the law to religions other than Christianity.²²⁹

All religiously motivated offensive speech does not constitute blasphemy. For example, religiously motivated speech condemning abortion or homosexuality cannot be taken as

²²⁶ Theodore Schroeder, *Constitutional Free Speech Defined and Defended In an Unfinished Argument In a Case of Blasphemy*, the law book exchange ,LTD, Union, New Jersey, p.165 (2001)

²²⁷ Leo Pfeffer, *supra* note 26, p.663

²²⁸ Eric Barendt, *Freedom of Speech*, Oxford university Press, p.186(2007)

²²⁹ Id.

blasphemy. The focus here is not on any kind of religiously motivated speech that is likely to offend others. But, the section is mainly about offensive religious speech that is motivated by sincerely held religious belief to convert people to a certain religion or belief offends others. The speech can be defended on the basis of exercising one's religious freedom. On the contrary, its offensiveness not only contravenes the rights and freedoms of others but also could serve as a recipe for violence that endangers public safety.

In certain jurisdictions particularly offensive religious expressions are considered beneficial to a multi-religious society. In *Cantwell v. Connecticut*, a Jehovah Witness played a phonograph record that included attack against the catholic religion to willing listeners. The listeners were incensed to strike Cantwell and he was charged for inciting others to breach the peace. The Supreme Court overturning the conviction of Cantwell opined:

“In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. *To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.*”²³⁰ (Emphasis added)

The Supreme Court was of the opinion that proselytism would be esteemed even at the cost of disparagement of other religions or beliefs. In another case which involved a Baptist minister the Supreme Court held unconstitutional a city ordinance that required a permit to engage in public worship despite the

²³⁰ *Cantwell v. Connecticut*, *supra* note

individual's use of insulting attacks against Jews and Catholics in his earlier public street preaching.²³¹ It was reported that the individual had denounced Catholicism as "a religion of the devil" and Jews as "Christ killers" among other things and as a result he was denied a permit. But the Court did not heed the allegations as a reason to deny him a permit. Instead, the court firmly pointed that the likelihood of disorder breaking out as an outcome of his offensive preaching should not be a reason to place a prior restraint on the individual's right to speech.

In the above cases the court upheld the individual's freedom of expression despite the danger posed by the utterance of insulting words directed at particular religions. The fact that an individual has a genuine commitment to convert others does not justify the use of disparaging language against a religion or its followers. Taking the above cases as examples, the words connote less of a religious message than an ordinary verbal blow that likely instigates immediate hostile response. The speech signifies typical case of advocacy of religious hatred that instigates hostility against the Jews and Catholics. International human rights law prohibits "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."²³² Hence, the law places a valid limitation on religious speech that constitutes incitement to discrimination, hatred, violence or hostility. In other words expression in the context of proselytism that crosses the line between expression and incitement is prohibited. The use of grossly insulting words that are likely to offend religious feelings cannot be taken as forwarding of merely opposing religious views by any standard.

On the other hand, the use of language that is, likely, to displease the followers of other religions is unavoidable in the context of proselytism. Primarily, it is in the nature of every religion or belief to endorse a claim of universal truth. The claim

²³¹ *Kunz v. New York*, 340 U.S. 290 (1951)

²³² Article 20(2) of ICCPR

that the other religious followers are in the wrong path seems unavoidable. In other words, proselytism may involve criticism of the religion of the targeted audience.

The European Human Rights Court had addressed the issue of criticism of religions in *Otto-Preminger-Institut v. Austria*. The European human Rights Court upheld the seizure and forfeiture of a film that portrayed scenes of God, Jesus Christ and Virgin Mary befriending the Devil among other things.²³³ The court held that the portrayals in the film were particularly offensive to the followers of Christianity especially Roman Catholicism in the region and violated their freedom of religion. But the court made a passing comment on inevitability of criticism in the realm of religious discourse. It said: “[t]hose who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.”²³⁴ Analogically the above argument applies to proselytism. Expressing opposition or criticism against the religion of the target of proselytism cannot always be blasphemous.

Seen from a broader perspective religiously offensive utterances undermine tolerance of multi religious societies. For one thing it is likely to cross the illusive line between acceptable expression of religious views and incitement to religious hatred. There are instances, though do not squarely fit the case of proselytism, which plainly show how speeches that are directed against religions test tolerance in multi religious societies. In the “*The Danish Cartoons Case*” a news paper published a series of cartoons caricaturing the Prophet Mohammad in 2007.²³⁵ The incident had caused a huge uproar throughout the world. Similarly the ability

²³³ *Otto-Preminger-Institut V. Austria*, European Court of Human Rights No. 13470/87 (1994)

²³⁴ *Id.*

²³⁵ Jihad Against Danish Newspaper, 2005-10-22, <http://www.brusselsjournal.com>

of blasphemy to incite Muslims to public disorder was evidenced by the upheaval in many parts of the world following the publication of the *Satanic Verses*.²³⁶

Under Islamic law it is broadly defined as '*sabb allah aw sabb al-resul*' meaning "reviling God or reviling the Messenger."²³⁷ Above it has been argued that the Ethiopian government cannot restrict proselytism among Muslims just because Islamic rules reject the practice. Conversely, the government has a duty to protect the religious sentiments of Muslims by prosecuting blasphemy against Islam in the context of proselytism. As seen above disparaging remarks in respect to the Allah or respected personages can have profound impact even in the context of proselytism.

Ethiopia has a law that protects religious feelings. The relevant law prohibiting injury to religious feelings has a wide application than the conception of blasphemy in Islam. Article 492 of Criminal Code of Ethiopia penalizes whoever publicly "profanes a place, image or object used for religious ceremonies." More particularly, Article 816 penalizes persons who "scoffs at religion or expresses himself in a manner which is blasphemous, scandalous or grossly offensive to the feelings or convictions of others or towards the Devine Being or the religious symbols, rites or religious personages." The act must be committed publicly and intentionally. The act is public when a proselytizer does the things mentioned above whether standing in the streets or in a podium or in a publication.

In multi religious context, such kinds of law that aim to protect the religious feeling of people are necessary and promote religious tolerance. Primarily it advances the rights and freedoms of others which is a legitimate constraint on the freedom of speech and religion. Unrestrained offensive expressions against

²³⁶ Time magazine, July 29-6, 2009

²³⁷ Mashood a. Badrin, *supra note*103, p.128, see also Perry S. Smith, *supra note* 199 , p.380

other's religions in public is in a way indicate religious intolerance. The state is under obligation to prohibit religiously offensive speeches that provoke hostility and violence which are expressions of intolerance under international human rights standards. While the law is not the most effective tool to promote religious tolerance, it can be applied to deter proselytizers from engaging in expressions that are likely to outrage others resulting in disorder. The state interest to prevent disorder or to maintain peace justifies the criminalization of religiously offensive speech.

4.5.2 Proselytism and Street Exhortation

On the one hand, from the perspectives of the proselytizer streets and parks are more suitable places to approach people to attempt to convert them or generally to reach out to potential converts. On the other hand, holding a religious meeting in streets interferes with other competing interests such as smooth pedestrian and traffic flow. In addition, the uses of voice amplifiers or even loud shouting bring about the added problem of noise. The question is whether a city administration legitimately prohibits street preaching. In other words, whether a city has a power to regulate the communication of religious ideas in the streets it administers.

The United States Supreme court in the past has incessantly rejected city ordinances that require permit for the use of public space such as streets and parks for religious purpose.²³⁸ The regulations reviewed were of a general nature that required permit and license fee for engaging in dissemination of ideas including proselytism. In *Jamison v. Texas* the Court rejecting the contention of the city of Dallas that it had absolute power "to prohibit the use of its streets for communication of ideas" said:

²³⁸ See *Jamison v. Texas*, 318 U.S. 413 (1943), *Neimotko v. Maryland*, 340 U.S. 268(1951), and *Fowler v. Rhode Islands*, 345 U.S. 68 (1953)

“Of course, states may provide the control of travel on their streets in order to insure the safety and convenience of the traveling public. They may punish conduct on the streets which is in violation of a valid law. But one who is rightfully on a street which the state has left open to the public carries with him there, as elsewhere, the constitutional right to express his views in an orderly fashion. This right extends to the communication of ideas by handbills and literature, as well as by the spoken word.”²³⁹

The primary purpose to which streets are destined is for the movement of people and properties. A city as well as the public has a legitimate interest in accessibility of its streets for unhampered movement. However, this cannot be sufficient ground for a city administration to absolutely prohibit a street preaching. This is primarily because there is no suitable venue than the streets for the exercise of the right to proselytism or generally for dissemination of religious ideas. The streets are less difficult place not only to look for willing listeners but also to attract large number of members of the community.

In addition it is in the interest of society in any democratic order to allow the free flow of ideas to take place. It will not be tenable to allow the selling or distribution of publications containing political or social affairs freely in public streets but to restrict communication of religion. Both are well protected by freedom of expression. Most of all people should not be silenced to disseminate their views on true religion simply because others prefer not to hear them.

There are instances when City authorities are justified to restrict proselytism in their streets. Targeting and engaging with a willing listener does not seem to affect the interests of others. However, proselytism activities in city streets that unduly burden the normal use of the streets need to be balanced. For example,

²³⁹ See *Jamison v. Texas*, *supra* note 238

causing a crowd to gather in the sidewalks affect or occupying centers of streets contrary to traffic regulations affect the flow of traffic.

In addition the use of loudspeakers or loudly shouting impairing the calmness of passersby justifies interference of authorities. For instance, in *Church of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare Association*, the Indian Supreme Court in dealing with a case where the issue was whether beating of drums or reciting of prayers by use of microphones and loudspeakers should be permitted concluded “no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice amplifiers or beating of drums.”²⁴⁰ However, one cannot reasonably ban all uses of amplifiers for religious purposes. Sometimes the use of amplifiers will be essential for the exercise of freedom to manifest religion or belief in community with others, for instance praying with or teaching to a larger group. What should reasonably be done is to limit the use of voice amplifiers that harm the right of others to function in a peaceful and tranquil environment. This would be in line with the prohibition provided under Article 815 of the Criminal Code which penalizes anyone who disturbs others by the "abuse of noisy instruments apparatus, machines or other noise-producing articles.”

4.5.3 Proselytism and Right to Privacy

Another issue that needs to be reconciled with proselytism is the right to privacy of individuals. The right to privacy is guaranteed in international human right instruments.²⁴¹ There are two ways of looking at privacy in connection with proselytism. Primarily, the right to privacy guarantees the security of individual’s home and their families from unwanted interference. The practice of door to door

²⁴⁰ *Church of God (Full Gospel) In India v. K.K.R. Majestic Colony Welfare Association*, AIR 2000 SC 2773

²⁴¹ See Articles 12 and 17 of UDHR and ICCPR, respectively

proselytism conflicts with privacy right when the proselytizer knocks on the door of unwilling listener. But this does not warrant state interference by way of prohibiting such practices.

In *Martin v. City of Struthers*, the U.S. Supreme Court rendered unconstitutional a city ordinance that prohibits door to door communication of ideas through distribution of publications.²⁴² In the opinion of the Court even crime prevention does not justify city authorities to prohibit door to door communication of ideas. It said “[w]hile door-to-door distributors of literature may be either a nuisance or a blind for criminal activities; they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion.”

Generally, the decision to welcome a visitor with a religious message or not entirely depends on the will of the dwellers of a house. The authorities cannot justifiably make such decisions for home owners. In a way the state interference in this respect amounts to the denial of the right to receive information. The right place for the city in the whole exercise will be to protect home owners from trespassers proselytizers who enter or knock on the doors of others irrespective of a clear contrary intention of the dwellers. In this respect, the Ethiopian civil code provides “no one may enter the domicile of another against the will of such person.”²⁴³ The proscription guarantees the inviolability of the dwelling of physical person from unsolicited incursion even by a person carrying a religious message. Arguably, the protection extends to artificial persons which include religious organizations. A person cannot claim the right to preach Christianity or Islam in Mosques or churches, respectively.

²⁴² *Martin v. City of Struthers*, 319 U.S. 141 (1943)

²⁴³ Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960 , Article 13(2) (entered into force may 5, 1960)

4.5.4 Proselytism and Captive Audiences

As discussed above, people should be free to proselytize in the streets and through door to door canvassing as long as they have willing listeners and do not interfere with normal transportation of people and goods. However, in places such as hospitals, schools, and prisons where people are present by force of law the right to proselytism can be restricted. People in such situation cannot simply avoid the speech, even if they wish, as they are “captive audiences.”²⁴⁴ The mere fact that a proselytism activity takes place in situations where their free movement was limited for some reason makes them unwilling listeners. People who are forced to listen to recorded preaching while traveling in public transport are likewise captive audiences. The right of the driver to disseminate his religious views does not justify him to compel others to listen to a preaching.

Similarly, in the military world in which the relationship of people is strictly hierarchical, proselytism poses the dilemma of captive audiences. In *Larsissus and others v. Greece*, the European Human rights Court upheld the conviction of the applicants by Greece courts for proselytism of subordinates within the armed forces.²⁴⁵ The court noting the hierarchical structure of military life said “...what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power.”²⁴⁶ The reverential fear that is usually created by hierarchical order of military life is likely to cause a situation in which subordinates, though unwilling, become hard pressed to reject an approach from a superior officer.

²⁴⁴ Natan Lerner, *supra* note 51, p.486

²⁴⁵ *Larsissus and others v. Greece*, *supra* note, 2

²⁴⁶ *Id.*

In a country where multiple religions and numerous communities reside, residents who live in the neighborhood of worship places other than theirs can be considered as captive audiences in some circumstances. A Sermon transmitted through voice amplifiers even when it is not intended for the consumption of the whole neighborhood not only disturbs the peace of these people but also makes them unwilling listeners. In such situations a particular religion or its followers cannot claim the right to use amplifiers on the basis of right to proselytize or preach to the detriment of unwilling listeners.

4.5.6 Proselytism and the Rights of Religious Minorities

The views and attitudes of majority or mainstream religious groups might affect minority religious groups.²⁴⁷ Sometimes state actions owing to religious favoritism of dominant religions seriously limit the religious freedom of adherents of minority religions within their borders.²⁴⁸ Such actions are contrary to international human rights standards that protect the existence and identity of religious minorities. The Declaration on the Rights of Persons Belonging to Minorities obligates states to “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the protection of that identity.”²⁴⁹

It is not an exaggeration to claim that successful proselytism among religious minorities naturally erodes their identity which is emphatically protected under the Declaration. However the Declaration does not address the issues of proselytism and conversion. In other words it does not place specifically tailored limitations that restrict the right to proselytize among religious minorities. In

²⁴⁷ Natan Lerner , *supra* note 51, p.534

²⁴⁸ Kevin Boyle and Juliet Sheen, *supra* note 1, p. 350 Iran notoriously prosecutes the followers’ minority religions such as Baha’is.

²⁴⁹ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic, Article 4 Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992

addition, Article 8(2) provides “the exercise of the rights proclaimed in the Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.” Hence, there is no basis to suggest that protection of religious identity of minorities trump over the right to disseminate religious information among religious minorities.

According to 2007 official census, followers of religion or belief outside the major religions constitute a fraction of the population in Ethiopia.²⁵⁰ Minority traditional and indigenous religious communities are the most likely candidates of proselytism.²⁵¹ There is no specific constitutional policy that is geared towards the protection of religious identity of such groups by limiting proselytizing among them. The principle of separation between state and religion precludes the state from implanting measures that mainly aim at restricting proselytism among religious minorities. Such measures would upset the constitutionally imposed balance, i.e. neutrality of the state, when dealing with essentially religious groups.

However, the state can legitimately protect identity and existence of religious minorities by restricting religiously motivated expressions including proselytism that constitute instigation of hatred, discrimination, violence and hostility against them.

²⁵⁰ See *Supra* note 201, 4% of the total population belongs to minority faiths. The minority faiths include Oriental Rite and Latin Rite Roman Catholics, Jehovah's Witnesses, Jews, members of The Church of Jesus Christ of Latter-day Saints (Mormons), animists, and practitioners of indigenous religions

²⁵¹ For instance the Ethiopian Evangelical Church of Mekane yesus and the Ethiopian Kale Hiwot Church envisions to preach the Gospel to what they call unreached groups referring to believers of traditional religions.

Conclusion

Religion or belief is one of the oldest human affairs. Traditionally, these terms used to refer to a belief in a Supreme Being to the exclusion of non theistic and atheistic convictions. But modern understandings of the notion of religion or belief include a conviction in wide spectrum of beliefs that are not necessarily aligned with a Supreme Being. Such views are entrenched in both constitutional and international laws.

Religion in wider sense has been the object of protection in various human right instruments both universally and regionally. The standards of protection extended to religious freedom in the various instruments are fundamentally similar. The various religious clauses essentially protect freedom to maintain and change as well as freedom to manifest religion or belief. However, the international community is ambivalent to come up with a convention that specifically addresses religious freedom so far.

The FDRE Constitution protects religious freedom in the same manner as the major international human right instruments. In addition the notion of secularism embedded in the Constitution provides for additional framework of protection for religious freedom. It guarantees the neutrality of the state from endorsing religious views.

The aspect of religious freedom that guarantees the right to choose one's religion or belief is accorded absolute protection since the beginning of codification of human right instruments. This freedom generally pertains to right to maintain or change what one believes. Yet some religions and state are still at loggerheads over this universal human freedom. Predominantly Islamic States do infringe this aspect of freedom of religion in disregard to international human right standards. In Ethiopia where state favoritism of a particular religion is constitutionally outlawed such kind attitude is less likely to surface from the side of the government.

The flip side of freedom to choose religion i.e. coercive conversion of religion is specifically outlawed. The clear case is the use of force to influence choice of religion. The international instruments do not specifically pin point other factors that would be considered in like manner. The FDRE Constitution, on the other hand, leaves room for consideration of other factors. In line with the Constitution the Criminal Code provides for fraud as another factor that negates the freedom to choose one's religion or belief.

Even though isolated, there have been recent incidents that involve the use of deadly force to convert others to one's religion in Ethiopia. Such realities call on the state to act in accordance with its obligations under the Constitution and international human right instruments to protect freedom of religion.

Freedom of manifestation of religion is likewise guaranteed in both international human rights as well as constitutional arenas. It covers a very wide spectrum of activities contingent upon the diversity of religions and beliefs. It is subject to limitation on the basis of known grounds such as public order, morality, and rights and freedoms of others.

Proselytism falls within the continuum of religious freedom. It is an activity that involves attempt to convert others to one's religion or belief. States who oppose conversion likewise do not acknowledge proselytism. Nevertheless, it is entrenched in religious freedom and other human rights. The fact that its main objective is to convert others to one's own religion and its undeniable instrumentality in facilitating change of religion makes it a matter of freedom to change religion. It is also an important part of manifestation of religion or belief. It means different things for different religions. But for most Christian denominations it is an epicenter of their faith. In addition, proselytism is related to other right in particular with freedom of expression. Most forms proselytism may take are covered by freedom of expression.

In multi religious society right to proselytism raises ramifications that affect many things. The international human rights and different constitutional laws attempt to balance the right with other interests. The constraints that are relevant to multi religious society come

in different sizes and shapes. In the same vein the FDRE Constitution limits the right. The most significant limitations are put in place for the protection of the rights and freedoms of others, public safety, and morals. Another significant limitation comes into the picture by way of protecting religious groups, inter alia, from propagation of views that constitute incitement to religious hatred, violence, discrimination and hostility. This proscription under international human rights law directly constrains the right of a proselytizer when the speech made constitute instigation against religious groups.

Other limitations on the right to proselytize on the basis of the interest and the rights of others set out to protect the religious feelings of others. This is particularly addressed by laws of blasphemy. But blasphemy must not be confused with mere expression of opposition on other's religious views. Opposing religious views are unavoidable in so far as meaningful religious freedom is desired. But mere opposing religious views cross the line of acceptable exercise of freedom of religion and expression when they constitute expressions that are gross and intentional vilifications of other's religion or belief. There is ample evidence that shows how it can be a recipe for public disturbance.

Right to privacy and the interest of others to enjoy peaceful environment can be affected by unharnessed exercise of the right to proselytism. Willing listeners can welcome solicitations of a proselytizer without the state's interference. But right to proselytism gives way to certain interests and rights of unwilling listeners. The balanced interests generally include the right to free movement, the right to privacy, the right to live in peaceful environment.

Generally the research identifies that proselytism has an important place within the continuum of religious freedom. In addition it concludes that unrestricted right to proselytism poses a threat in multi-religious society. And Ethiopia has grounds that justify restriction of the right to proselytize.

Recommendations

Ethiopia as a multi religious polity cannot avoid but confront the right to proselytism and its ramifications. Religious zealots who aim to increase their followers through unlawful means endanger the public peace. In order to promote peaceful co existence of its religiously diverse society, the state should protect the religious freedom of its citizens by prosecuting crimes infringing the freedom to choose one's religion or belief freely. In order to avoid the resort to unlawful means by religious fanatics to advance their religion or belief, the state must not hamper the free flow of religious opinions. But this does not mean that the state should put legal harness in all sorts of religious expressions.

The state must protect all religions from blasphemy even if raised in context of proselytism. It should not base its decision to prosecute blasphemy on sensitivity grounds. The need to advance religious tolerance among diverse groups demands the neutral application of the law. The law should be applied to mainstream religions as well as to minority religions. In connection with this, the state must control speech that constitute incitement to hatred, violence, discrimination and hostility against religious groups particularly minority groups.

The state must also address the rights of unwilling listeners as against the right of the proselytizer when their right of movement is hampered, when their right to privacy is threatened, when their right to peaceful environment is compromised and when they are captive audiences.

When proselytizers interfere with the normal transportation or movement of people the state must step in to protect the rights of uninterested parties. The state must regulate misuse of voice amplifiers in proselytizing activities placing unwilling listeners at a disadvantage. The state must protect the peaceful environment of citizens from disturbances. In addition the state must regulate proselytism in places where unwilling listeners become captive audiences. Particularly in places designated for public utility

such as public transport and public buildings the state can legitimately regulate proselytism.

Declaration

I, Gedion Sissay, do hereby declare that this research is my own original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other University for Degree or Diploma. Other cited or referred to are accordingly acknowledged.

Signed: _____

Date: _____

This Dissertation has been submitted for examination with my approval as University Supervisor.

Signed: _____

Yared Legesse (LLB.,LLM.,SJD Candidate (CEU))

Addis Ababa Univerity, Faculty of Law

Date: _____