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No. 08, Arul Nagar, Seera Thoppu,

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Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



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Religion and Culture – Inter-relations in Modern Discourses of Law

Author - Ayush Pandey, Student at National Law Institute University, Bhopal

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ABSTRACT

यतो धर्मस्ततो जय: - "Where there is Dharma, there is victory"

Law, as described by Leon Duguit, is "Essentially and exclusively as a social fact". And the same time, Roscoe Pound considered the law to be predominantly a tool of social engineering. Thus, we can know that there are various subjective opinions of how someone interprets law. But in simple terms we can say that "Law is a set of rules that are created and are enforceable by social or governmental institutions to regulate behavior, with its precise definition a matter of longstanding debate".[10] On the other hand, if we talk about Religion, it means a "Voluntary subjection of oneself to God"[11] by The Catholic Encyclopedia, 1913 and many others define religion as a set of beliefs to offer worship towards an energy which they believe to be Supreme God. Both these terminology has a unique link between them which is to be governed by someone else. In this article paper, we would be exploring more about these terms and their inter-relatedness.

KEYWORDS: Religion, Law, Purpose, Conflict, Debate

I. INTRODUCTION

Law is something that imposes a duty on people to abide by. And similarly, Religion also includes a set of rules and regulations, mainly known as culture and custom traditions, which is required by its followers to follow. In other words, we can say that religion is a law which is mainly driven by faith put upon by the believers on their respective gods.[12] We can differentiate them on the basis of consent and willfulness of the followers/citizens. Religion is something that is optional and depends on the choice of the follower whereas Law is something that one has to follow regardless of whether he consents it or not. But, we can say that both Religion and Law are interdependent and till a certain extent they are somewhat similar.

II. RELIGION AND LAW

The word 'Law' has been derived from the Teutonic word *Lag*, which means 'definite'.[13] And following this, we can comfortably say that it is a set of rules and regulations that one is expected to follow in order to maintain a sense of peace and stability in the society.

'Religion', one the other hand has its origin from Latin word *religo*[14], which means 'Good faith', 'Ritual', and other similar meanings. And it refers to a practice of activities by followers which they believe to be sacred and of spiritual importance. Religion is a very important part of our lives. It has been around for thousands of years and will continue to be around for many more. Religion has played an important role in shaping the way we think, act, and feel about things. Religion can be any one or a combination of different beliefs that people have based on their own personal experiences or observations. If we try to inter-relate these two terminologies, then we would be getting pretty much same concept on a wider term. Both these terms try to contribute in upholding the 'Concept of Morality'. Religious textbooks generally do not explicitly mention each and every immoral activity that should not be undertaken, unlike Legal textbooks which

[10] Law, Wikipedia (2023), https://en.wikipedia.org/wiki/Law (Feb 15, 2023)

[11] Thomas A. Idinopulos & Brian C. Wilson, *in* What is religion? (1998)

[12] Ijalr, Religion and the law ijalr (2021), https://ijalr.in/religion-and-the-law/#:~:text=Religion%20is%20a%20basis%20of,in%20maintaining%20law%20and%20order (Feb 15, 2023)

[13] Law: Meaning, features, sources and types of law, Your Article Library (2014), https://www.yourarticlelibrary.com/essay/law-essay/law-meaning-features-sources-and-types-of-law/40363#:~:text='The%20word%20'Law'%20has%20been,the%20people%20of%20the%20State (Feb 15, 2023).

[14] Requirements of a definition, https://www.qcc.cuny.edu/socialsciences/ppecorino/phil_of_religion_text/CHAPTER_10_DEFINITION/Requirements_of_a_Definition.htm#:~:text=The%20English%20word%20%22religion%22%20is,means%20%22to%20tie%20fast.%22 (Feb 17, 2023).

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mention each and every diminutive detail which are sometimes of little or no importance but are mentioned in the Laws. Whereas, in religious texts, Sin in itself is considered as a violation of a cosmic sacred order but according to Legal texts, they would be considered only as a legal violation of someone's legal rights.

III. PURPOSE OF LAW AND RELIGION

Every idea in this world has some or the other purpose, for which it was initially originated. Here, we are mainly talking about two ideas, i.e. Religion and Law.

Religion gives meaning and purpose to life, it reinforces social unity and stability, and it also acts as an agent of social control and thus strengthens social order. Religion provides *greater psychological and physical well-being by acting as a source of comfort for their followers in times of distress and while facing difficulties in real life situations. And it also* motivates people to work for positive social changes as well.[15]

Law on the other hand, has its own different purposes. Some of them are listed here such as; it establishes standards by setting the bar of morally less acceptable behaviors and activities in society that it tries to prevent. After standards have been established, there is a need for the appearance of the orders and it needs to be reflected in the laws. When laws are enforced, they make orders which are in line with the societal guidelines. And when any conflict arises between any individual or a group, these laws are the only thing that helps in resolving them and law provides formal way of resolving disputes through litigation and court proceedings. Law also helps in protecting various liberties and rights that are provided to the citizens of any state.[16]

IV. INDIA – RELIGION AND LAW

India is a multi-religious country and a political state of cultural diversities, here, religion plays a very important part of any individual's life and majority of Indian population associates themselves with one or the other religion. According to the 2011 census, 79.8% of the population of India practices Hinduism, 14.2% adheres to Islam, 2.3% adheres to Christianity, 1.7% adheres to Sikhism, 0.7% adheres to Buddhism and 0.4% adheres to Jainism, Zoroastrianism, Sanamahism and Ju daism also have an ancient history in India, and each has several thousands of Indian adherents.[17]

There are various articles provided by 'The Constitution of India' in the name of 'Right to Freedom of Religion' from Articles 25-28.[18]

Article 25 - Freedom of conscience and free profession, practice and propagation of religion subject to public order, morality and health and to the other provisions.

Article 26 - Freedom to manage religious affairs subject to public order, morality and health.

Article 27 - Freedom as to payment of taxes for promotion of any particular religion No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

These above-mentioned laws are Fundamental in nature and are guaranteed to all citizens. And are expected not to be violated.

Recently, in India, there was a great issue regarding hijab ban in educational institutes

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[15] SOCIOLOGICAL PERSPECTIVES ON RELIGION INTRODUCTION TO SOCIOLOGY UNDERSTANDING AND CHANGING THE SOCIAL WORLD (2016), https://pressbooks.howardcc.edu/soci101/chapter/17-3-sociological-perspectives-on-religion/#:~:text=Religion%20serves%20several%20functions%20for,work%20for%20positive%20social%20change. (Feb 18, 2023)

[16] [16] The Meaning and Purposes of Law, https://courses.lumenlearning.com/suny-hccc-introbusiness/chapter/meaning-and-purposes-of-the-law/#footnote-636-4 (Feb 18, 2023).

[17] Religion in India, Wikipedia (2023), https://en.wikipedia.org/wiki/Religion_in_India#:~:text=According%20to%20the%202011%20census,and%200.4%25%20adheres%20to%20Jainism. (Feb 18, 2023)

[18] Freedom of Religion under Indian Constitution, Legal Service India - Law, Lawyers and Legal Resources, https://www.legalserviceindia.com/legal/article-731-freedom-of-religion-under-indian-constitution-whether-freedom-of-religion-or-freedom-from-religion.html (Feb 18, 2023).

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which can be used as a great example to show the conflict between religion and law. And this takes us to our next topic i.e. conflict among them.

V. CONFLICT – RELIGION AND LAW

As far as now, we have known that religion and law both are inter-related and inter-dependent on each other. But, Law can sometimes become and act as a hinder in Religious activities. Laws on various levels try to stop the inter-religious or intra-religious discrimination that may be caused at times. Religious faith is something that involves one step in the examination of one's moral convictions towards their Supreme Godhead. This means that their choices of actions are not dependent on the legal technicality of the acts but the religious boundary within which they are[19]. And due to this nature, sometimes the followers might feel that the law of the land is not consistent with their faith and this might result in them not following the laws or even breaking them. There are various different religions in the world. Some individuals consider only one religion, while others practice a variety of religions. Within each religion, there are many distinct beliefs, yet most faiths share a few basic principles. One of these widespread sentiments is that everyone should be treated equally regardless of their faith or physical appearance. No one should be denied the chance to succeed and accomplish their goals because of their ethnicity, gender, age, or any other factor that would set them apart from others. In law, majority of the society uses the term 'Secular' in order to avoid any sort of discrimination among any two religions. This takes us to our next topic.

VI. SECULARISM

Secularism is a political and social philosophy that does not believe in the existence of any god. From legal secular point of view, religion does not seem pertinent and stands irrelevant as it carries on the idea of universalism of religion in law. This idea helps the state to impose laws and regulations with equality on all the communities by making the government look all the religions with same eye. Secularism is a concept that keeps each and every practiced religion universal in the society and also proves to be instrumental by leaving no room for discrimination from government's end. The Latin word "seculare," which means "to separate or to be away from God," is where the word "secularism" originates from. Secularism's primary goal is to exclude religion from politics and public life. The idea behind secularism is that since religion may lead to discrimination against people based on their religious beliefs, it should not be utilized as a basis for laws and regulations.

VII. DEBATE

It has been up for discussion for centuries how law and religion interact, and it is still an important question today. The current discussion on this subject is focused on whether and how many religious convictions should affect the legislation. On the one hand, those who advocate keeping religion and law apart contend that there should be no connection between the two. They think that rather than being based on religious doctrine or beliefs, legislation should instead be based on logic, facts, and the greater good. This perspective is sometimes founded on the secularism principle, which contends that the state ought to be impartial towards all religions and refrain from favoring any in particular. Secularism advocates claim that since each person's religious views are a matter of personal conscience, the government should refrain from interfering with them.

In contrast, proponents of the merger of religion and law say that the legal system should take religious views into account. They contend that religious ideas need to be represented in the legal system and that religious convictions may offer a moral basis for the rule of law. This stance is frequently supported by the belief that religious traditions have a lengthy history of

[19] William C. Duncan, Conflicts between religious freedom and government actions? Sutherland Institute (2020) https://sutherlandinstitute.org/what-are-the-current-conflicts-between-religious-freedom-and-government-actions/ (Feb 19, 2023)

moral and ethical teachings that can be helpful in forming the law. The conflict involving individual rights and religious freedom is one of the key themes in the contemporary discussion of law and religion. When laws are established that go against their religious convictions, certain religious organizations claim that their freedom of religion is being violated. Religious organizations, for instance, have on occasion declined to offer services to same-sex couples or to include contraception in their health plans. In these situations, the state had to strike a balance between the individuals' rights and the institutions' freedom of religion.

The question of whether the law should accept religious law or practices is another point of contention in the current discussion of law and religion. For instance, courts have occasionally had to determine whether to accept a religiously sanctioned divorce or a marriage that was not recognized by the state. The requirement for a consistent and uniform legal system must be balanced against the individual rights of all concerned, making this a complicated subject.

VIII. CONCLUSION

In conclusion, there are several different sides to the current discussion on how law and religion coexist. While some suggest keeping religion and law apart, others think that religious convictions may offer the legal system with an important moral foundation. Another important topic in this discussion is the conflict between personal freedom and religious liberty. In the end, the matter of how religion and law should interact will be a topic for discussion and controversy in modern times. We may also come to the conclusion that law and religion go hand in hand, with one of law's primary functions being to uphold and respect individuals' religious beliefs while simultaneously keeping an eye on social structure and the general welfare of the populace.[20]

[20] LAW AND ITS INTER-RELATION WITH RELIGION by Joysree Das JOURNAL FOR LAW STUDENTS AND RESEARCHERS (2023) https://www.jlsrjournal.in/law-and-its-inter-relation-with-religion-by-joysree-das/#_ftnref2 (Feb 20, 2023)

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