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CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
1.	HIGH PERFORMANCE ORGANIZATION AND ORGANIZATIONAL EFFECTIVENESS IN BAPPEDA (DEVELOPMENT AND PLANNING BOARD), ACEH- INDONESIA FIFI YUSMITA & DR. VIMALASANJEEVKUMAR	1
2.	SOCIAL ENTREPRENEURS IN BANGLADESH DEWAN MAHBOOB HOSSAIN & MOINUL HOSSAIN	7
3.	IMPACT OF WORKING CAPITAL MANAGEMENT ON FIRM'S PERFORMANCE: EVIDENCES FROM LISTED COMPANIES OF INDIA DR. AVANISH KUMAR SHUKLA	13
4.	ENGLISH TEACHERS' EMOTIONAL INTELLIGENCE AND ITS IMPACT ON THEIR ORGANIZATIONAL CITIZENSHIP BEHAVIOUR IN SRI LANKAN SCHOOLS U.W.M.R. SAMPATH KAPPAGODA	18
5.	A QUALITATIVE INQUIRY OF LEADERSHIP PRACTICES AND ITS BEHAVIORAL AND PSYCHOLOGICAL OUTCOMES MADIHAREHMANFAROOQUI	23
6.	LINKING ORGANIZATIONAL CULTURE, STRUCTURE, AND ORGANIZATIONAL EFFECTIVENESS FAKHRADDIN MAROOFI, AFSHINGHASEMI & SAMIRA DHGHANI	29
7.	SWOT ANALYSIS: AN INSTRUMENT FOR STRATEGIC PLANNING – A CASE STUDY GOMATESH M. RAVANAVAR & DR. POORNIMA M. CHARANTIMATH	35
8.	THE ROLE OF HRM PRACTICES IN ORGANIZED RETAILING A STUDY OF SELECT RETAILERS IN BANGALORE CITY LAKSHMI NARAYANA.K, DR. P. PARAMASHIVAIAH & DR. SREENIVAS. D. L	41
9.	WATER CRISIS AT COAL CAPITAL OF INDIA: A PRAGMATIC STUDY OF ROOT CAUSES, IMPACT AND SOLUTION OF WATER CRISIS IN REGIONS OF WORKING COAL MINES OF BHARAT COKING COAL LIMITED DHANBAD ABHINAV KUMAR SHRIVASTAVA & DR. N. C. PAHARIYA	46
10.	PORTFOLIO MANAGEMENT OF INDIAN MUTUAL FUNDS: A STUDY ON DIVERSIFIED EQUITY FUNDS PERFORMANCE E. UMA REDDY & C. MADHUSUDANA REDDY	50
11.	A STUDY OF DIFFERENCES IN PERCEPTION OF EMPLOYEES ABOUT THE HRD CLIMATE PREVAILS IN THE ENGINEERING INSTITUTE ON THE BASIS OF AGE GROUP MUKESH KUMAR PARASHAR & DR. MURLIDHAR PANGA	54
12.	INSTITUTIONAL FINANCING OF AGRICULTURE IN INDIA WITH SPECIAL REFERENCE TO COMMERCIAL BANKS: PROBLEMS FACED BY FARMERS – AN EMPIRICAL STUDY DR. KEWAL KUMAR & ATUL GAMBHIR	58
13.	MULTIPLE FACETS OF ORGAN TRANSPLANTATION IN A TERTIARY CARE HOSPITAL MANAGEMENT, INDIA DR. PRAKASH.K.N, DR. CYNTHIA MENEZES, DR. ANNAPURNA RAMESH & S. HARISH BABU	61
14.	FDI, TRADE, AND ECONOMIC GROWTH IN SINGAPORE--EVIDENCE FROM TIME-SERIES CAUSALITY ANALYSES DR. G. JAYACHANDRAN	66
15.	AN EVALUATION OF MICRO CREDIT IMPACT ON RURAL POOR WOMEN – A CASE STUDY IN BELLARY DISTRICT, KARNATAKA K. S. PRAKASHA RAO	77
16.	APPRECIATION AND APPREHENSIONS OF INDIAN CORPORATE SECTOR ABOUT CORPORATE SOCIAL RESPONSIBILITY DR. B. M. HARSHAVARDHAN, DR. A. PRASAD & A V LAL	84
17.	SOCIAL MEDIA MARKETING: THE NEXT FRONTIER (AN EXPLORATORY STUDY ON SOCIAL MEDIA MARKETING PROSPECTIVE WITH REFERENCE TO PUNE CITY) GUNJIN SINGH	92
18.	ROLE OF INFORMATION TECHNOLOGY IN AGRICULTURE AND AGRO-BASED INDUSTRIES DR. B. RAMACHNADRA REDDY, E. LAVANYA & P. HUSSAIN BASHA	97
19.	ADVENTURE TOURISM POTENTIAL: A STUDY OF KASHMIR FARHAT BANO BEG & DR. ASHOK AIMA	99
20.	INVENTORY MODEL IN A FUZZY ENVIRONMENT WITH ITS ASSOCIATED COSTS IN EXPONENTIAL MEMBERSHIP FUNCTIONS K. PUNNIKRISHNAN & K. KADAMBANAM	102
21.	EMPLOYEES PERSPECTIVE VIEW TOWARDS PERFORMANCE APPRAISAL AND TRAINING PROGRAMMES PRACTICED IN SUGAR INDUSTRIES IN ERODE DISTRICT M. SELVI SRIDEVI & DR. L. MANIVANNAN	107
22.	INTEREST IN MANAGEMENT EDUCATION: THE CURRENT TREND AND ITS IMPLICATIONS VIJENDRA KUMAR S. K. & ANCY MATHEW	116
23.	IMPACT OF CORPORATE GOVERNANCE PRACTICES ON THE FIRM PERFORMANCE: AN EMPIRICAL EVIDENCE OF THE SMALL AND MEDIUM ENTERPRISES IN INDIA PARTHA SARATHI PATTNAYAK & DR. PRIYA RANJAN DASH	119
24.	A REVIEW OF HUMAN ERROR IN MAINTENANCE AND SAFETY ROSHAN KURUVILA	124
25.	SEARCH-EXPERIENCE FRAMEWORK: A CASE OF MOVIE INDUSTRY T. SAI VIJAY & TANUSHREE GOSWAMI	127
26.	GENDER EQUALITY AND INCLUSIVE GROWTH: IN CASE OF PUNJAB DR. SANGEETA NAGAICH & PREETI SHARMA	132
27.	ESTIMATION OF POPULATION MEAN USING RANKED SET SAMPLING DR. SUNIL KUMAR, DR. SANDEEP BHOUGAL & RAHUL KUMAR SHARMA & DR. KULDIP RAJ	139
28.	A GOAL PROGRAMMING FORMULATION IN NUTRIENT MANAGEMENT OF FERTILIZERS USED FOR RUBBER PLANTATION IN TRIPURA NABENDU SEN & MANISH NANDI	142
29.	A STUDY ON THE FACTORS INFLUENCING INDIVIDUAL INVESTOR BEHAVIOR IN IT SECTOR SINDU KOPPA & SHALINI .P	145
30.	RELIGION, LAW & THE ROLE OF STATE NITUJA KUMARI & MOHD YASIN WANI	150
	REQUEST FOR FEEDBACK	154

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OBJECTIVES

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RESULTS & DISCUSSION

FINDINGS

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RELIGION, LAW & THE ROLE OF STATE

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ABSTRACT

The interrelationship of religion and law has always been a complex and considerably a matter of dispute. As an admitted fact, the origin of religion is time immemorial and it's also a common observance and a proved fact that every religion has specific and exclusive legal provisions. In fact, initially, the society was administered by religious beliefs, not by legal provisions. With the passage of time, efforts were made to segregate law from religion because it was found difficult to administer multi-religious society through any particular religion. Though, the basic tenets of every religion is less or more similar but many aspects of religions differ and herefrom the dispute aroused. It is the common belief of religious persons that religion has been revealed by any super natural power i.e. God. But, there is no dispute regarding the fact that law has been evolved by human rationale and experience. Now, with the emergence of State as a political governing body, the question of reconciliation among the various religions inter se and between religion and law became acute because the State came into existence as a common political guardian of its subjects. So, it had to either protect the interests of its all subjects irrespective of their race, caste, creed, language or religion or to discard the identity of multi-religious society by declaring it as a specific religious - State and the third path whereby the State may provide special preference to any particular religious group but also recognize the religious-freedom of other Community. In this paper, the effort has been made to study the interrelationship of religion and law and instant, how different political States are harmonizing the interests of multi-religious society.

KEYWORDS

Concept of Dharma, Concept of Law, Role of State.

INTRODUCTION

In the ancient legal system of every society, religion and law has been synonymously termed because the law essentially constituted a part of the religion. Every political society has its religious origin, even of Communists society because before the emergence of the Communism, people were free to have belief in religion of their choice. The eternity of religion may be upheld when it is seen that now even in China, North Korea and Vietnam there is not complete ban on profession of any religion. But the relationship between religion and law has been famously complex. Religious values constitute central elements of societal values that shape the rules, principles institutions governing society. Institutional policies affect those underlying societal values by reinforcing and entrenching societal beliefs or seeking to change them. Scholars recognize that the multiple interactions between religion and law are so embedded in particular cultures that broad generalizations have limited utility.¹ The impact of religious norms has been varying considerably with time and place as well as subject matter, politics and economics.² It is said that Indian jurisprudence is as old as humanity itself, there is no founder of it other than the creator itself.³ Law proper has been a part and parcel of ancient Sanatan Dharma. Sanatan Dharma⁴ means one that is ancient and everlasting. Thus, Sanatan Dharma means an ancient Dharma that was, is, and will last till eternity. It is the soul of all religions and therefore, it is ever present and never ending. Law being a part of Dharma there was no disharmony and discord between laws and Dharma and both constituted a single integrated whole.⁵

OBJECT

The object of pursuing the research for the instant topic is, firstly, to weigh the relevancy and importance of Religion in different Political Legal Systems and secondly, to be aware about the freedoms of religion of people in the present Global era where the entire world is alike a village and anyone can within legal limitations access and live in any corner of world. In such a situation, it's not possible for any society to keep reserve it's any part for any specific or particular group of people.

CONCEPT OF DHARMA

Literal meaning of the term Dharma is that 'which sustains or upholds.' According to Sanatan scripture, Dharma stands for "religious rights, fixed principles of rules of conduct and the whole body of religious duties."⁶ Dharma is a larger domain of which religious, moral, social and legal duties are several elements. Dharma has been taken to be an elusive term which has no exact equivalent in any other language. The religion and law are only two facets of Dharma. In widest sense, Dharma suggests all pervading rules or order that upholds the universe. Fundamental principles underlying Dharma is uniformity or regularity of order which is universally accepted. It may, therefore, include statutory law, law of nature, law of society, law of creation, law of gravitation etc.⁷ According to Manusmriti, "Conduct is the basis of Dharma and it is not what you think but

¹. Barzilai, Gad: Law and Religion, (ed.2007), p.556.

². Ibid.

³. Para jape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.86, Para-4

⁴. Para jape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.86, footnote 3.

⁵. Para jape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.86, Para -4

⁶. Parajape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.87, para-1st

⁷. Ibid.

what you do, constitutes your Dharma. Non-Violence is the essence of Dharma.⁸ As per Islam also, from religious sense Islam means 'submission to the will of God' and from secular sense Islam means 'Peace'⁹ i.e. Non-Violence. From the common man point of view the term Dharma may be said to include three things: (i) Religion (ii) Duty and (iii) Inseparable quality of a thing or order.

In the first sense, Dharma has been treated as 'religion.' In strict sense of the word, 'religion' may be said to be obedience to the law of God.¹⁰ According to Mahatma Gandhi, "God and His law are synonymous terms and, therefore, God signifies an unchanging living law. No one has really found him but prophets have by their devotion and *sadhna* given to mankind a faint glimpse of the eternal law."¹¹

In the second sense, Dharma stands for duty. For instance, Raj dharma connotes the duty of 'Ruler, Grahastha dharma signifies the duty of family-man, and Matri Dharma Signifies the duty of a mother and so on. Similarly, there may be the duty of a doctor, Judge, lawyer, priest, teacher, leader etc.¹²

In third sense, Dharma connotes essential characteristic features of a thing or an object. For instance, the essential characteristic (Dharma) of Agni i.e. fire is to burn anything and everything without discrimination. Similarly, the dharma of water is to quench fire. This is unalterable and immutable.¹³

According to Dr. Kane, the concept of Dharma passed through several transitions over the year and in the modern context it signifies privileges, duties and obligations of a man, his standard of conduct as a member of the society.¹⁴

CONCEPT OF LAW

Mayne observed; "Indian law has the oldest pedigree of any known system of Jurisprudence, and even now it shows no signs of decrepitude. At this day it governs races of men, extending from Kashmir to Capecomorin, who agree in nothing else except their submission to it."¹⁵ Sir Francis MacNaughton wrote that the merit of having been the founders of their own jurisprudence cannot be denied to the ancient Indian Jurists.¹⁶

According to Upanishadic Interpretation of law, function of law is to ensure social security of men and the existing social institutions by avoiding conflicts and confrontation between individuals. The form of laws is to be determined by its effectiveness and rationality. It is a device, which keeps everyone within his limits in his relations with other members of the society.¹⁷

As per Briharanyak Upanishad, "Law is a Chatra of Chatras, therefore, there is nothing higher than the law. Thenceforth even a weak man rules a stranger with the help of the law, as with the help of the King. This law is what is called the truth truth and law, both are the same."¹⁸

Naykapanished highlighted the importance of law and called it 'King of kings' and that nothing is mightier than law. Similar views were expressed by Aristotle, the great Greek philosopher of his time who said, "law is a form of order and therefore, a good law means a good order." Cicero also pointed out that "no power should be above law." Thus, it would be seen that supremacy of law has been upheld in India from the oldest times because of its divine origin.¹⁹

From the view point of application of a particular branch of Law upon persons, laws may be either territorial or personal. A territorial law is that branch of law which is applied in a particular territory and is applicable upon persons of all communities living in that territory. For example, Indian Penal Code, Indian Contract Act etc are territorial laws of India. On the other hand, a Personal Law is that branch of civil law which applies upon the persons of a particular religious community. For instance, Mohammedan Law applies upon the Muslims while the Hindu Law applies upon the Hindus. In India at Present some of the main provisions of Hindu Law have been codified, such as Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoption and maintenance Act, 1956, etc. In India, Parsis and Christians are also governed by separate Acts, i.e. The Parsi Marriage and Divorce Act, 1936, Indian Christians Marriage Act, 1872 and Indian Succession Act, 1925.²⁰

ROLE OF STATE

State is a political institution which stands as the supreme guardian of all its citizens and ultimate law makes for its entire territory. The history of human civilization reveals that man as social being tended to live in larger groups under a common authority for the purpose of regulating their interests *inter se* as also for the adjustment of relations between States and similar other groups. The main factors which contributed to the evolution of the State include sociability of man, kinship, religion and industry. The war also led to the growth of a social organizational form of larger group called the State for the sake of protection and self preservation of its people.²¹

Brierly, "A State is an institution, that is to say, it is a system of relations which men establish among themselves as a means of securing certain objects, of which the most fundamental is a system of orders within which their activities can be carried on".²²

Thus, the State is an institution formed by people of a particular area for the governance of themselves. Thus, the State has to protect the rights and interests of all its citizen. But, the case become complex when population is divided on several grounds. For instance, population may be associated with different class of politics, religion, caste, creed, sect etc.

In such a situation, it depends upon the law makers that whether they intend to protect the rights and interests of all its citizens or only of majority class of people, whether they intend to give any preferential rights, freedoms and privileges to any particular class of people over another or whether they intend to be indifferent from the caste, creed, sects, religion of its citizens and intends to make a common law for all its citizens.

On this basis, the organization of States may be divided mainly in 4 types:

1. Secular States,
2. Religious States,
3. Religious-cum-Republic States,
4. Communist States.

SECULAR STATES

Secular States are those States wherein the state neither concern with the propagation of religion nor with the suppression of religion. Secularism means the State shall not have any project in the name of religion but as a common and supreme guardian of it's all citizen, it must protect the

⁸ . Manuswriti, Chap. I, verse. 108

⁹ . Ahmad, Akil: Mohammedan Law, (21st ed.) 2004, p. 3, para-3

¹⁰ . Parajape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.87, Para- 4-5

¹¹ . Quoted from 'Sanatan Dharma & Law' by Justice K. B. Panda (1977) P. 23.

¹² . Parajape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, P.87,

¹³ . Ibid.

¹⁴ . Dr. Kane. P. V.: History of Dharmasastras, Vol. I, (2nd Ed.) P.3.

¹⁵ . Mayne: Hindu Law and Usage Preface (1st ed.) P-1.

¹⁶ Sen, P.N: General Principles of Hindu Jurisprudence, P.374]

¹⁷ . Radhabinod Paul: The History of Hindu Law (1958) P 194

¹⁸ . Upanishad 1 chap. -4, Verses 4.

¹⁹ . Parajape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, p 91, Para- 6

²⁰ . Ahmad, Akil: Mohammedan Law, (21st ed.) 2004, p.1, Para-1

²¹ . Parajape, N.V. : Jurisprudence & Legal Theory, (5th ed.) 2008, 117.

²² . Brierly: Law of Nations (4th ed.), P.111.

rights, freedoms and all interests of its citizens irrespective of their caste, creeds, race, sects or religion. Such a Secular State protects even the religious freedoms of all its citizen and also protect the places of worship of its citizen.

A secular State does not interfere with the religious belief of all its citizen or allows interference by one group of citizen to another group. USA and India is an ideal example of a secular State.

Its generally referred that the theme of Secularism was firstly adopted by the Constitution of USA but here a great fact of truth must be considered that Secularism may be new for West and It may have been firstly introduced by American Constitution but for Eastern part of World, Secularism has been a way of life. That's why, in the Sub-Continent of India, people practicing with other belief, did not face any problem on account of religion. Here, Message of The Emperor Ashoka, who ruled Combined India more than 2300 years ago, may be taken for the proof of this fact, when he says that, "Its both wrong to praise one's own religion or criticize other's. Each one should respect the other's religion. If one praises one's own religion while criticizing another's, one is actually doing greater harm to one's own religion. Therefore, one should try to understand the main ideas of another's religion, and respect it."²³

SECULAR PROVISIONS IN INDIAN CONSTITUTION

Preamble of Indian Constitution Proclaims that *inter alia*, the people of India, having solemnly resolved to constitute India Into a Secular Democratic Republic and to secure to all its citizens liberty of thought, expression, belief, faith and worship.....

Part III, Articles 25 to 28 of Indian Constitution solely deals with right to freedom of religion of all Indian citizens.

SECULAR PROVISION IN USA CONSTITUTION

In the original text of the Constitution of USA, 1787 there was nothing in the name of fundamental rights but by the first ten amendments made in 1789, some fundamental rights were incorporated which is famously known as Bill of Rights.

The first amendment which reads *inter alia* that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or is popularly known as Free Exercise Clause.²⁴

RELIGIOUS STATE

Religious states are those states where the state, by its supreme law, declares any particular religion as its National Religion. In such a case, the state is ruled by the tenets and commands of particular religion. In another words, the State declares itself to be governed by *the so-called* God made laws and not by manmade laws. Therefore, the job of Religious State is not only to maintain the law and order but also to supervise whether religious principles are being properly followed and respected by its people or not and further such State holds religious festivals and ceremonies as National festival. The other people not belonging to the National Religion, are also governed by the religious law of the State. News relating to Egypt is relevant here. On 23 of March, 2009 CNN reported that two couples have been jailed in Egypt for allegedly attempting to smuggle children out of the country with fake paperwork. The couples say that they were arranging to adopt the children, although adoption is illegal in Egypt. The couples and the families of the children were all Christians in a Muslim-dominant country, and they feel that they are being unfairly targeted. Critics argue that strict laws of the Egypt which allow fostering among family members but not adoption, forced couples to go "underground" when seeking to adopt.²⁵

Another example of the Religious State is the Constitution of the Republic of Maldives, 2008 which is a sovereign, independent, democratic Republic based on the principles of Islam (Art. 2). According to Article 10 (a) of Maldives Constitution, Islam shall be one of the basis of all the laws. Maldives has an Islamic religious legal system. Furthermore, the Constitution guarantees the right to freedom of expression in a manner that is not contrary to any tenet of Islam (Art. 27).²⁶

The 1997 Constitution of the Maldives designates Islam as the official State Religion. The Government interprets this provision to impose a requirement that citizens be Muslims. Freedom of religion is restricted significantly. The law prohibits the practice by Maldivian citizens of any religion other than Islam. The president is the "supreme authority to propagate the tenets of Islam." Government regulations are based on Islamic Law (Shari'a). The Government maintained and funded most of the mosques. Non-Muslim foreigners are allowed to practice their religion only privately. Visitors must also refrain from encouraging local citizens to practice any religion other than Islam.²⁷

RELIGIOUS CUM REPUBLIC STATE

Religious cum Democratic States are those States where State is governed by any particular religious principles but other religious groups are also given freedom to profess any religion of their choice. In such a State, though the State propagate for the national Religion and provides fund for the propagation of any particular religion but it does not mean that other religious group cannot profess and propagate for the religion of their choice, though they cannot claim fund for the same from the Government. The Constitution of The Republic of Afghanistan and Iran is of such nature.

Article (I) of the Constitution of Afghanistan declares that Afghanistan shall be an Islamic Republic, independent, unitary and indivisible State. Article (II) the sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals. Article (III) no law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.²⁸

Preamble of the Islamic Republic of Iran declares that the "central axis" of the theocracy shall be Quran and Hadith. Article 1 states that the form of Government in Iran is that of an Islamic Republic. Article 4 says that Islamic Principle is immutable and the Council of Guardians ensure that all articles of the Constitution as well other laws are based on Islamic criteria. CHAPTER III, Article 23 of the Iranian constitution holds that "the investigation of individuals' beliefs is forbidden, and no one may be molested or taken to task simply for holding a certain belief."²⁹

COMMUNIST STATE

A communist state also called working class State, is a State with a form of government characterized by single party rule or dominant party rule of a communist party and a professed allegiance to a Leninist or Marxist Leninist communist ideology as the guiding principle of the state. According to this principle public ownership of all or most means of production by the Communist party-run State is necessary for the possibility to further the interest of the working class. According to Marxist Leninists, the State is a tool in the hands of the ruling class. There are five Communist States in practice at present namely China, Laos, Cuba, Vietnam and North Korea.

Religion is the opium of the people" is one of the most frequently paraphrased statements of Karl Marx. It was translated from the German original, "Die Religion

²³ .Our Pasts- I, Text Book in History for Class VI, NCERT, (1st ed.) 2006.

²⁴ . <http://www.wikipedia.org/> visited on 02-04-2012

²⁵ . <http://islam.about.com/b/2009/03/23/adoption-in-islam-2.htm> visited on 02-04-2012

²⁶ . <http://www.wipo.int/wipolex/en/details.jsp?id=8809> visited on 02-04-12

²⁷ . http://en.wikipedia.org/wiki/Freedom_of_religion_in_the_Maldives visited on 02-04-12

²⁸ . http://www.diplomatie.gouv.fr/fr/IMG/pdf/The_Constitution_of_the_Islamic_Republic_of_Afghanistan.pdf visited on 02-04-12

²⁹ . http://en.wikipedia.org/wiki/Constitution_of_the_Islamic_Republic_of_Iran visited on 02-04-12

... ist das Opium des Volkes" and is often referred to as "religion is the opiate of the masses." The quotation originates from the introduction of his 1843 work *Contribution to Critique of Hegel's Philosophy of Right* which was subsequently released one year later in Marx's own journal *Deutsch-Französische Jahrbücher*.³⁰

The founder and primary theorist of Marxism, had an ambivalent attitude to religion, viewing it primarily as "the opium of the people" that had been used by the ruling classes to give the working classes false hope for millennia, while at the same time recognizing it as a form of protest by the working classes against their poor economic conditions.

In the Marxist-Leninist interpretation of Marxist theory, developed primarily by Russian revolutionary Vladimir Lenin, religion is seen as negative to human development, and socialist states that follow a Marxist-Leninist variant are atheistic and explicitly antireligious. Due to this, a number of avowedly Marxist governments in the twentieth century, such as the Soviet Union and the People's Republic of China, implemented rules introducing State atheism.³¹

In practice, now there is not complete ban on religion in any Communist State. For instance, The Constitution of the Socialist Republic of Vietnam formally allows religious freedom; however, government restrictions remain on organized activities of many religious groups. The government maintains a prominent role overseeing officially recognized religions. Religious groups encounter the greatest restrictions when they are perceived by the government as a challenge to its rule or to the authority of the Communist party. In 2007, Vietnam News reported that Viet Nam has six religions recognized by the State (Buddhism, Catholicism, Protestantism, Islam, Cao Dai, and Hoa Hao), but that the Baha'i Community of Viet Nam had been awarded a "certificate of operation" from the Government's Committee for Religious Affairs. In 2007, the Committee for Religious Affairs was reported to have granted operation registration certificates to three new religions and a religious sect in addition to six existing religions. Every citizen is declared free to follow no one, or more religions, practice religion without violating the law, be treated equally regardless of religious belief, and to be protected from being violated in their religious freedom, but is prohibited from using religion to violate the law.

In fact, there are some limitations in religious practice in Vietnam. Foreign missionaries are not legally allowed to proselytize or perform religious activities. No other religions than the aforementioned eight are allowed. Preachers and religious associations are prohibited to use religion to propagate ideologies that are opposed to the government. Many Vietnamese preachers who fled for America and other countries say that they were suppressed by the Communist government for no or unreasonable reasons; however, preachers and religious associations who abide by the law working in Vietnam today are aided and honored by the government.³²

CONCLUSION

The object of Dharma, Religion or any other such social, legal or political institution is the betterment of human being. Religion, law or any such ideology is just a means to achieve the end. It is said that nothing is perfect in this world, so how can a system may be perfect made by human being. It's not the legal or religious system that makes a person right but its right and virtuous person who makes the system proper and ordered.

There is no personal religion, legal system of animals; nevertheless they are living in their natural way. It's we, the human being, who has evolved and developed so many Religions, Laws, Orders, Social norms and political Institutions, notwithstanding not capable to live together peacefully. Therefore, we are submitting that if there is any religion, social or legal principles which are tend to injure the interest of human being, we ought to discard it. No religious value, social norms or legal provision may be above the Religion of Humanity. Bare Humanity is such a religion which is Universal, nothing else.

³⁰ . http://en.wikipedia.org/wiki/Constitution_of_the_Islamic_Republic_of_Iran visited on 03-04-12

³¹ . http://en.wikipedia.org/wiki/Marxism_and_religion visited on 04-04-12.

³² Ibid.

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