
INSTITUTIONAL SELF-PRESERVATION AND RELIGION VIS-A-VIS GLOBAL JUSTICE

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Abstract

From the sociological lens, it is to be acknowledged that religion is attributed as an institution, like any other institutions. At the same time, the religious institution is very different from any other institutions as it circumscribes within it the notions of faith, belief, hope, love and peace which attempts to raise humanity to be more civilised. In that alignment where religion is viewed as rescuer and preserver of humanity often roars for preserving itself. It is in this context the notion of institutional self-preservation has been attempted to be associated with the religion in this research article. On the other hand, human conscience has evolved upon the parameters of duality, discriminating one from other, good from evil, moral from immoral and just from unjust; such is the nature of mind. In that alignment and for the reasons of the human history, justice becomes too crucial and involves sensitivity for all. With the contemporary understanding of human civilization and the present phase of globalization and transnationalism, justice has also been initiated to be understood with the lens of global justice. This paper presents three coordinates on the one landscape; these three coordinates are institutional self-preservation, religion and global justice.

Key Words: *institutional self-preservation, religion, global justice, transnationalism, peaceful co-existence.*

Introduction

Self-preservation is a universal principle which is based on instinctive responses in order to preserve the self. For an individual, the notion of self-preservation holds its prominence in the ambits of fear and pain. In order to avoid pain and to resist fear, the basic survival instinct is to tackle the threat and ensure security. The principle of self-preservation is being studied across disciplines such as anthropology, psychology, evolutionary psychology, sociology, political theory and international law, etc. While considering anthropological understanding of self, it summarises as '*self is the cause of self-preservation*'¹. In that sense the foundation for an individual to chalk out just and unjust in her consciousness resonates from self. The logical reasoning of moral and immoral strands is being first validated and contradicted in one's consciousness, which are actually

¹ Martin P J Edwardes, *The Origins of Self: An Anthropological Perspective* (1st edn, UCL Press, 2019)

the narratives of justice for an individual conscience. In that aspect the notion of justice incepts from the very foundation of self-preservation.

Similarly, in International Law according to Oppenheim there is a commonly accepted '*fundamental right of self-preservation reserved to states*'². This right of self-preservation can be invoked if the states require intervention under exceptional circumstances.³ These special circumstances are actually the threats of special kinds which are relevant to states as entities. Any action taken by states in those circumstances would be considered as 'just'. The notion of justice for a state considering right of self-preservation maintains a semblance to that of individuals' notion of justice based on anthropological sense of self-preservation.

However, as the transactions between individuals are culminated culturally, experientially, and sentimentally, the individual notion of justice takes a collective form and seeps in collective conscience. This collective conscience also forms its basis on the foundations of self-preservation. Broadly it can be said that, if the collective conscience is evolving within a territory, then it is the individual conscience of that territory, usually states. So at an international level respective states often base their conscience on the parameters of sovereignty, self-determination and fundamental right of self-preservation in order to achieve a global conscience for peaceful co-existence. In other words, state entities are striving to pursue global justice within their own territories and as well as with respective states.

Howsoever on the other hand, individuals' conscience is also motivated by other variables. One such important and strongest variable is religion. Religion interacts with conscience beyond the idea of territories. On that aspect it is pertinent to understand the role of religion in order to achieve global justice.

The objective of this article is to identify:

- (1) Whether religion also enshrines the idea of institutional self-preservation?
- (2) If religion enshrines the idea of institutional self-preservation then what role does it play in order to execute global justice?

Self-preservation and Religion

On studying religion through sociological perspective it is evident that religion is an undisputed institution. According to Durkheim, '*religion is a system of beliefs and practices which guides human behaviour*'.⁴ Similarly Kurtz, Max Weber, Karl Marx and Bruce also admit about the institutional character of religion.⁵ Since religion is an institution, therefore it is organised, like all other institutions. According to Robert Lee, there is a dilemma about organisation of religion i.e., the purpose of religion is missionary, which requires an institutional form; but inevitably the

² Oppenheim, *Oppenheim's International Law*, vol 1 (Robert Jennings, Arthur Watts, 9th edn, OSAIL, 2008)

³ *ibid*

⁴ Diana Kendall, *Sociology in Our Times* (8th edn, Wadsworth Publishing, 2010)

⁵ *ibid*

embodiment of institution tarnishes the purpose of institution itself.⁶ Therefore religion compromises its purposes for institutional self-preservation.⁷

Every religion, to an extent, advocates for institutional self-preservation. While taking into consideration the 'Ten Commandments' of Holy Bible, five out of these ten commandments directly enshrine the idea of institutional self-preservation, implicitly. At first hand, these five commandments compel not to question the authority of the 'God'. Similarly in Islam, the utterance by Prophet in the form of *kalma*, that '*there is no god except Allah, and Muhammad is the messenger of Allah*' contains the idea of institutional self-preservation. Rambam's principle of faith under Judaism directly establishes the preservation of institution by not questioning its authorities.

On the other hand, the concept of *Dharma* in Hinduism also cherishes institutional self-preservation. *Dharma*, protects the religion itself for preserving the authority of deities and also propagates preservation for self amongst its disciples. More emphasis lays on the practices under Hinduism, which can be attributed as preservative for the purposes of protecting one's belief, thereby, the religion itself.

With proper interpretation of the sacred texts, beliefs and practices of these religions, it can be established that the idea of institutional self-preservation persists distinctively across religions. But the purpose of religion is missionary, thereby, it provides directives to its disciples. These directives are often in the form of rituals, practices, beliefs and commandments. In a way religion preaches just and unjust to its followers. Those who follow these directives are counted to involve in justice and those who do not are counted to involve with some kind of injustices. This missionary role of religion is accounted for ensuring just against unjust.

Hobbesian idea of state, often known as *Leviathan*⁸ tends to locate the cause of all causes in one source i.e., God. The quest of the all causes begins from the religion itself which embodies the fabrics of reasoning and logic within it to locate good from evil and success from failure. In other words religion becomes the threshold to determine just from unjust. Hobbes claims that beyond natural law which is the circumference to circumscribe all causes, exists the God in the nucleus. It is the duty of sovereign states to ensure that the subject (people) of sovereign shall not fall outside the circumference of natural law. These sovereign states must derive its powers from the nucleus i.e. the God, to determine and to adhere to the fundamental principles of natural law.⁹

Hobbes reflects the idea of self-preservation concerning individuals by mentioning that humans' reasoning, cause and behaviour are all directed through fear and the strongest desire to protect oneself.¹⁰ However, Hobbes also implicitly reflects the institutional self-preservation pertaining to

⁶ Paul C. Empie, 'Can Organised Religion Be Unethical?'(1966) 363 The Annals of the American Academy of Political and Social Science <<https://www.jstor.org/stable/1036470>> accessed 25 December 2020

⁷ *ibid*

⁸ Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985)

⁹ *ibid*

¹⁰ *ibid*

religion, when he mentions that natural law also locates its source from the cause of all causes i.e., the God.¹¹ In other words it means that religion is the effect of all the causes and all the causes derives its source from a single 'cause' that is God and sovereign states must protect the cause and the effect of all the causes that is none other than natural law.

Protection of Religion and Issues of Justice: Case Laws

The Scopes Monkey Trial¹²

In *Scopes v. State*¹³, a young teacher named as John Scopes was held guilty in 1925 for teaching the theory of evolution propounded by Charles Darwin. John Scopes was a teacher at a high school in Tennessee where he used to teach biology to students.¹⁴ While in 20th century the theory propounded by Charles Darwin was much debated and criticised on various accounts. John Scopes was held guilty under the Butler Act and he was defended by criminal lawyer and a public activist lawyer named as Clarence Darrow.¹⁵ The bone of contention in this case was that according to Holy Bible, the creators of humans are divine Eve and Adam and the Ten Commandments prevail above everything.¹⁶ Whereas, the theory of Charles Darwin propounded that humans have actually evolved since ages, from different sapience species to homosapience. So the issue before the court was if Butler Act must prevail which discard any other theory of creation on account of the Holy Bible.¹⁷ This case gained much of public attention and in subsequent years U.S. First amendment was also invoked on the similar facts of the case.

However one important take away from this case is that, religion is supposed to ensure minimum injustices. But this case presented a very appropriate question, i.e., whether it is the duty of the religion to protect the state or whether it is the duty of the state to protect religion? And even before this question could be answered there exist an important observation, that some degree of institutional self-preservation is reserved to religion because time and again the protection of religion portrays a wall in order to determine just from unjust. Now for answering the first question, whether it is the duty of the religion to protect the state? It can be taken into consideration that religion sows the seeds of just against unjust, good against evil, and moral against immoral. Thereby the conscience of individual is being moulded by religion to a greater extent and since individuals reside in a territory so implicitly religion protects the integrity, unity and cohesiveness of the fellow beings residing in a territory. But at the same time religion posses transnational and supraterritorial characteristics, since the followers of a particular religion resides beyond defined

¹¹ *ibid*

¹² *Scopes v State* 152 Tenn 424 (1925)

¹³ 'The Clarence Darrow Digital Collection -The Scopes Trial (1925)' (*University of Minnesota Law Library*) <<http://moses.law.umn.edu/darrow/trials.php?tid=7>> accessed 2 January 2021

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

territories. And these followers have the same degree of faith, belief and practices, so in that sense it becomes truly debatable that if religion is protecting state (or if it ever could). Let's consider the other relevant question that whether it is the duty of state to protect religion? In this case, *Scopes v State*¹⁸ it was evident that religion is often being protected by the state. Since religion is being protected by state and especially these states are sovereign in nature, it can be put as institutional self-preservation pertaining to religion exists beyond doubts. And this hypothesis is also supported by the theory of Hobbes on *Leviathan*¹⁹ wherein he established that the duty to protect the natural law reserves with sovereign states and natural law derives its source from the cause (God) of all the causes (Religion).

Ram Mandir/Babri Masjid Demolition Case²⁰

Ayodhya Dispute case is the longest case in the judicial history of India, which sprawled for seven decades. This is a property dispute case but identifies the key mark issues relevant with our discussion. Under this case it is evident that the religion or the protectors of religion seek remedy through state to ensure if justice is being adhered with or not. One of important fact about this case is that, in a subsequent petition of the same case, Lord Ram was made a plaintiff, himself.²¹

Indian Law treats God as legal persons. Salmond²² states if law in some or the other ways attributes certain kind of personality to any subject matter other than human beings then those subject matters are called as legal persons. These legal persons bear certain rights and duties and as well as receives certain protection from law. This juristic character is also attributed to the God or idol because recognition of it is necessary for conceiving the faith amongst society members. In other words, "the entity acts like a natural person but only through designated person, whose acts are processed within the ambit of law".²³

In *Ram Janmabhumi case*²⁴, besides other technical issues the crux underlies in the fact that the conflict between two or more religious institutions is also under the keen scrutiny of the judiciary. An observation emerges herein that, 'institutional self-preservation' is widely entrenched because if the conflict between two or more religious institutions arise then the 'institutional self-preservation' pertaining to these religious institutions comes at cross roads in order to defend, preserve and sometimes, collide. So this observation leads to our partial answer that sovereign state machinery plays a very important role in order to protect the institutional self-preservation pertaining to these religious institutions.

¹⁸ *ibid*

¹⁹ Thomas Hobbes, *Leviathan* (first published 1651, Penguin 1985)

²⁰ *M Siddiq (Ram Janmabhumi Temple-5 J.) v Suresh Das* (2020) 1 SCC 1

²¹ *ibid*

²² Salmond, 'Theory of Law'

²³ *Shiromani Gurudwara Prabandhak Committee v Som Nath Das* (2000) 4 SCC146

²⁴ *ibid* (n20)

Religion by way of its virtue must ensure the integral principle of just and unjust amongst its fellow citizens. But the conflict amongst religious institutions ‘gives birth to innumerable injustices’²⁵ which prevails amongst its members and followers. The aspect of global justice and justice per se remains unfulfilled in that scenario.

Sabrimala Case²⁶

In this Sabrimala case, which regards to the women entry in temple, SC through its majority opinion held that it is against the principle of equality to not allow them to enter in the premise of temple contentious on the issue of menstruation, examining that it cause exclusionary grounds which are against Part III of the constitution.²⁷ It is evident that under this case also the religious institution is self preserving itself against the identified cause which the believers of the deity perceive as a threat to their institution. This threat is that the entry of menstruating women may pollute the offerings being offered in the temple.²⁸ It is in light of this threat the religious institution is seeking state remedy to ensure that no injustices shall happen against the institution, effectively self preserving it.

This case sheds light that in order to ensure justice it becomes too tricky. As from one perspective, if the equality jurisprudence is being considered then, the Supreme Court’s judgement seems to appropriate. But at the same time the religious sentiments of the believers remained as it is. The religious sentiments are also protected under Part III of the Constitution.²⁹ It is on that note the remarks of Justice Indu Malhotra³⁰ become important to be considered when she mentions in her minority opinion, “Article 25 and 26 of Indian Constitution shall not be disturbed in light of other articles of the constitution as it would like opening the Pandora box”. This minority opinion reflects the layered entrenchment of religion with its believers and the issues of justices.

Transnational Characteristics of Religion and Global Justice

Globalization must also be understood in terms of transnational imagination wherein religion also plays a very significant role.³¹ Religion crosses national and cultural boundaries and in that light the studies related to transnationalism is being researched comprehensively.³² Since religion crosses national boundaries, so the citizens or the patriots of a sovereign state become the subset of a set i.e. the group of believers of a particular religion. This highlights a very pertinent

²⁵ ibid

²⁶ *Indian Young Lawyers Association v The State of Kerala* (2019) 11 SCC 1

²⁷ ibid

²⁸ ibid

²⁹ Article 25 and 26 of Indian Constitution

³⁰ ibid (n26)

³¹ Stephen Selka, ‘Religion and the Transnational Imagination’ (2013) 16 *Nova Religio: The Journal of Alternative and Emergent Religions* <<https://www.jstor.org/stable/10.1525/nr.2013.16.4.5>> accessed 2 January 2021

³² ibid

observation that is the role of politics (amongst sovereign states) and religion.³³ On that ground the ambition of both must be to ensure justice, but when the politics and religion interplays instead of serving justices it causes more injustices. Because religion and their group of followers across nation states tries to self preserve their own religious institution and sovereign states on the other hand tries to ensure its diplomatic relations. This interplay between the two often causes friction amongst both. Relevant examples exist for the evidentiary discussion on the same, for example the cohesion of the Islamic states with the ideology of Islam oriented propagation and its friction with various nation states.³⁴

It can be argued that the principle of self-preservation in international law is often invoked on the grounds of institutional self-preservation concerning religious groupings. If some conflict emerges from the ambits of religious cohesion and the same conflict causes effect on one sovereign state then the state is left with limited choice other than to invoke the principle of self-preservation under International Law. And in response of it, religious groupings may often react by invoking their own notion of institutional self-preservation in order to protect the ideology of the same religion. Adolf Hitler is one such example where in we can witness evidentially that how the conflict between sovereign idea of self-preservation persist with the religious institutional self-preservation.

In India the Citizenship Amendment Act³⁵ establishes the foreigners of six communities from three different countries on the basis of fear of persecution on the grounds of their religion may seek Indian citizenship.³⁶ This is one example wherein it shows that communal hatred exists and the discussion on saving or protecting the followers of one religion become crucial. In that light the approach of India seems peculiar, as here the sovereign state is trying to protect the minorities of six religious communities establishing the semblance that the sovereign state is trying to protect these six religious institutions. The protection to these six religious institutions is a kind of institutional preservation. In this case the state actor is directly involved but if the same approach would have been taken by some religious grouping then the same would have turned from institutional preservation to institutional self-preservation.

Howsoever the issues of global justice in light of the institutional self-preservation and religion present a clumsy picture. We often come across the turbulences, inequalities, communal riots, etc, in the name of religion or its associated institutional self-preservation. This is not the mission or the aim of religion as it shall be to contribute for peaceful co-existence. The global justice must take in to account the diversity of the individual across the globe. This diversity of individuals shall establish equity which in turn can only sustain the atmosphere pertaining to peaceful co-existence globally. On the other hand the individual conscience must also play a very important

³³ Asif Mohiuddin, 'Globalisation, State and Transnational Islamist Movements' (2019) 23 World Affairs: The Journal of International Issues <<https://www.jstor.org/stable/10.2307/48531209>> accessed 2 January 2021

³⁴ *ibid*

³⁵ The Citizenship (Amendment) Act, 2019.

³⁶ *ibid*

role. It must give rise the notions of awareness which shall contribute towards equity and sustainability. Only on those principles if some religion is based then that becomes a perfect model for ensuring global justice through it. Spirituality on other hand is an attribute which is the goal of all the religions across. So, spiritual awareness must also be taken into account.

Legal framework of sovereign nations must be such that it shall ensure the sustainability and peaceful co-existence amongst all its citizens and people residing in a particular territory. And based on the same principles and the associated legal framework, the institutional framework within a sovereign state shall be built.

Recommendations

Based on the discussion on the institutional self-preservation pertaining to religion and the issues of global justice, following recommendation are being suggested:

- The research related to the principle of ‘institutional self-preservation’ must be given recognition because religion often interplays with politics very dynamically. Various research gaps does exists on the same ground and if studied and researched properly then it must provide way forwards in order to tackle with the issues arising out of religious groupings and its associated institutional self-preservation.
- Religious models pertaining to global justice must be studied comprehensively and the underlying principles shall be identified in order to dissect the issues consisting with the religion. On the other hand the approach of global justice could be different through various religious models of the same. So these approaches of global justice based on religious models shall also be identified.
- State policy must recognise the sensitive interplay between religion and its followers. These policy inputs must be widely given importance in order to avoid the injustices arising out of the interaction between two or more religions. Principles such as inclusiveness, sustainability, distributive justice, fair treatment must be included in all the documents of state policy. Along with the inclusion of the same these principles shall be weighed and implemented properly.
- Specific research orientation shall be devoted towards understanding the interplay of Article 25 and 26 of Indian constitution with the rest of the articles of Part III of the Indian Constitution. The interplay of these articles with other articles of Part III shall be researched bearing the sensitivity or the entrenched and hidden underlying concepts within the religion.
- Transnational characteristics of religion must also be understood comprehensively in context of India. Many researches point out that the identity of the sovereign state India recently, is marking its shift to particular religious identity, which is termed as ‘*hindutva ideology*’. The present bearing of such researches must be understood in context of transnationalism and the subsequent role of religion pertaining to it.

Conclusion

This article tries to answer two important questions. The answer of the first question comes in affirmation of the same, that, the religion embodies within it the idea of institutional self-

preservation. From theories to the contemporary examples and the relevant case laws tries to establish that religion does enshrine the notion of institutional self-preservation. The second question which it tries to answer is that, if religion embodies the same idea then what role it plays in order to contribute for global justice. The answer to this question presents a gloomy picture. The reason is the friction between the principle of self-preservation in international law and the institutional self-preservation of religion. Global justice in that context is not being achieved with the model of religion as the notion of justice is. Howsoever, the article identifies few recommendations in order to comply with. Justice either individual or global must arise from one's conscience.