

**LOCKE’S RELIGIOUS TOLERANCE: PERSPECTIVES FROM THE
INDIAN EXPERIENCE**

Gibran Naushad¹

ABSTRACT

The theory of John Locke on religious tolerance is by far the most comprehensive theory on the said subject. Locke aptly deals with distinct fundamental elements of the society, and tries to carve out an inviolable basis for sustenance of religious freedom in the society. The Indian context, however, looks grim, when one puts Locke’s theory to test in the said domain. From ambiguous theoretical constructions to intrusive court decisions, the Indian scenario looks far from following the path endorsed by the ‘collective will’.

This essay aims to carry out a socio-legal analysis of Locke’s theory of religious tolerance, in the Indian context. This topic becomes particularly important when one sees the constant religious tension that’s pervading the Indian Polity and Judiciary in the contemporary times. Be it the discussion around conversion and re-conversion or the suggestion to remove ‘secularism’ from the constitution, the conundrum of religious manifestation seems far from settled. This essay would try and highlight the fault lines that weaken the Indian system, while at the same time seeking to indicate viable solutions for the same.

The argumentation around religion has gained notorious significance in the modern day context. Often seen as necessary for morality and public spirit, religion has invariably held great significance for political authorities over the years.² The debate, however, has centered around its endorsement at different levels and times of society, thereby leading to contestation regarding the scope of such backing. John Locke gains huge significance in this context. Born to a middle-class Puritan churchman, he constantly endeavored to create a consistent conceptual framework, locating tolerance at its epicenter while being deeply positioned along a religious tone.³

¹3rd Year, 6th Semester, National Law University, Delhi.

² Victoria Harrison, “The Pragmatics of Defining Religion in a Multi-Cultural”, 59 IJPR (2006), p.142.

³ Frederick C. Giffin, “John Locke and Religious Toleration”, 9 J. Church &St. (1967), p.1.

In *The Letter Concerning Toleration*, one of his most influential and distinguishable pieces of work, he can be seen as constructing a framework that attempts to separate religion and politics, thereby allowing each full freedom in their own respective spheres.⁴ This has been done through the advancement of both religious as well as non-religious arguments. The aspect of civil peace, representing the notional concept of welfare of the people, is placed on the utmost pedestal and taken as an objective that is sought to be achieved through the tolerant principles of the state.⁵ The influence of Locke can be assessed by the adoption of his principles in the formation of domestic governmental frameworks, such as those of France and the United States of America.⁶

The Indian scenario in light of the Lockean principles becomes extremely interesting. Tending towards procedural liberalism, the Indian State guarantees individuals the right to practice their own religion, thereby protecting the choice of the individual to choose a particular religion.⁷ However, the conceptual orientation of religion, along with the multiplicity of choices, can lead to huge discomfort for the state, which seeks to put forward a homogenized process.

The present paper aims to put across the Lockean case of religious tolerance. An analysis of his theory, starting from the social contractarian view to his emphasis on public order would be undertaken. The purview and weightiness of the tolerant manifestation of religion would be examined. At the same time, the researcher would undertake a study of the Indian State within the paradigm of the Lockean framework, thereby seeking to answer *if the theory of Locke on tolerance falls short on taking into account the socio-religious dimensions of a modern nation state.*

⁴ Theodore J. Koontz, "Religion and Political Cohesion: John Locke and Jean Jacques Rousseau", 23 J. Church & St. (1981), p.98.

⁵ *Ibid*

⁶ Lockean principles find clear expression in the Declaration of the Rights of Man and the Citizen and other justifications of the French Revolution of 1789; Lockean account of the limits and origins of the legitimate governmental authority found inspired the U.S. Declaration of Independence and the broad outlines of the system of government adopted in the U.S Constitution.

⁷ Michael J. Sandel, "Religious Liberty: Freedom of Choice or Freedom of Conscience", 11 OUP (1998), p. 74; Article 25, The Constitution of India, 1950.

THE SOCIAL CONTRACT: IGNORING MAJORITARIAN TENDENCIES

Locke's conception of the origin of the state and the curtailment of its powers forms the essence of the tolerance policy that he exhorts the state to follow. In his *second treatise on civil government*, an exhaustive elaboration of the above-mentioned aspects can be found. The origin of the state takes us to the *state of nature*, which entails a system where people live without government or written laws.⁸ Thus the state of nature refers to a society where people live as per the principles of justice, which are evident through reason to all normal people. These principles typically include right to life, liberty and estate.⁹ However there would be certain glaring problems in this model. Lack of a publicly known law, an established and impartial judge, and the absence of a reliable way to execute sentences would be the major setbacks of this system.¹⁰

The insecurity of property, as a result of unwritten laws, forms a prominent danger in the mind of Locke.¹¹ The difficulty and uncertainty of resolution of disputes pertaining to property necessitates the establishment of a social contract. The social contract would thus be a contract for the formation of a government so as to solve these collective action problems that are faced by the society in a state of nature.¹² The will of the people would be the basis for government. The social contract brings forward the idea that 'right' and not 'might' would be the basis for all political societies.¹³

The state created by Locke is limited in its ends. The end pertains to the protection of civil rights, i.e. right to property, thereby restricting the scope of the activities of the state to that extent.¹⁴ Moreover the contract created by Locke implies rule by majority. Locke emphasized on the fact that there is an implied consent in the social

⁸ D. Mwita Nyamaka, "Social Contract Theory of John Locke in the Contemporary World", 1 SULJ (2011), p.2.

⁹ *Ibid*

¹⁰ Ryan Pevnick, "The Lockean Case for Religious Tolerance: The Social Contract and Irrationality of Persecution", 57 PS (2009), p.849.

¹¹ Second Treatise of Civil Government, p.849 ¶ 124.

¹² *Ibid* ¶ 131.

¹³ P.L. Quinn, "Religious Diversity and Religious Toleration", 50 IJPR (2001), p.68.

¹⁴ Supra note 7, p.4.

contract, relating to the submission of the minority to the majority.¹⁵ Unanimity of will would be rare, and therefore Locke authorizes the ‘majority to act and conclude the rest’.¹⁶

Locke brings about the idea of religious tolerance by relating to the aspect of collective action problem. He starts off by setting up the premise that there may be certain situations where the majority would want to transfer religious rights or personal rights to the government.¹⁷ He says that this could happen when the majority shares the faith of the magistrate, or when there is a belief in the salvation of others, i.e. governmental power is required to bring others to your way of thinking.¹⁸ However Locke then provides the counter to this proposition, thereby trying to reiterate the main purpose for which the contract was formed. Locke emphasizes on the fact that the minority, which doesn’t share the above-mentioned postulates, would immediately reject such a contract that exceeds its boundaries and limits its rights.¹⁹ Locke then insists on the point that this dissent and unwillingness of the minority would be of extreme importance to the majority, in terms of creating a major roadblock in solving the collective action problems.²⁰ A small majority would not be able to solve the collective action problems, which also requires the participation of certain sections of the minority. Thus in order to avoid civil discord and to overcome collective action problems, the majority would have ample reasons to offer a social contract on such terms that are agreeable by the minority as well.²¹ This arrangement, as per Locke, would ensure religious tolerance in the society.

Although great insight has been shown in creating the said conception, there are major fault lines that run through the very premise of the conception. Locke emphasizes on the point that collective action problem can only be solved by a

¹⁵ William Popple, “John Locke’s Letter Concerning Toleration”, Constitution Society Articles, available at www.constitution.org/jl/tolerati/html.

¹⁶ *Ibid*.

¹⁷ *Supra* note 9, p.850.

¹⁸ *Ibid*

¹⁹ David C. Snyder, “John Locke and the Freedom of Belief”, 30 *J. Church & St.* (1988), p. 229.

²⁰ *Supra* note 9, p. 851.

²¹ *Ibid*, See also John Locke, “A Letter Concerning Toleration”, J. Horton and S. Menus (eds.), 1991, p.30.

substantial majority.²² However, Locke faults on assuming that for every society, there would be a substantial minority. There is a great possibility that the minority, as aggregated in a particular society, totals a miniscule.²³ This would create a highly problematic situation for Locke, as the collective action problems could then be solved without any indulgence from the miniscule minority.²⁴

The argument gains greater force when one sees glimpses of majoritarian tendencies in various modern nation states, particularly India. Calls by the RSS for the establishment of a Hindu National State, a highly exclusionist notion for the minorities of India, could be one of the examples of such majoritarian tendencies.²⁵ Religious riots over the years, dawning from infamous episodes such as the Babri demolition, along with the recent call for mass reconversion, christened as ‘Ghar Wapsi’, denote certain other examples that go on to exemplify the notion that collective action poses a misery solely for the minorities.²⁶

INTRINSIC RELIGIOUS BELIEFS: A MODERN DAY MOCKERY

An attempt to coerce belief is considered hugely irrational by Locke.²⁷ Locke, which relying on the religious inflection, stresses on the fact that deeply held beliefs are not chosen, and therefore it is highly futile for the state to coerce individuals to give up those beliefs. Locke therefore insists that the state tool is incapable of altering the religious beliefs of a person, and thus the state should not interfere in religious aspects.²⁸ Further Locke also emphasizes that the magistrate is to concentrate on his primary goal, i.e. solving the collective action problem, which predominantly relates to disputes regarding property. Thus Locke implies that the magistrate is to resist

²² *Ibid*

²³ K.M. Beatty and O. Walter, “Religious Preference and Practice: Reevaluating their impact on political tolerance”, 48 POQ (1984), p. 323.

²⁴ *Ibid*

²⁵ Arun R. Swamy, “Hindu Nationalism: what’s religion got to do with it?”, 1 APCSS (2003), p.12.

²⁶ Manjari Katju, “The Politics of Ghar Wapsi”, 1 EPW (2015), p. 24.

²⁷ Supra note 9, p.854.

²⁸ Marlies Galenkamp, “Locke and Bayle on Religious Toleration”, 5 ELR (1979), p.82.

himself from going into questions of religion, as it threatens civil peace, maintenance of which is the primary goal of the magistrate.²⁹ This, as per him, would greatly contribute in bringing about religious tolerance.

When one puts the above-mentioned stipulations in the Indian context, there appears a highly ambiguous situation. There has been a constant attempt to create a homogenized structure when it comes to religion. Thus as *Nandy* very aptly puts it, a monolithic structure is given to religion, thereby promoting religion as ideology, which emphasizes on certain demarcated characteristics as identifying marks of religion.³⁰ Thus religion as 'faith' needs to be emboldened, an aspect which ensures the characterization of religion as a way of life, thereby entailing within it multitude of beliefs and practices.³¹ The implantation of ideology becomes clear on a reading of the constitution, as it explicitly makes provisions for throwing open Hindu religious institutions.³² Thus, although for social reform, the constitution has very clearly chosen to ignore certain crucial beliefs of Hinduism. In a way the state has constructed the idea as to who would be a Hindu and who would not.³³ Hinduism is constructed as a 'certain project', having specific beliefs and values as part of its structure.³⁴ A clear suppression of plurality of claims is intended, thereby relegating a plethora of sections within the fold of Hinduism.³⁵

Certain Indian cases become important in light of the interference of the state with individual beliefs. The *Satsanghi Case*³⁶ holds high importance in this light. The Court elaborately dwelled into the question as to whether the 'satsanghis' would constitute a part of the Hindu religion or not, thereby deciding on the rights with regards to the entry to a temple.³⁷ The Court mockingly declared the beliefs of the 'satsanghis' as based on superstition and misunderstanding, and brought the 'satsanghis' within the fold of Hinduism on the basis of their allegiance to the Vedas,

²⁹ *Ibid*

³⁰ Ashis Nandy, "The Politics of Secularism and the Recovery of Religious Tolerance", 2 OUP (1998), p.326.

³¹ *Ibid*.

³² Article 25(2)(b), The Constitution of India, 1950.

³³ *Ibid*, *Jawed v. State of Haryana* AIR 2003 SC 3057.

³⁴ Akeel Bilgrami, "Secularism, Nationalism and Modernity", 11 OUP 1991, p. 386.

³⁵ *Ibid*

³⁶ *Sastri Yagnapurushadji v. Muldas Brudardas Vaishya* 1966 AIR 1119.

³⁷ *Ibid*.

which constitute and intrinsic part of Hindu culture.³⁸ Tracing of the genesis to the Vedas, by the Courts, can also be seen in the *Ramakrishna Mission Cases*.³⁹ It becomes interesting to see that the decisions given by the High Court and Supreme Court differ in this case. While the Calcutta High Court stated that the thoughts and actions of Ramakrishna Mission could not strictly fall within the ancient Vedantic thought, thereby excluding them from the purview of Hinduism,⁴⁰ the Supreme Court specifically picks up the notion of the sole foundation being the Vedas, thereby demarcating their boundaries to the fold of Hinduism.⁴¹ This becomes highly problematic when one looks at the theory of Locke, which clearly does not permit the court to go into such complex social and historical analysis of the religious beliefs and values of the people.

The Court has thus gone on a self-identification spree, through which it has tried to delineate the true essence of religion. Moreover, the Court does not deal at all with the issue as to what is religion and how to assess religious tenets. So without any precise framework, the court does a case-by-case analysis of religiosity. The cases of *Ratnilal*⁴² and *Seshammal*⁴³ typify such analysis. The Court in *Ratnilal* dealt with the fundamental question of whether a charity commissioner, appointed by the government, could be the head of the Math.⁴⁴ The court categorically stated that the same could not be done, and upheld the spiritual position of 'Mathapati', who as per the Court is required to protect the philosophy and culture of the Math.⁴⁵ Contrasting this with *Seshammal*, one can easily see the ambiguity in the stands that the Court has taken over time. The integral question of who could be an 'Archaka' is dealt with by the Court in this case, wherein the Court emphatically differentiates between the role of a Mathapati and an Archaka, and holds the role of the latter as one which is more of administrative in nature.⁴⁶ The Court thus states that the appointment of an

³⁸ *Ibid* ¶ 57.

³⁹ Cases elaborately dealing with the question as to whether the followers of the cult of Shri Ramakrishna are a part of the Hindu Religion or constitute a separate religious denomination.

⁴⁰ *Madhab Chandra Bandopadhyaya v. State of West Bengal* 90 CWN 306.

⁴¹ *Bramchari Sidheswar Bhai v. State of West Bengal* 1995 AIR 2089.

⁴² *Ratnilal Panachand Gandhi v. State of Bombay* AIR 1954 SC 388.

⁴³ *Seshammal v. State of Tamil Nadu* (1972) 2 SCC 11.

⁴⁴ *Supra* note 41.

⁴⁵ *Ibid*

⁴⁶ *Supra* note 42.

‘Archaka’ could be interfered with by the state on secular lines.⁴⁷ This type of comparison and analysis goes wildly against the tolerant postulations of Locke. Competency of the magistrate in these aspects is highly questionable, thereby attracting Lockean condemnation for lading the court with such questions.

The meager attempt of the Court in definition religion has been through the rather abstruse notion of ‘essential practices’. Starting from the case relating to *Swaminar of Sri Shirur Mutt*,⁴⁸ the court has constantly upheld the notion that only essential practices of religion would be protected from state intervention. Moreover such essential practices are to be seen through the tenets and practices of such religion.⁴⁹ The aspect of intrinsic beliefs goes completely for a toss as the court becomes the arbiter of what would constitute such essential practices. Moreover such postulation further perpetuates the promotion of ideology rather than faith, thereby constraining the ambit of religion within a monolithic paradigm.⁵⁰ The same notion can also be seen as being a dominant factor in the case relating to *Durgah Committee*⁵¹. However the complexity of the intervention of the court comes out in full force in the *Saifuddin Case*, wherein the court seems to be divided between the minority of Justice Sinha, and the majority represented by Justice Gupta.⁵² The contradiction appears as a result of the ‘essentially religious’ paradigm provided by Sinha, as opposed to ‘essential to the religion’ notion by Gupta, thereby reflecting the acceptance of the Court, although in a minority, of the complexity involved in carrying out a factual analysis of religion.⁵³

These stipulations delineate the paradox of a modern nation state in upholding the essential fabric of procedural liberalism.⁵⁴ Further the intrinsic complications of a multicultural society centering around group rights, leading to curtailment of

⁴⁷ *Ibid.*

⁴⁸ *The Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swaminar of Sri Shirur Mutt* AIR 1954 SC 282.

⁴⁹ *Ibid.*

⁵⁰ *Supra* note 29; See also *Supra* note 33.

⁵¹ *The Durgah Committee v. Syed Hussain Ali* AIR 1961 SC1402.

⁵² *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* AIR 1962 SC 853.

⁵³ *Ibid.*

⁵⁴ *Supra* note 33.

individual religiosity, become highly noticeable in a modern day setup.⁵⁵ The religious line of argumentation of Locke places huge emphasis on the internal religious values of individuals, banking on the inability of the state to bring about any change in them.⁵⁶ However the constant intervention of the state as noted above leads to a highly precarious situation, thereby indicating an acute problem in the management and functioning of the state leading to perpetuation of religious intolerance.

CIVIL PEACE: DISORIENTING PUBLIC ORDER

Locke places huge importance on maintenance of civil peace and states that the magistrate should not tolerate opinions that go against human society, moral rules or are contrary to the prevention of public order.⁵⁷ Thus the end that religious tolerance seeks to achieve is establishment and maintenance of civil peace. In light of the conflicting interests of the individuals that are bound to exfoliate in the society, Locke believes that certain interests of the individuals can be sacrificed for the preservation of the rest of the society.⁵⁸ Thus the privatized sphere of religion can only extend till the public sphere of civil peace.⁵⁹

When one looks at the modern day society, the civil peace ambit of Locke has been used through the puzzling aspect of public order and morality. There have been several contestations over the period of time that have questioned the pursuance of individual choices in light of the threat to public order and morality, exposing the inability of the court to delineate in precise terms as to what could constitute and interference with public order and what could not. While the court has upheld the religious freedom of the Amish Community and the Jehovah's Witnesses against the order and morality of school education and exemptions to national anthem in cases such as *Wisconsin v. Yonder*⁶⁰ and *Bijoe Emmanuel v. State of Kerala*⁶¹, the cases of

⁵⁵ Partha Chatterjee "Secularism and Tolerance", 29 EPW (1994), p. 348.

⁵⁶ Supra note 27.

⁵⁷ Supra note 2, p. 389.

⁵⁸ Supra note 3, p. 114.

⁵⁹ *Ibid*, p. 98.

⁶⁰ 406 U.S. 205 (1972); The case related to the Amish Community's right to not be forced to send their children to school past 8th grade in the United States of America.

⁶¹ (1986) 3 SCC 615

*Employment Division v. Smith*⁶² and *Sabbath Holiday*⁶³ clearly reflect the state's intention to uphold public order when it comes to religion affecting essential notions of the society.

The use of public order has gained different connotations over time, most of which seem contradictory and incoherent. The Indian scenario gains high significance in this context. One can easily see certain instances whereby the court has chosen a completely religious tangent for an issue which could have been dealt through the ambit of public order. The *Ananda Margi Case*⁶⁴ stands representative of such an instance. The court in this case went into the discussion relating to whether 'Tandav' would constitute an essential practice of religion or not.⁶⁵ The Court however, instead of dwelling into such deep religious doctrines, could have taken recourse to the public order paradigm, whereby the court could have assessed the practice as being contrary to public order, even if it falls within article 26(b) of the Constitution of India. A similar ignorance of the 'public order' stipulation can be seen when one looks at the Babri judgment.⁶⁶ An intrinsic public order question relating to the demolition is involved in the judgment, however the court has carefully chosen to ignore that. Despite taking into account the 'abominable manner' in which the demolition took place and acceptance of the fact that the idols were installed by human hands, the court has given a rather casual response to the former issue, stating that the defendants had never held the plaintiff responsible for the same, while the latter issue is emboldened as habitual and uninterrupted usage by the court.⁶⁷

Public order also gains high relevance in matters relating to religious conversions in India. Politicization of the 'public order' stipulation can be easily seen in some of the anti-conversion that have come up over the years in India. The Himachal Pradesh

⁶² 494 U.S. 872 (1990); The case hinged on the fact as to whether unemployment benefits could be denied to person fired for the use of Peyote, a drug, although that was part of a religious ritual. The Supreme Court said that the benefits could be denied.

⁶³ *Sherbert v. Verner* 374 U.S. 398 (1963); The question before the Court was whether any one day could be claimed as holiday by the Sabbath community, as opposed to only Sunday. The Supreme Court said that such a choice was not mandated by freedom of religion.

⁶⁴ *Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, Calcutta* AIR 1984 SC 51.

⁶⁵ *Ibid*

⁶⁶ *Ibid*, See also elegalix/allahabadhighcourt.in (summary of the judgment).

⁶⁷ Vidya Subramaniam, FROM POLITICAL AYODHYA TO LEGAL AYODHYA, *The Hindu*, 16th October 2010.

Freedom of Religion Act 2006 and Anti-Conversion Law of Rajasthan denote the said usage of public order.⁶⁸ Both the Acts carry stipulations that prohibit forceful conversion. However nothing has been mentioned about reconversion, thereby giving a strong indication about its dominant allegiance to the claims of Hindu fundamentalists espousing the cause of bringing back converted Hindus within the fold of Hinduism.⁶⁹ Moreover the case of Rev Stainislaus⁷⁰ denotes yet another anomaly when it comes to demarcation of ‘public order’. The case upholds the right to propagate, but at the same time reiterates the essential requirement of public order whereby a person cannot be forced to convert in the garb of propagation.⁷¹ However the court creates a major anomaly here, as it grants executive the power to decide as to whether propagation has turned forceful or not.⁷² This is highly problematic as the contours of propagation are being left to the executive, thereby opening up the gateway for a huge amount of arbitrary state interference in the religious practice of people.

Although Locke provides a cohesive doctrine relating to public order in his theory of religious tolerance so as to ensure civil peace, the said aspect seems to have been greatly distorted by the modern day complexities. An analysis of Indian context clearly reveals a highly dubious regimentation of the said doctrine, which needs to be analyzed and corrected, so as to bring out the true essence of Lockean Tolerance.

CONCLUSION

Locke presents an elaborate theory on religious tolerance covering various facets of public sphere, thereby enunciating on the application of tolerance over the said spheres. Locke begins by examining the social contract theory, and presses on the fact that the interests of the majority lies immensely in preserving the interests of the minority, as the absence of such considerations would lead to inability in solving collective action problems. However, as has been discussed above, Locke does not

⁶⁸ James Andrew Huff, “Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws”, 10 JLR (2009), p.6

⁶⁹ *Ibid*

⁷⁰ Stainislaus v. State of Madhya Pradesh (1977) 1 SCC 677.

⁷¹ *Ibid*

⁷² *Ibid*

take into account the presence of an unsubstantial minority, which would then not be able to affect the collective action problems. Therefore the theory of Locke dwindles when one considers this aspect, particularly in the Indian scenario, as has been examined above. Hence one would have to rely more on the reasoning relating to the non-interference of the state in the religious affairs, owing to the inability of the state to change the religious beliefs of the people. Although if one looks at the Indian context, the courts have distorted this notion also to a considerable length. However there still remains the possibility of corrective action, so as to move the state away from the temptation to give a homogenized picture to religion, thereby reduction of their interference in personal religious affairs.

The 'public order and morality' stipulation has also been rendered flaccid by the courts. However there needs to be a constant attempt by the courts to modulate a specific standard for such public order interventions, or else religious tolerance as emphasized by Locke would remain a distant dream. The astuteness of any theory is judged on the basis of its coherence and sapience. Locke's theory on tolerance provides an incisive framework for maintaining religious balance in the society. However much water has flown under the bridge since the publishing of the *Letter of Toleration* in 1689. Therefore a careful adaptation of the said theory, by cautioning state of its inability to regulate religious affairs, would make the theory quite fitted for the present world order, thereby giving us a comprehensive framework for religious tolerance that can be acted upon.