CHAPTER NINE

STATE ENTANGLEMENT WITH RELIGION & THE EQUAL RELIGIOUS RIGHTS OF OTHERS, FREEDOM OF EXPRESSION, FREEDOM OF ASSOCIATION AND EQUAL EMPLOYMENT OPPORTUNITIES

9.1 Introduction

The issue of state interference with the observance of religious laws merited separate discussion as human rights violations surrounding this issue clearly have a special origin and often can be said to be of a distinct nature. We have seen that those forms of state practice that are characterized by a direct commitment to upholding religious laws are as a rule particularly at odds with international standards on the rights and freedoms of women and religious minorities (including non-believers). The objective of this Chapter is to further substantiate the claim (which was made in the conclusion of Chapter 7) that most, if not all, of the states that are officially entangled with a single religion—including the states that do, but also including many states that do not, actively interfere with the observance of religious laws—fail to fully comply with the principle that no one should be treated differently because of one’s religion or belief. It will be demonstrated, firstly, that the large majority of existing regimes of positive state identification with a religion are not devoid of forms of institutionalised discrimination or de facto practices of discrimination on the ground of religion or belief (or lack thereof). This claim will be substantiated by carrying out a range of thematic case studies on, among other issues, Establishment of Religion & the ‘Equal Religious Rights of Others’, Religion & Freedom of Expression, Religion & Freedom of Association and Religion & Equal Employment Opportunities.

Secondly, it will be equally highlighted that in some secular or separationist states the ideals of state secularism and separationism have come to be considered ends in themselves. That is to say, these principles are not merely used instrumentally so as to enhance other values such as democracy or human rights protection but have become important yardsticks for public policy as such. This has given rise to situations where the principles of secularism and separationism are construed so as to impose special—and occasionally unacceptable—limits on the activities of religions (principally in the field of organizational freedom of religious organizations) or special limits on the manifestation of certain beliefs (principally in the field of the freedom to manifest a religion itself, the field of conscientious objections, and the field of ‘Politics and Religion’). The issues of ‘Religion & Education’ and ‘Religion & Politics’
will be discussed in separate Chapters (10–11), partly because the human rights questions that emerge in these fields are of a different nature and partly because the key to preventing and redressing most of the, thus far, indicated human rights issues are to be found in these two fields.

9.2 Establishment of Religion & the Equal Religious Rights of Members of Other Religions

The relevant, ultimate ramifications of human rights law, as argued throughout this study, are: (i) the right to freedom of religion or belief empowers people (not states) to freely choose and practice a religion or belief; and (ii) no one should be treated differently because of one’s religion or belief. The latter implies that if the state grants certain forms of support or privileges to some religious believers it should, unless there are ‘reasonable and objective’ criteria that justify otherwise, make those privileges available to others as well. If we take these two notions, freedom of religion and non-discrimination on the basis of religion, in conjunction, we may speak of ‘equal religious rights’. In this section it is demonstrated that the practice of many states that are officially entangled with religion is characterized by encroachments upon people’s equal religious rights. In other words, regimes of positive state identification with religion are surrounded by practices that directly restrict people’s right to freedom of religion or belief; or by practices that amount to a form of exclusive support to one religion (putting non-dominant or non-traditional religions at a disadvantage), or by both.

9.2.1 Establishment of Religion & Limited Domestic Conceptions of the Right to Freedom of Religion and Belief

The international standards on the right to freedom of religion or belief as enshrined in the UN International Covenant on Civil and Political Rights are as follows:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

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1 Artt. 18 and 26 of the ICCPR.