

# Religious Freedom is a Non-derogable Human Right

**“... even in time of public emergency”**

**Rita Joseph**

**15<sup>th</sup> December, 2023**

## **Recommendations:**

- **Given that religious freedom is a non-derogable human right under the international human rights instruments which the Commonwealth has ratified, this Inquiry should make a special study of the notable extent to which the right to freedom of assembly in churches, synagogues and mosques and the right to freedom of expression (including the singing of hymns) at religious venues was excessively restricted by impositions that were disproportionate to the actual public emergency threat.**
- **Given that, in the recent COVID emergency situation, State, Territory and Federal governments made serious mistakes that infringed unjustly on people of faiths, men, women and children, needing sincerely in that time of crisis, to gather in their churches, synagogues and mosques and to pray for God's blessings, healing and guidance as believers have done since time immemorial in even the most terrifying emergencies, it is important for the States, Territories and Federal authorities study and agree to abide by the Siracusa principles. See <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>**
- **Given that legal protection for religious freedom is the purview of the federal government, which has the authority when it comes to human rights violations to override state and territory laws, an agreement should be reached that, in future genuine emergency situations, where there is any inconsistency between state/territory and federal law when it comes to severely curtailing religious**

worship and practices in established religious venues, the federal law, consistent with the international human rights instruments which Australia has agreed, must prevail.

### Disrespecting the non-derogable human rights status of religious freedom

All religious belief or activity is lawful. Religious freedom is a non-derogable human right.

Under international human rights law, there is a universally agreed set of non-derogable principles on which ideologically-defined 'lawful' encroachment cannot be justified. The human right to freedom of religion or belief belongs to this category.

Religious rights and freedoms have been accepted and recognised by the international community of States parties as peremptory norms, as *jus cogens* in nature by virtue of their presence in the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR). It is the universal nature of non-derogable human rights that States parties to the *ICCPR* may not derogate from them, not even 'in time of national emergency'.

Article 4 of the *ICCPR* establishes religious freedom as a non-derogable right. It guarantees a rightful immunity from coercion of interior and/or exterior acts contrary to conscience or belief.

The morally and intellectually honourable Syracuse principles have set out some of the important restrictions that must obtain against violations of non-derogable rights "even in public emergencies".

### Syracusa principles C. "Strictly Required by the Exigencies of the Situation"

54. The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and **may not be imposed merely because of an apprehension of potential danger.** [Emphasis added]

### Syracusa principles D. Non-Derogable Rights

58. **No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of ... the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.** [Emphasis added]

64. In a public emergency the rule of law shall still prevail. Derogation is an authorized and **limited prerogative** in order to respond adequately to a threat to the life of the nation. **The derogating state shall have the burden of justifying its actions under law.** [Emphases added]

**...not even “in time of public emergency”**

Under international human rights law, States parties to the *ICCPR* may not derogate from the universally recognized non-derogable right to religious freedom, not even ‘in time of public emergency’. The Commonwealth has solemnly committed to guaranteeing rightful immunity from coercion of interior and/or exterior acts contrary to conscience or belief.

Indeed, no domestic human rights legislature may legitimately withdraw legal protection of a non-derogable right. Legal protection for religious freedom is the purview of the federal government, which has the authority when it comes to human rights violations to override state and territory laws that fail to provide adequate protection. Where there is any inconsistency between state and federal law in matters of protecting religious beliefs from accusations of discrimination, the federal law prevails.

The *International Covenant on Civil and Political Rights* (1966) decrees in Article 50, that all human rights provisions “shall extend to all parts of federal States without any limitations or exceptions.”

States parties to the *ICCPR* are obliged to reject any part of domestic law that purports to authorise the abuse of the non-derogable human rights set out in the *Universal Declaration* Article 18 and the *ICCPR* Articles 18 and 27 or the removal of legal protection for ‘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’.