

RELIGIOUS FREEDOM VERSUS MINORITY RIGHTS

In recent times, social and main stream media have been abuzz with stories which portray an apparent conflict between religious freedom and minority rights. What makes it all the more crucial is that both forms of rights are enshrined in various national constitutions, specific domestic and international law. It is a commonly held view these days that minority rights run the risk of being eroded by religious freedom. The American case of **Masterpiece Cakeshop v Colorado Civil Rights Commission**, aptly illustrates the constant struggle between religious freedom and minority rights. In that case, Jack Phillips, a Christian baker was sued for discrimination for refusing to bake a wedding cake for a gay couple. He lost in the court of first instance. However, in the Supreme Court, it was held that “the State of Colorado overstepped its legal limits by trying to force him to bake a cake for a same-sex wedding ceremony which violated his religious beliefs and convictions. The Democrats in the US have also just introduced an updated version to the Equality Act which seeks to prohibit all forms of discrimination based on sexual orientation. Opponents of the bill however believe it is not equal as it coerces Christians or others to violate their beliefs in order to comply with the law.

Just recently, the Sultanate of Brunei passed a strict Sharia penal law which prescribes death by stoning for those who are found to engage in adultery and homosexual acts. The news received worldwide shock and condemnation. The Commonwealth Lawyers Association issued a statement condemning the new law and urged the Sultan of Brunei to uphold and adhere to Section 2 of the Commonwealth Charter, which opposes all forms of human rights abuses There were also reports that the offences like rape and insulting the Prophet Muhammad would attract the death penalty, public caning for abortion and amputation as punishment for theft.

The seeming conflict between religious views or beliefs and LGBT rights is only one amongst the many instances of ‘clashes’ between religious freedom and

minority rights. I will begin the presentation by defining the two parts of the topic which is Religious Freedom v Minority Rights. Religious freedom, according to **Article 1 of the UN Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief** includes “the freedom to have a religion or whatever belief of one’s choice and freedom individually or in community with others and in public or private, to manifest religion or belief in teaching, practice, worship, and observance. This is repeated in **Article 18 of the UN International Covenant on Civil and Political Rights**. Throughout history, religion around the world has been plagued by intolerance, restrictions and persecution; from the expulsion and inquisition of Jews and Moors in 15th Century Spain to the persecution of the Quakers in the United States in the 17th Century.

On the other hand, minority rights are “the individual rights that apply to persons as members of racial, ethnic, religious, linguistic, gender or sexual minorities. They also refer to the collective rights that are to be accorded to such minority groups. A minority group is a category of people who experience relative disadvantage as compared to members of a dominant social group; they are often discriminated against by those who wield the majority of positions or power in society. The term minority group therefore does not necessarily refer to a numerical minority. The **UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities** provides guidelines to States for the recognition and protection of the rights of minorities and their right to participate effectively in cultural, religious, social, economic and public life. Additionally, in the African Human Rights System, **Article 2 of the African Charter on Human and People’s Rights** states that, “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status”.

Religion and Abortion

One of the most controversial social issues in modern times that has generated a lot of discourse is the topic of abortion. Many religions have their own perceptions about the moral issues surrounding the subject. In Buddhism for instance, Lord Buddha is said to have stated in the *Pratimoksha Sutra* that, 'Whatever monk

intentionally with his own hand destroys the life of a human or a human foetus or searches for a weapon or searches for a slayer ... and should he die by that, that monk ... is to be expelled”. Other religions such as Islam, Hinduism, Christianity, and Judaism have similar pro-life teachings that forbid abortion. The Catholic Church and many protestant and evangelical Christians are against abortion because they believe all life is “sacred and inviolable”.

On the other hand, Pro-Choice activists argue that a woman must be able to decide for herself, what to do with her own body, that a ban on abortion will force women to seek out unsafe abortion methods and that a woman’s right to abort is inextricably linked to her sexual and reproductive rights. Dr. Sarah Ragle Weddington representing ‘Jane Roe’ in the landmark case of **Roe v Wade**, averred to the Supreme Court of the United States that;

“A pregnancy to a woman is perhaps one of the most determinative aspects of her life. It disrupts her body. It disrupts her education. It disrupts her employment. And it often disrupts her entire family life.” She continued, *“And we feel that, because of the impact on the woman, this ... is a matter which is of such fundamental and basic concern to the woman involved that she should be allowed to make the choice as to whether to continue or to terminate her pregnancy.”* The Supreme Court indeed held that a woman’s right to terminate her pregnancy is protected under the 14th Amendment of the United States Constitution.

Opponents vehemently disagree with ‘Pro-Choicers’ that a foetus is part of a woman’s body; they rather argue that it is a separate ‘body’ with separate DNA and organs, with its own right to life. Christians generally believe that our bodies are not our own to use as we please and this is based on biblical scripture in 1 Corinthians 6: 19-20 which states that our bodies are the temple of God and we are not our own and therefore we are to honour God with our bodies. This is similar to the argument usually put forward against suicide and euthanasia. There are many ‘Pro-lifers’ who believe that the termination of pregnancies may be justified where the life of the mother is threatened and this is the position of some countries around the world. However there still remain a few who have blanket bans on abortion, one of such is El Salvador. The country totally prohibits abortion even where there is rape, ectopic pregnancy or foetal malformation. A woman who aborts her baby may face a conviction of up to 12 years in prison but where a miscarried or still

born is deemed viable by the Courts, the woman will be charged with aggravated homicide. Latin America is noted for some of the most restrictive legislations on abortion and this, many attribute to the strong influence the Catholic Church still holds over the governments even though most of these countries are usually referred to as secular.

In Australia, all the states and territories but one have laws defining what constitutes unlawful abortion. Abortion is allowed for up to 24 weeks, with doctors' approval or when the life of the mother is threatened. In Ghana, it is provided in the Criminal Offences Act 1960 (Act 29) that abortion is not an offence if pregnancy was as a result of specific circumstances including rape/defilement, incest, risk to life of the woman or injury to her physical or mental health. The laws of Nigeria however dictate that the only legal way to have an abortion is if the life of the mother is in danger.

In the case of England, Scotland and Wales, an abortion is regulated by the Abortion Act 1967 and per the law an abortion may be done where it is performed by a licensed medical professional and signed off by two other doctors. To proceed with an abortion, one or more of certain criteria must be met such as the pregnancy must not have exceeded 24 weeks or there must be a risk to the life of the mother. The Department of Health however allows Doctors to perform abortion without an actual medical reason. The Act does not apply in Northern Ireland where abortion is illegal except where there is a risk to life of the mother, a serious risk to her physical or mental health or a substantial risk that the child will be born with physical and mental abnormalities. Again, in Northern Ireland, one finds the strong influence of the Church in society; both the Catholic and the Presbyterian Churches are opposed to the easing of the laws regarding abortion.

It has been argued that the opposition to abortion is not borne out of religious teachings or beliefs but rather a mere sense of morality. Many atheists and agnostics view abortion as a violation of human rights and as such hold pro-life opinions. To them, the stance against abortion is a logical and moral one, which rejects the killing of innocent life, and that it should be "the fundamental moral principle on which human rights should stand". On the other hand, these logical and moral perspectives have also birthed some liberal-religious advocates who hold more liberal opinions on abortion laws; some of them are Catholics for

Choice, The Religious Institute (USA) and the Latin American Council of Churches. These organisations rather believe that the denial of the woman's right to abortion is immoral as it stands in the way of her right take decisions in regard of her own body.

Islam and the Status of Women

Regardless of the fact that women make up the majority in most societies and even in the world at large, they are ironically often considered a minority group as they are in many instances forced to succumb to a more dominant group made up of their male counterparts. This phenomenon is due to the many restrictions and inequalities suffered by women, restrictions that are imposed on their freedom of movement, choice of garb and sexual reproductive rights including abortion rights as earlier mentioned. Even though the realities of women's rights around the world may differ, they are in essence similar as they are often perpetuated by deeply held religious views and traditions.

Some Islamic countries subscribe to a strict code of law called 'Wahhabism' which seeks to keep women separate from men and requires them to wear veils and headscarves. One may recall the story of Iranian Human Rights Lawyer Nasrin Sotoudeh who was sentenced to 38 years in prison and 148 lashes. Sotoudeh defended women who were prosecuted for peacefully protesting Iran's compulsory hijab law by removing the headscarf in public. She was tried in absentia since she refused to appear in court because she was denied the right to choose her own legal representation in the matter. The offences included, propaganda against the State, encouraging corruption and prostitution and publishing falsehoods with intent to disturb public opinion. Many women's rights activists around the globe see the veils in all their variations, the hijab, niqab, burka etcetera as oppressive to women. Devout Muslims however believe it is in obedience to the Qur'an, that it is not just a fashion statement nor a symbol of oppression but an expression of Islamic faith.

It was only last year that King Salman of Saudi Arabia issued a special decree allowing Saudi women to drive for the first time in the kingdom's history. In the past Saudi women have been arrested and fined for driving, again as a result of 'wahhabism' which also prescribed male guardianship for women and which

meant that women did not need to drive because they were required to travel with a male relative who could drive her around. In 2011, Manal al-Sharif a Saudi woman went to prison after she posted a video on Youtube of herself driving as a way of protesting the ban. Saudi women are also now able to play sports and compete in the Olympics and in 2015 were allowed to be elected to local councils for the very first time. Despite these changes, Saudi women still need permission from a male family member to apply for a passport, travel abroad, marry, get divorced, open a bank account, get a job and have some medical surgery. Also hospitals, banks and medical colleges are the only places that women are allowed to mix with men. Muslim women in Tunisia, Algeria, Egypt and Morocco seem to have had better luck as new reforms have been introduced in the ‘family codes’ which set the roles and status of Muslim women in marriage. These reforms have improved marriage rights, access to divorce, access to contraceptives and ability to secure custody of children but there still remains a lot more to be done. For example, in Egypt, male guardianship still exists and Muslim women are still required to seek permission from male relatives, usually a father or husband, in order to travel. Many Muslim women also face economic violence in the form of strict inheritance laws as a son is generally entitled to a double share of that of a daughter.

Although these progressive changes in favour of Muslim women have been largely embraced both locally and internationally, there are still some who believe that they are likely to bend the laws of Sharia. Thankfully, some civil society groups and indeed Muslims have argued that these rules are actually steeped in age-old traditions more so than religion. In fact, Benazir Bhutto a former Prime Minister of Pakistan stated that “the subjugation of women in Islam has got nothing to do with religion, but has got very much to do with material or man-made consideration.” As a solution to this ‘man-made consideration’, some have proffered that the Qur’an and other Islamic laws must be open to a process of interpretation by Islamic scholars called the *Ijtihad*. They believe these interpretations are more likely to reflect the modern times and could be used as a tool of social engineering. As welcome as these suggestions are, one must note that a change in law would not necessarily lead to change in the social situation; it would take a while for mindsets to change on the issues affecting the status of Muslim women around the world.

The Persecution of People With Albinism (PWA)

Albinism generally affects around 1 in 20,000 people around the globe but in Tanzania, a person out of every 1,429 has albinism; a much higher rate than any other African nation. Albinism is a “hereditary genetic condition where a person is born with very low levels of the usual pigmentation called melanin for the skin, hair or eyes”. Because of this condition, albinos are more susceptible to conditions such as serious vision problems and sun damage to skin. In recent times, albinos in countries like Tanzania and Malawi have been facing an even more serious threat. The Shamans or witch doctors in Tanzania like in many other African countries have been existence for centuries providing healing and protection with their incantations and concoctions. But in the recent past this traditional belief in the supernatural has taken a dark turn; alarming numbers of albinos are being hunted down for their body parts. This is as a result of the belief that the body parts of albinos can be used to gain magical powers, wealth, social influence amongst others. Ironically, **Article 4 of the African Charter on Human and People’s Rights** states that “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

Many albinos have had to flee for fear of being murdered or dismembered, even their graves are often desecrated and their bodies exhumed for their bones for concoctions and amulets. The practitioners of this inhumane act have attempted to justify their acts by claiming that albinos are bad omens or came to be because of curses on a particular woman or family. The statistics are disheartening: it has been reported that between 2000 and 2016, 75 albinos were killed in Tanzania. The actual number is however expected to be higher as some of the incidents occur undetected by the authorities.

This disturbing trend seems to have also taken root in Malawi. In recent years witch doctors, religious leaders, police and government officials have been charged and convicted for killing albino people. The promise of wealth and power proves

too irresistible to pass up as Red Cross has reported that some witch doctors are willing to pay as much as \$75,000 for a complete set albino body parts.

Even in other parts of Africa where the killing of albinos is not as prevalent, many albinos still face stigmatization, exclusion and denial of their basic human rights including health care and education. Mothers who give birth to albino children are often shunned in their communities and branded as cursed. Efforts are continually being made to improve the lives of albinos and to dispel harmful myths about albinos in Africa. Organisations such as Under The Same Sun (UTSS) which has offices in Tanzania and Canada, have dedicated resources towards educating communities about albinism in an attempt to get rid of the stigma associated with the condition. To raise awareness about the plight of Albinos, the United Nations declared the 13 of June of each year as International Albino Awareness Day. Similarly in South Africa, every September is celebrated as Albino Awareness month and in 2017, a South African model and inventor Mala Bryan, created a doll with albinism as a way of changing misconceptions.

Poverty and ignorance are considered some of the major drivers of the persecution of albinos. Although the Governments of Tanzania and Malawi have in recent times stepped up their efforts in stemming the tide, the problem of inadequate resources still persists. However, that said, the message from the authorities is pretty clear, the killing and the persecution of human beings including albinos cannot in anyway be justified by another's right of belief in the name of religious freedom.

But it is not all gloom when it comes religious freedom and minority rights. In some Commonwealth nations, religious groups have learnt to co-exist peacefully not only with minority groups but with other religious groups that happen to be in the minority. In Gambia, there is a high level of tolerance and acceptance between the Muslims who are in the majority and Christians who are the minority. In Ghana, a mostly Christian population, the State accords the same level of respect and recognition to Muslims. Public holidays include both Christian and Muslim ones and it is common to hear both Christian and Muslim prayers at major State functions. The State even goes further to facilitate the Hajj pilgrimage to Mecca and includes Muslims in all levels of public discourse. Coincidentally the two NPP Presidents, J A Kuffor and Nana Addo Akufo Ado choose Muslims as vice-

presidents. This is refreshing news as against that of Northern Nigeria where Boko Haram has unleashed terror on the Christian minority living in the North.

Conclusion

The **Universal Declaration of Human Rights** which is an international guiding document affirms the inherent and inalienable rights of all human beings regardless of sex, colour, race, language, religion, or political affiliation. It states in **Article 18** that every person has the right to freedom of thought, conscience and religion and the right to manifest his or her beliefs. It is also provided in **Article 7** that all are equal before the law and are entitled to equal protection against any form of discrimination.

Again, the **UN Human Rights Committee in its General Comment 22 of Article 18 of the International Convention on Civil and Political Rights** provides that

“the fact that a religion is recognized as a State religion or established as official or traditional or that its followers comprise the majority of the population, must not result in any impairment of enjoyment of any other rights under the covenant..., or any discrimination against adherents to other religious groups or non-believers.”

In light of this and the frequent struggles between religious freedom and minority rights, it is paramount to ensure that in attempting to enforce one, the rights of those who strive for the other are not infringed upon. Elder Ronald A. Rasband has taught that “when the rights of one group collide against the rights of another, we must follow the principle of being as fair and sensitive to as many people as possible.” **“Religious Freedom and Fairness For All”** ([Brigham Young University devotional, Sept. 15, 2015]). As imperfect as the system may be, there is the need to attempt to reconcile conflicting rights among groups by encouraging objective dialogues at all levels of society.

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