

A CRITICAL ANALYSIS OF THE RIGHT TO FREEDOM OF WORSHIP



INTRODUCTION & BACKGROUND

The right to freedom of religion and conscience is one of the core rights recognized globally. It encompasses the freedom of one to hold certain views and beliefs, exercise and manifest these beliefs in private or public in various ways such as manner of prayer, manner of dressing, eating acceptable foods, sacrifice of animals among others.

Although the right to freedom of religion is not absolute, it can only be limited where there is a likelihood of violating other people's rights and to a degree that is acceptable and demonstrably justifiable in a free and democratic society.

There have been several attempts to limit or regulate the freedom of religion in various jurisdictions. Examples of these include Rwanda where a policy was passed requiring closure of churches where the leaders had not received training or closure of places of worship for noise pollution; China where the church has been relegated to underground practice and Kenya of recent where a board will be set up for registration and regulation of religious organizations.

This will be discussed in detail under the comparative study section. It is, however, important to note that the right to freedom of religion is a difficult one to regulate as who is to define what one's rightful beliefs are save for what has been determined by deity? Matters of spirituality cannot be carnally explained, and neither can they be regulated by rules of men dictating what they morally believe to be right or wrong.

In several jurisdictions, courts have grappled with questions of registration or deregistration of religious organizations due to what the government or individuals deemed as right or wrong. Examples include the question of self-harm in regard to the Jehovah Witness' stand on refusal for blood transfusion in medical instances.

In this digest, we explore the International, regional and domestic laws pertaining to the freedom of religion, examine the comparative jurisdiction on regulation of religious freedoms and analyse how courts in various jurisdictions have determined various aspects pertaining to the freedom of religion.



Law Applicable:



A plethora of International, Regional and national laws govern the enjoyment of the freedom to thought, conscience and religion. These not only provide for the right, but its protection.

International Laws:

a.The 1948 Universal Declaration for Human Rights. Article 18 therein states that;

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his [her] choice.”

b.The 1966 International Covenant on Civil and Political Rights. Article 18 stipulates that;

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.

3.Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

c.1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. This Declaration contains eight Articles, all of which stipulate different aspects pertaining to the right to exercise one’s religion.

d.1945 U.N Charter. Article 55 of the U.N Charter while providing for the need to promote international peace and security calls for universal respect for human rights without discrimination on the basis of religion.

e.Convention on the Prevention and Punishment of the Crime of Genocide (1948). Article 2 prohibits acts committed with the intention of wiping out a nationality, ethnic or religious group.

f.1951 Convention Relating to the Status of Refugees. Article 4 mandates member states to accord refugees with respect for their religious beliefs.

g.1954 Convention Relating to the Status of Stateless Persons. Articles 3 and 4 call for the non-discrimination of stateless persons on the basis of their religious beliefs.

h.1960 Convention Against Discrimination in Religion. Articles 1, 2 and 5 call for non-discrimination in access to education on the basis of one’s religious beliefs.

i.International Covenant on Economic, Socio and Cultural Rights. Article 13 on the right to education recognizes that everyone should be able to participate freely and promote understanding and tolerance among nations and religious groups.

j.1989 Convention on the Rights of a Child. Article 14 recognizes the right of a child to freedom of thought, conscience and religion.

k.The Human Rights Committee, General Comment No 22 on Article 18. This offers guidance to state parties to the ICCPR on how best to respect, protect, observe and fulfill their citizens’ right to freedom of thought, conscience and religion.

National Laws:

a)1995 Constitution of the Republic of Uganda. Article 29 (1) (c) therein guarantees the freedom of religion and to manifest one's religious beliefs in Uganda. Article 7 stipulates that Uganda will not adopt a state religion. In other words, it is a secular state. Article 21 prohibits discrimination on the basis of one's religion.

b)The Non-Governmental Organizations Act, 2016. Section 29 provides for the registration of entities or groups of persons incorporated as an organization with the NGO Bureau.

c)The 2012 Companies Act. Section 4 on the registration of a company with or without liability of its members. Most Religious Organizations in Uganda are registered under section 4 as Companies Limited by Guarantee.

d)The Trustees Incorporation Act. Section 1 calls for the formation of trustees under religious bodies for purposes of conducting legal transactions.

e)The National Environment (Noise Standards and Control) Regulations 2003. These were developed under sections 28 and 107 of the National Environment Act to guide on acceptable levels of Noise in the Environment. They have constantly been used as a tool to hold places of worship accountable in regard to noise pollution.

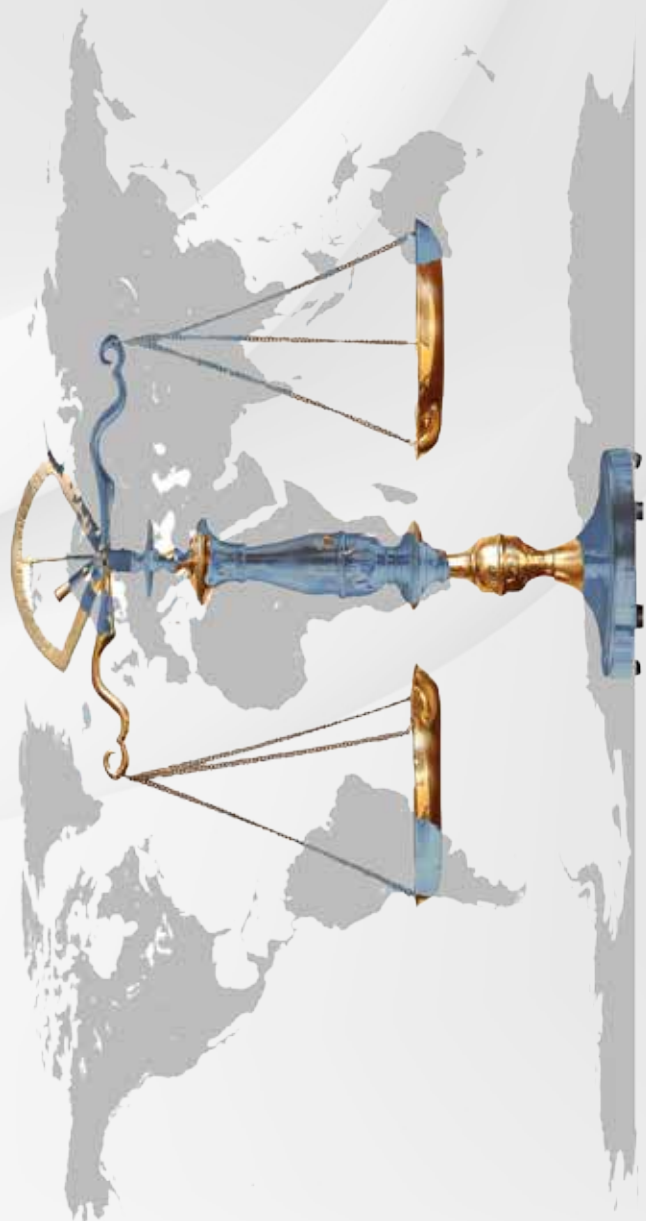
f)The Anti-Money Laundering Act (2013). This law establishes the Financial Intelligence Authority which has the mandate to investigate any suspicious sources of income and bring to accountability individuals engaging in money laundering activities. Religious Organizations can be held accountable under this law.

g)The Penal Code Act. Chapter XIII of the Penal Code defines offences and punishment for offences regarding religion such as insulting a religion or disrupting a religious gathering. Further, section 305 of the Penal Code deals with the offence of obtaining money by false pretense – which is the basis for most

calls for accountability and protection of citizens from manipulation under the suggested Religious Policy.

h)The Prevention of Trafficking in Persons Act (2009). This Act prohibits the trafficking of persons for purposes of conducting human sacrifice, witch craft or rituals.

i)Income Tax Act. Section21(1)(f) exempts income of religious organisations whose object is not for profit, subject to approval from Uganda Revenue Authority.



COURT'S INTERPRETATION OF RELIGIOUS FREEDOMS



Religious freedom is a fundamental right recognized by various legal frameworks around the world, guaranteeing individuals the right to practice their faith without undue interference.

a) Separation of Religion and State

The separation of religion and state is a philosophical and jurisprudential concept for defining political distance in the relationship between religious faith organizations and the nation state. Conceptually, the term refers to the creation of a secular state (with or without legally explicit church–state separation) and to disestablishment, the changing of an existing, formal relationship between the church and the state.

In a free and democratic society, the degree of political separation between the church and the civil state is determined by the legal structures and prevalent legal views that define the proper relationship between organized religion and the state. The arm's length principle proposes a relationship wherein the two entities interact as organizations independent of the authority of the other. Article 7 of the Constitution provides that "Uganda Shall not adopt a state religion" This clearly demonstrates a constitutional restriction against the state from descending into the regulation of religious matters thereby entrenching separation.

John Locke, an English philosopher, argues that since the State uses force whereas religion uses persuasion, there should be separation of the State and religion as the two have distinct ends. This principle has been enunciated in various cases as highlighted below:

Jesse Kamau & 25 Others v Attorney General High Court Miscellaneous Civil Application No.890 of 2004 In this matter, the petitioners petitioned the High Court and argued that section 66 of The Constitution of Kenya (repealed) was unconstitutional as it violated the principle of separation of Church and State. This repealed provision provided for establishment of muslim Kadhi courts within the judicial structure of Kenya. The Court held inter alia that section 66 violated this principle since Kenya is a secular State. It stated that section 66 was discriminatory and contrary to section 82

and granted a declaration that any form of religious courts should not form any part of the judiciary as it would offend the doctrine of separation of state and religion.

Furthermore, Reverend Benedict Mutuku Munyao of African Foundation Churches of Kenya in responding to the question of what extent the State should regulate the Church said the following;

"The State should not regulate the Church. It is the church that should regulate the State because we are neutral. Our congregation has people from all walks. The State and the church are separate; we are not funded by the State but by members of the church so why should the State regulate the church? ... in case there is a problem (crime), it reports to the government. Tithe is voluntary. It is God's principle. If a member wants to support their leader, why should the person be stopped or the money be taxed? A leader is employed by God; it is a calling so why should the government interfere with it? ... Let the Church work and regulate itself. However, it should follow the (general and neutral) law of the land of general application.

Watson v. Jones, 80 U.S. 679 (1871)

This was a litigation which grew out of certain disturbances in what is known as the "Third or Walnut Street Presbyterian Church," of Louisville, Kentucky, and which resulted in a division of its members into two distinct bodies, each claiming the exclusive use of the property held and owned by that local church. Because the Walnut Street Presbyterian Church had a clear internal authority structure, the court granted control of the property to that group, even though it was only supported by a minority of the congregation. It was decided on common law grounds in a diversity action without explicit reliance on the First Amendment. Court thought nonetheless that the opinion radiated a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. In this case, the Supreme Court recognized that decisions about Church law, discipline and faith are not subject to civil court review.

Court's Interpretation of Religious Freedoms Cont'd...



b)The Religious-Question Doctrine

The “religious question” doctrine is a well-known and commonly accepted notion about the religion Clauses. The general idea is that, in our system of separated church and state, courts do not decide religious questions. And from this premise, many things flow – including the idea that courts must dismiss otherwise justiciable controversies when they would require courts to resolve religious questions. The religious-question doctrine traditionally comes out of a notion that secular courts cannot resolve metaphysical or theological issues. This principle has been put forward in some national and international landmark judgments as detailed below:

The Most Reverend Dr. Kazimba v Mazzi and 5 Others (Miscellaneous Application 36 of 2023) [2023] UGHCCD 323

In this matter, the appointment of Canon Kasana Ssemakula as Luwero Diocese Bishop-elect of was nullified on grounds of adultery and in accordance with rules and regulations that govern the church of Uganda a duly mandated organ, which caused the respondents to file a suit against the Arch Bishop which he challenged on grounds that election and consecration of a bishop in the church of Uganda is a matter of religious nature and calls for interpretation of provincial constitution and canons together with traditions and practices of the church and that court has no jurisdiction to entertain the same as it amounts to judicial intervention in religious questions and the doctrine of ministerial exception applies to it. He also stated that the election of Bishop is spiritual and Ecclesiastes matters within the jurisdiction of the church of Uganda organs subject to the laws, regulations, practices, and norms of the church while the civil court also has separate and independent jurisdiction from that of the church.

The Principal Judge Hon. Justice Dr. Flavian Zeija in a well-reasoned judgment held that “it is a constitutional gospel in all commonwealth jurisdictions and also the United States, that courts have no business handling religious questions. In other words, courts should not resolve cases that turn on questions of religious doctrine and practice. This is popularly referred to as the ‘religious question’ doctrine.” He concluded that courts cannot resolve controversies over religious doctrine and practice.”

Reverend Charles Oode Okunya v The Registered Trustees of the Church of Uganda (Civil Suit No. 35 of 2020) [2021] UGHCCD 74

In this judgement, the learned justice Hon. Justice Ssekaana Musa reasoned that religion is deemed by our culture to be a matter of persuasion. Therefore, the law cannot compel a citizen’s adherence to a religious belief. He added that the court must understand that they are ill-equipped to deal with religious beliefs and practices because of remoteness and lack of familiarity hence should only interfere when any practices seriously damage the constitutional fabric.

Sharon Dimanche v Makerere University Constitutional Appeal No.2 of 2004

In this case, court observed that the essence of the concept of freedom of religion is the right to entertain such religious beliefs as person chooses, the right to declare religious beliefs openly and without fear of hindrance of refusal. Every individual is free to hold whatever religious beliefs his or her conscience dictates provided inter alia, such manifestations don't injure his or her neighbors or their parallel rights to hold and manifest beliefs on opinions of their own.



United States v. Ballard 322 U.S. 78 (1944)

In this particular case, Ballard the leader of a religious group known as 'I Am' Movement claimed among other things that he was possessed with supernatural powers including the power to heal the sick afflicted with incurable diseases. His wife Edna and son Donald who were part of the movement also claimed that they had healed hundreds of people. Federal government stepped in when they solicited funds on the basis of religious claims. Ballard and other co-defendants were charged under a mail fraud statute that required proving a knowing intent to defraud. At issue were 18 statements, most of which involved matters of religious belief. The government prosecuted Edna and Donald (as Ballard himself died before conclusion of the case). They were convicted and when the matter came before the Supreme Court the issue was whether the jury could deliberate on the truth of the accused' religious beliefs as part of fraud. Court held that the jury could not deliberate since granting the jury to evaluate the validity of religious claims would amount to a violation of religious liberty. The Judge maintained that prosecutions of this character easily could degenerate into religious persecution.

c)Manifestation of Religious beliefs

Religion is universally considered to be a matter of faith however, there has been an emerging question over the years as to whether the freedom of manifestation of religious beliefs is absolute or not. Courts have answered this question thus:

Re Chickeche (1995) 2 LRC 93

In this matter, the appellants' manifestation of his religion by the wearing of dreadlocks fell within the protection of freedom of conscience afforded by S.19 (1) of the Constitution. It was held by the Supreme Court of Zimbabwe that freedom of conscience and religion had to be broadly construed to extend to conscientiously held beliefs whether grounded in religion or secular morality.

The wearing of dreadlocks was symbolic expression of the beliefs of Rastafarianism which had the status of a religion in the wider and non-technical sense,

or in any event was a system founded on personal morality. The Court was not concerned with validity or attraction of Rastafarian beliefs, but with the sincerity with which they were held, which in the case of the applicant was not in doubt.

Therefore, the refusal by the Court to permit the applicant to take the oath of loyalty and of office as a preliminary to registration as a legal practitioner on the ground of his appearance had placed the applicant in a dilemma. He was forced to choose between adherence to the precepts of his religion which meant foregoing the right to practise the profession he had chosen, or satisfying an important edict of his religion in order to be able to practise and it followed that the judges ruling violated his constitutional right to freedom of religion under S.19 (1)

Kokkinakis v. Greece (1993)

Issue: Whether prosecuting Jehovah's Witnesses for proselytizing violates their freedom of religion.

Court's Decision: The European Court of Human Rights ruled in favour of Kokkinakis, determining that proselytizing is a form of bearing Christian witness protected under Article 9 of the ECHR, which safeguards religious freedom. This decision emphasized that freedom of religion encompasses the right to manifest one's beliefs through teaching, practice, worship, and observance.

Sahin v. Turkey (2004, 2005)

Issue: Whether prohibiting students from wearing Islamic headscarves at a public university violates their freedom of religion.

Court's Decision: The European Court of Human Rights upheld the prohibition, supporting the principle of secularism and considering the potential impact on students who choose not to wear headscarves. However, Judge Tulkens dissented, emphasizing the necessity for clear and indisputable facts to justify such restrictions.

303 Creative v. Elenis (2023)

Issue: Whether a business can refuse to create art, such as a wedding website, that violates the owner's religious beliefs.

Court's Decision: The U.S. Supreme Court ruled in favour of 303 Creative, emphasizing the protection of freedom of speech and religious liberty. The court held that compelling an artist to create work that contradicts their beliefs infringes on their constitutional rights.

Phillip Okoth and LSK v. BOM, St Anne's Primary Ahero (2023)

Issue: Whether Jehovah's Witness students had the right to abstain from attending mandatory Catholic Mass and other interfaith activities in school.

Court's Decision: The Court of Appeal ruled that forcing these students to participate in activities against their faith violated their freedom of religion. The court found that the school failed to reasonably accommodate the religious beliefs of Jehovah's Witness students, thereby violating their right to education. This decision emphasized the need for educational institutions to respect individual religious beliefs.

Centre for Minority Rights in Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya

Issue: Whether the eviction of the Endorois community from their ancestral land to create a game reserve violated their freedom of religion.

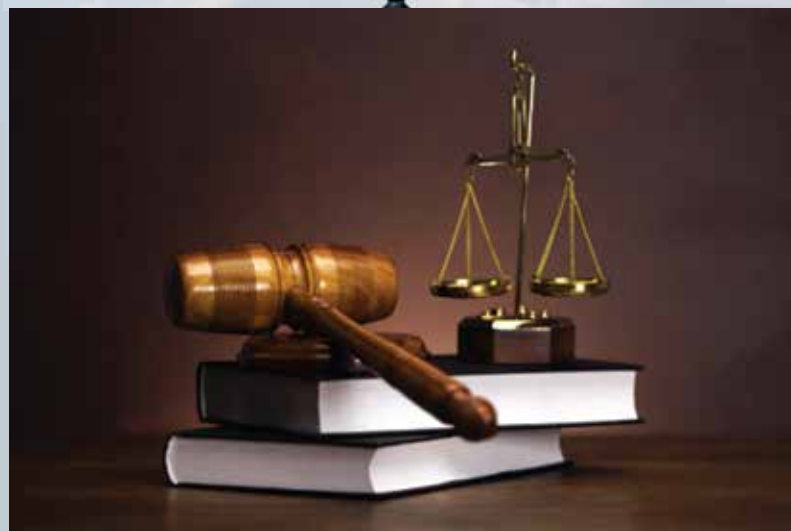
Court's Decision: The African Commission found Kenya in violation of the Endorois' freedom of religion. The commission concluded that the eviction was neither necessary nor justified, and that allowing the Endorois to use the land would not undermine conservation or development goals. The ruling stressed the importance of protecting indigenous communities' rights to practice their religion on their ancestral lands.

Loyola High School and John Zucci v. Attorney General of Quebec (2015)

Issue: Whether a private Catholic school could replace the mandatory Ethics and Religious Culture (ERC) program with a course taught primarily from a Catholic perspective.

Court's Decision: The Supreme Court of Canada ruled in favour of Loyola High School, finding that the Minister of Education's refusal to grant an exemption to teach the ERC program from a Catholic viewpoint unreasonably infringed upon the school's religious freedom. The decision highlighted the importance of respecting religious perspectives within private educational institutions.

From the foregoing, the above rulings stress the significance of protecting religious practices and give a deeper understanding of how the right of religious freedom is interpreted and upheld in various legal contexts.



COMPARATIVE ANALYSIS OF THE STATUS OF RELIGIOUS FREEDOMS IN DIFFERENT JURISDICTIONS



The relationship between church-state relations and minority religious rights is complex, with countries taking different approaches like theocratic, secular, or established church models. Conflicts between religious freedom and other rights, such as equality, are a growing concern in many jurisdictions.

The extent to which legal protections translate into actual religious freedom in practice can vary significantly across countries. Below are some of the variations among various jurisdictions.

a)Brazil

Brazil is what is considered as the model state for religious freedoms. The Brazil Constitution provides strong protection for religious freedom. The freedom of conscience and of belief is inviolable, with the free exercise of religious beliefs being ensured. The Brazilian Supreme Court has ruled on several key cases related to religious freedoms:

Ecclesiastical authority

In a case ruled by the Brazilian Supreme Court on April 8th, 1958, the relationship between the church and the state was presented by a dispute over the power to control the sacraments and faith in a Catholic association. On one side were a Catholic association and a priest and, on the other side was an ecclesiastical authority in charge of sacrament and faith. The core issue was related to the rites of the religious confession and the ecclesiastical authority had done an intervention in the association, breaking an agreement made under the canon law, not allowing the members to elect a new board of directors. After acknowledging the facts, the Court ruled that a temporal authority could not decide issues of faith and religion – like the religious confession – arisen between the ecclesiastical authority and a religious association.

The Court affirmed that any government authority could not decide issues of faith and religion as a result of the “complete spiritual freedom, a republican policy principle that carried out the separation of Church and State.

The dispute over estate property between a parish and the diocese

In a 1977 case, the Brazilian Supreme Court ruled a dispute between a parish and the diocese, both belonging to the Brazilian Orthodox Church. In the local Court and in the Appellate Court, the issue was considered according to canon law. The Supreme Court reversed, applying only state property law and affirming it lacks jurisdiction over religious issues.

The parish was established as a private association, with statutes and properties, including a temple and its annexes, submitted to the members of the parish, whose faith could be expressed through the Brazilian Orthodox Church or any other Church at will.

To crack down on a rebel religious leader, the diocese decided to reclaim possession of the temple and filed suit against the rebel priest. As a third party in the dispute, the local parish association filed suit to protect its assets and the result was that the parish association had its title of property affirmed, but only in the Supreme Court. The Brazilian Orthodox Church diocese was recognized as an ecclesiastical entity according to its canon law, with powers to punish the rebel priest according to it. Not an entity with title to regain possession over a real estate according to the state property law.

Taxation of temples and religious services

According to the Brazilian Constitution, temples and assets related to the main place of worship are immune from taxation. In a 2002 leading case, the Brazilian Supreme Court ruled in favor of granting tax immunity to temples and religious services.

The facts were related to a Roman Catholic Diocese in a mid-sized city, Jales, in Sao Paulo State. The city mayor took action to levy local property taxes on 61 real estate properties belonging to the Diocese, with the exception of the main temple.

The issue arose because, among the 61 real estate properties, some were allocated to house priests and religious servants and others were leased in order to grant funding for the Church.

In a 7-4 vote, the Supreme Court granted tax immunity to the Diocese affirming that, according to the Brazilian Constitution, the immunity covered the property, the assets, the income and services of temples of any cult.

b) United States of America

The First Amendment to the U.S. Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Bill of Rights contain the two religious liberty clauses of the First Amendment: The Establishment Clause and the Free Exercise Clause. The Establishment Clause is the part of the First Amendment that prevents the state from controlling or mandating religion. The Free Exercise Clause is the part that protects our religious belief and practice. We can believe in God, Buddha, the Flying Spaghetti Monster, or nothing at all. The Free Exercise Clause protects the deeply devout to the fiercely atheistic and everything in between.

The Supreme Court explained the meaning of the Establishment Clause in *Everson v. Board of Education* (1947), a case involving a law that allowed school districts to reimburse parents for the costs of bus transportation to and from religious schools. Writing for the majority, Justice Hugo Black explained;

The “*establishment of religion*” clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect “a wall of separation between church and State.” In that case, the law was upheld.

In *Engel v. Vitale* (1962), the Court explained “it is neither sacrilegious nor antireligious to say that each separate government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.”

Justice Anthony Kennedy explained in *Church of the Lukumi Babalu Aye v. City of Hialeah* (1993): “Legislators may not devise mechanisms, overt or disguised, designed to persecute or oppress a religion or its practices. The laws here in question were enacted contrary to these constitutional principles, and they are void.”

In recent years, the Court has also applied strict scrutiny to invalidate laws that bar religious access to generally available programs.

Burwell v. Hobby Lobby Stores, Inc. (2014)

In this case, the Supreme Court ruled that the contraceptive mandate in the Affordable Care Act violated the religious freedom of closely held corporations. The court held that the mandate substantially burdened the companies' exercise of religion.

Masterpiece Cakeshop v. Colorado Civil Rights Commission (2018)

The Supreme Court ruled in favor of a baker who refused to create a wedding cake for a same-sex couple, citing his religious beliefs. The court found that the Colorado Civil Rights Commission had violated the Free Exercise Clause by showing hostility towards the baker's religious beliefs.

In Fulton v. City of Philadelphia (2021), the Court held that a city ordinance requiring foster care organizations to allow placements with gay couples was not generally applicable to a Catholic foster care organization because the ordinance allowed exceptions to the rule.

In Carson v. Makin (2022), the Court held that Maine violated the Free Exercise Clause when it withheld a state-funded tuition benefit to parents who wanted to send their children to religious schools, because the benefit was generally available to be used at any other type of school.

c)United Kingdom

The United Kingdom is known for its high tolerance for religious freedoms under Article 9 of the Freedom of belief and the Convention rights provides that;

Everyone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 9 (1) of Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Set out in Schedule 1 of the HRA 1998) equally provides that

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

However, in light of Article 9 (2) of the above convention, there is requirement to interpret Article 9 (1) as a whole with regard to others. In other words, public authorities cannot interfere with your right to hold or change your beliefs, but there are some situations in which public authorities can interfere with your right to manifest or show your thoughts, belief and religion. This is only allowed where the authority can show that its action is lawful, necessary and proportionate in order to protect public safety, public order, health or morals, and the rights and freedoms of other people

In the case of R (Williamson) v Secretary of State for Education UKHL 15 [2005] 2 AC 247, there was a challenge by the heads of several Christian private schools in the UK against the prohibition of corporal punishment in schools under the Education Act 1996.

The Christian school heads argued that the ban on corporal punishment violated their freedom of religion under Article 9 of the European Convention on Human Rights, as they believed mild corporal punishment was part of their fundamental Christian disciplinary practices.

However, the House of Lords unanimously ruled that while freedom of religion must be respected, it cannot take precedence over children's rights and best interests. Any interference with the religious practice was deemed justified to protect the rights and freedoms of the students.

The court held that the state has a positive obligation to protect children from inhuman or degrading punishment, and that prohibiting all corporal punishment in schools, including in private Christian schools, was a legitimate and proportionate limitation on the practice of the schools' religious beliefs.

d)South Africa

Whereas the freedom to religion is respected to an extent, the same test is applied as in *R (Williamson) v Secretary of State for Education* UKHL 15 [2005] 2 AC 247

In the Constitutional Court ruled in *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others* [2019] ZACC 34 that the common law defense of reasonable and moderate parental chastisement is inconsistent with the rights to human dignity and freedom from cruel, inhuman or degrading treatment. The Court declared this defense unconstitutional.

What is highlighted in respect to the United Kingdom and South Africa both highlight the avenues through which religious freedoms may be tampered with constitutionally.

e)China

Religious freedom conditions in China continue to deteriorate under the authoritarian rule of the Chinese Communist Party (CCP). While China's constitution claims to protect religious freedom, the reality is that the CCP tightly controls and restricts religious activities to maintain its power and promote atheism. The CCP is actively pursuing a policy of "Sinicization" that requires religious groups to align their doctrines, customs and morality with Chinese culture and CCP ideology. This includes removing crosses from churches, demolishing domes and minarets, and asking clergy to focus on teachings that reflect socialist values.

To date, China has detained between 900,000 and 1.8 million Uyghur, Kazakh, Kyrgyz, and other Muslims in concentration camps in Xinjiang, subjecting them to mass internment, surveillance, and torture. The government claims these measures are meant to improve Muslims' lives and counter religious extremism. Furthermore, Christians are only allowed to worship in state-sanctioned churches and government authorities have arrested prominent church leaders and shut down unregistered churches.

f)Rwanda

Rwanda's constitution provides strong protections for religious freedom, prohibiting religious discrimination and guaranteeing the right to freedom of religion and worship. However, the government has taken steps to assert greater control over religious institutions. In 2018, a new law was enacted requiring churches and mosques to meet strict safety, hygiene, and infrastructure standards, leading to the closure of over 8,000 churches.

The government has also required citizens, including Jehovah's Witnesses, to participate in certain civil ceremonies involving the national flag, which conflicts with the religious beliefs of some groups.

There have also been reports of the Rwandan National Police (RNP) killing several Muslim community members, claiming they had links to terrorist organizations, though the Muslim community expressed concerns about these killings.

More to that, Seventh-day Adventist students have faced suspensions and expulsions for missing classes scheduled on their Sabbath at Catholic-affiliated public schools.

Overall, while Rwanda's constitution on the face of it protects religious freedom, the government has taken actions that restrict the ability of certain religious minorities to freely practice their faith, raising concerns about the state of religious freedoms in the country.

g)Kenya

The constitution stipulates there shall be no state religion and prohibits religious discrimination. The constitution provides for freedom of religion and belief individually or in communities, including the freedom to manifest any religion through worship, practice, teaching, or observance. The constitution also states individuals shall not be compelled to act or engage in any act contrary to their belief or religion. These rights shall not be limited except by law, and then only to the extent that the limitation is "reasonable and justifiable in an open and democratic society." The constitution requires parliament to enact legislation recognizing a system of personal and family law adhered to by persons professing a particular religion.

According to the Societies Act Cap 208, new religious groups, institutions or places of worship, and faith-based nongovernmental organizations (NGOs) must register with the Registrar of Societies, which reports to the Attorney General's Office. Indigenous and traditional religious groups are not required to register, and many do not. To register, applicants must have valid national identification documents, pay a fee, and undergo security screening. Registered religious institutions and places of worship may apply for tax-exempt status, including exemption from duty on imported goods. The law also requires that organizations dedicated to advocacy, public benefit, the promotion of charity, or research register with the NGO Coordination Board. Additionally, the Ministry of Information, Communications, and Technology must approve regional radio and television broadcast licenses, including for religious organizations.

CONCLUSION

While many countries appear to have strong constitutional and legal frameworks protecting religious freedoms, the actual state of religious freedoms differs greatly based on the specific cultural, political, and social dynamics within each jurisdiction. There has been subtle yet proactive moves to dilute the weight and extent of application of faith and spirituality to varied aspects of life. However, the sanctity and supremacy of faith over the state is a core element to the seamless functioning of any government and ought to be upheld as such.

CROWNEL

