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Religious Freedom in the Global South

Edited by
Waheeda Amien

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About the Editor

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Preface to "Religious Freedom in the Global South"

This book is a compilation of papers that are published in a Special Issue of the journal *Religions*. The aim of the Special Issue and of this book is to create a space for contributions on religious freedom in the Global South.

The 11 contributions that were published in the Special Issue and reprinted in this book speak to diverse themes underscoring religious freedom in the Global South including the impact of religious freedom on majority and minority religious communities, the relationship between religious freedom and the state, and the relationship between religious freedom and other fundamental human rights.

Contributors were invited to consider and explore one or more of the following questions: Do the approaches of countries in the Global South to freedom of religion reflect a plurality of perspectives, or do the commonalities outweigh the differences? How has history assisted in shaping the discourse on freedom of religion in Global South countries? How do the legal frameworks of Global South countries protect, promote, or deny the right to freedom of religion, and what are the reasons for this? Is the right to freedom of religion in Global South countries conceived as individual, collective, associational and/or group rights? How do Global South countries address potential conflicts when the right to freedom of religion undermines or is undermined by other human rights, for example, sex/gender equality? To what extent, if any, do politics, religion, culture, and law intersect in influencing and developing the narratives on religious freedom in the Global South? Which other factors impact on how Global South countries have developed their discourses on freedom of religion?

Through inter- and multidisciplinary approaches, contributors sought to address one or more of the questions posed above. Across the chapters, the authors covered several regions including Africa, South Asia, South-East Asia, South America, and Eastern Europe. Depending on the social, legal, and political context and by relying on diverse examples, the contributions show how religious freedom can undermine or promote the rights of majority or minority religious communities in the Global South, and how it can impact on the rights of marginalised members within minority religious communities.

In most instances, the authors demonstrate how minority religious communities are disadvantaged through skewed understandings or implementations of the right to religious freedom. For instance, in Pakistan, Mehfooz considers the implications that mainstream Islamic approaches have for religious minorities including Christians, Hindus, and Sikhs. Within the parameters of religious freedom, Mehfooz juxtaposes the concept of religious freedom in Pakistan with the concept of religious freedom in Islam. He observes that minority faiths in Pakistan are denied their right to exercise religious freedom, which is contrary to the Constitution of Pakistan and Islamic principles. Mehfooz then offers some practical suggestions to reconcile the conflict.

In the broader South Asian context, Dutta interrogates the marginalised impact that religious orthodoxies arising from majority and minority fundamentalist discourses such as Hinduism and Islam have on those practicing alternative spiritual doctrines such as Sufi and Bhakti followers. Dutta examines various communication strategies adopted by Sufi and Bhakti performers to promote a multitude of standards in society.

At the same time, Claerhout and De Roover contend that the discourse on religious freedom in India cannot be discussed without considering the issue of conversion, which they suggest is pivotal to discussions about religious freedom on the sub-continent. The authors examine historical writings

about the Indian conflict relating to conversion and hypothesise that the 'propagation of religion' is viewed as a human endeavour to spread religion, which contradicts a religious understanding of conversion as being within God's domain. In this way, the authors conclude that there are two specific and varying Indian experiences dealing with conversion and religious freedom.

In the African context, Semenova, Kiseleva, and Solntsev consider the position of Christians, especially with reference to abortion and LGBT persons. The authors observe that the right of women to choose is prioritised above a medical practitioner's freedom of conscience and the rights of LGBT persons are prioritised above freedom of religion. By examining various international and regional treaties and organisations, the authors suggest that the right to freedom of religion is afforded insufficient protection.

Interestingly, the relationship between religious freedom and animal rights is also explored by Boaz in the context of animal sacrifice in Sri Lanka and Brazil. Boaz argues that laws protecting animal welfare can be used to promote religious intolerance and racial discrimination.

The relationship between citizenship and religious freedom is then examined by Menza in the Egyptian context. With reference to ethnic and religious minorities including Coptic Christians, Muslim Shiites, Nubians, and Bedouins, Menza unpacks the involvement of state and non-state actors. He attempts to highlight the changing role of religion in the Egyptian polity and the impact of social, political, and economic effects on religious liberties and citizenship.

The relationship between religion and nationalism is further explored by Topidi through the example of religious education in public schools in Poland. Despite an expected separation between church and state, Topidi argues that the majority religion strongly influences legal and political debates in Eastern Europe. In fact, she suggests that there is a gradual move away from secularism to religious nationalism, which serves to widen divisions among people and disregards the plurality of religions existing in the region.

In contrast, Batalla and Baring examine the relationship between church and state in the Philippine context. They explore the extent to which the Duterte presidency resulted in a conflict between state leaders and Catholic leaders, which impacted on the constitutional provision for the separation of church and state as well as the state's policies for religion and religious freedom. The authors argue that notwithstanding the conflict between the Duterte-led state and the Catholic church, institutional church–state relations continue to be stable in the Philippines.

In some instances, the right to freedom of religion conflicts with other fundamental rights. Moosa demonstrates this by exploring how a conflict between religious freedom and property rights are negotiated within the context of limitations placed on religious and cultural symbols such as the Muslim call to prayer (adhan) in South Africa. Moosa concludes that within the parameters of South Africa's commitment to constitutionalism, amplified and unamplified forms of the Muslim call to prayer could be treated as an unreasonable expression of noise nuisance.

In Indonesia, Nurtjahyo considers the relationship between religious freedom and gender equality in the context of domestic violence. She illustrates how domestic violence results from a limitation of freedom of religion in the family. Nurtjahyo observes that many domestic violence cases arise when women choose to follow different faiths from those of their parents or husbands. Although protected by legislation, religious freedom in Indonesia is threatened by a lack of choice for women within the private sphere of the family.

Finally, by relying on the language of decolonialism and through participatory action research, Dube examines the Gabola church in South Africa as a postcolonial manifestation of freedom of religion. He identifies the Gabola church as a new socially inclusive religious movement and shows how it functions without a regulatory body.

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Article

Religious Freedom in Pakistan: A Case Study of Religious Minorities

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Abstract: The Islamic Republic of Pakistan is a multi-racial and multi-religious nation, with Muslims being in the majority. Its 1973 Constitution guarantees religious freedom to all religious minorities, including Christians, Hindus, and Sikhs. This is mainly because Islam itself ensures religious freedom to the whole of humanity. Unfortunately, some Muslim clerics seem to be attempting to deny religious freedom to other faiths in Pakistan. Their opposition to the plurality of faith contradicts Islamic principles. This research paper identifies such Islamic principles and examines the undesirability of the mistreatment of religious minorities in Pakistan, focusing on the arguments for and against religious freedom in Pakistan on the one hand, and the religious rights and freedoms of non-Muslim minorities from an Islamic perspective on the other. The methodology applied in this discussion is critical analysis. The conclusion drawn is that both the Constitution of Pakistan and Islam guarantee religious freedom to the country's religious minorities. Finally, this study suggests some practical mechanisms to reconcile the different religious groups in Pakistan.

Keywords: Pakistan; Islam; religious freedom; religious minority; social harmony

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1. Introduction

The freedom to change and choose one's religion is protected by international law. Particularly, in any circumstances, people's core rights cannot be breached. Currently, international law acknowledges twelve non-derogable fundamental rights, including freedom of faith and the prohibition of discrimination based on religion. (The Siracusa Principles 1985). Therefore, everyone holds the privilege of freedom of thought, religion, and conscience. This right consists of liberty to convert one's belief or religion, whether individually or in society along with others and in private or public, and to manifest one's religion or belief in preaching, worship, observance, and practice (Universal Declaration of Human Rights 1948).

Discrimination against minorities is as ancient as documented history (Christen 1981), and religious minorities are not excluded from this phenomenon (Thornberry 1980). During the early period of Islam, when the Persian Emperor Khusraw Parvēz conquered Byzantine, Byzantine Christians were treated mercilessly and exhibited extreme brutality to succumb Christianity, slaying over a hundred thousand Christians, annihilating monasteries and temples and constructing fire temples far and wide. Christians were compelled to worship fire instead of Christ. In such an environment, when the King of Rome, Harqal, tried for reconciliation with Khusraw Parvēz, the reply of Emperor of Persia revealed his intolerable tolerable thought: "No, I want Harqal the King of Rome, imprisoned in chains under my throne, I will not reconcile until he denied the Christianity and embraced the religion of Persian Empire" (Shibli 1985).

Notwithstanding pervasive education, constitutional guarantees, and enlightenment in most of the world's states, minorities are ignored; therefore, they must confront discrimination in every phase of life. In several countries, various kinds of minorities face marginalization (Bécares and Priest 2015). Minorities are classified as, among other things, sexual or gender minorities, ethnic or racial minorities, age minorities, religious minorities,

and individuals with disabilities (Mohanty 2010). According to international law, minorities of religions consist of classifications described by their willingness to conserve their languages, their traditions, their religion, and their culture within the State (Fouzia et al. 2014). In South Asia, the problems of common violence and religious freedom are complicated and deeply embedded in history (Curtis 2016).

South Asian communities were always religious. The major faiths in this region are Hinduism, Jainism, Buddhism, Sikhism, Islam, and Christianity. Javaid observes that "[t]he South Asian societies in the contemporary environment are confronted with religion-based violence, sectarianism, extremism, communalism and even regionalism" (2011). While taking a glance at some Asian territories, it appears that India is the biggest secular country (Corbridge and Harriss 2013). However, it must be highlighted that India has the world's largest Muslim population, comprising approximately two hundred million Muslims (Osuri 2013), who live as a minority in a predominantly Hindu country where there are numerous incidents of religiously driven assassinations, riots, assaults, vandalism, discrimination, and actions limiting one's right to speak and practice one's religious beliefs (Fouzia et al. 2014). Under the statistics represented by the Ministry of Home Affairs (MHA), 7484 communal violence instances occurred based upon religion between 2008 and 2017, in which more than 1100 people were killed (India: International Religious Freedom Report 2019).

In Burma, Muslims have not been allowed to build new mosques or Madrasahs (a religious teaching institution) for the last 20 years (Gravers 2015), and those who go against this law and try to build mosques or Madrasahs can be punished with six months to six years in jail, plus a fine. (IHH 2012). Hundreds of violent incidents against the Muslim community have taken place in recent times. Mosques have been attacked, Muslim shops ransacked, Muslim properties vandalized, and Muslim houses burned down (Smith 1996). Some Buddhist extremist groups have also ridiculed Islamic doctrines and Islamic teaching (Marzoli 2015).

In the Muslim majority country of Iran, Bahá'ís are facing false imprisonment, arbitrary detention, deduction and destruction of property, a lack of employment and government benefits, and are being denied access to higher education (Affolter 2007). After the 1979 revolution in Iran, the Bahá'ís' community was discriminated against by having their places of worship and graveyard removed by the government (Congressional Research Service 2008).

Pakistan was established on 14 August 1947, based on the ideology of Islam. Most of the population in Pakistan was Muslim at this time, with almost 23% of Pakistan's population comprising non-Muslim citizens at the time of partition in 1947 (Gregory 2012). Today, the proportion of non-Muslims has declined to approximately 3.7% of the population due to the fact that non-Muslims face many challenges, such as employment discrimination, societal discrimination, forcible conversion to Islam, intimidation, violence, and much else besides (Manchanda 2009). The distinctions among Muslim denominations have also become far more accentuated over the years. While conducting a survey about minorities' rights in a Christian colony in Lahore, one of the Christian residents said: "We received threats and our churches have been burnt by a religious extremist in Pakistan whenever in abroad people used insulting remarks in respect of Holy Prophet (PBUH)" Bureau of Democracy Human Rights and Labor (2006).

In the past few years, the necessity for religious freedom has intensified, owing to the religious fanaticism present amongst the adherents of various religions. Following 9/11, the world witnessed a surge in racism, prejudice, and bigotry. The September 11 incident split the world along religious lines, as an "Us" versus "Them" mentality began to grow. Consequently, foreign affairs continued to be influenced. Even today, it is not possible to determine when this divide may be peacefully resolved. How do we cross the bridge between "divided" and "united" (Minhas 2013)?

Therefore, this research intends to highlight the religious freedom provided to the minorities in Pakistan and how these religious minorities experience their aforementioned

fundamental rights, including religious freedom, which is the basic feature of an inclusive society. The study aims to answer to what extent Freedom of Religion, as per the Constitution of Pakistan, is applied to all religious minorities in Pakistan. How do the primary sources of Islam treat non-Muslim minorities under a Muslim polity? How can peace and social harmony be fostered among different religious groups in Pakistan?

Religious Minority Groups and Their Religious Freedom in Pakistan: An Overview

In 1947, at the time of the partition, non-Muslim citizens consisted of about 23% of Pakistan's total population. Presently, the non-Muslim population decreased to 3.7% approximately, due to facing many challenges such as societal and employment discrimination, intimidation, forced conversions, violence, and much else besides (Manchanda 2009). According to the 2017 Census, Muslim citizens comprise 96.28% of the total population of Pakistan. In total, 1.59% of the population comprises Christians, and they are mainly based in Punjab, Sindh, and Islamabad, the Federal Capital (Sookhdeo 2002). At the same time, Hindus make up 1.60% of the population and are mostly concentrated in rural Sindh (Pakistan Bureau of Statistics 2017). Presently, most Sikh communities reside in the Peshawar region. According to the latest information, the estimated population of Sikhs is about 0.03%, and they live mostly in Lahore and Nankana Sahib in Punjab (Walia 2003). The followers of the Bahá'í faith (founded by Baha'u'llah, 1817–1892) consist of over 0.04% living in Pakistan, particularly in Karachi and Lahore (Barrett et al. 2000). In Pakistan, there are approximately 20,000 followers of Buddhism (United States, Department of State 2004). Presently, the few remaining Buddhists live in the hilly areas of the Swat and Gandhara regions of NWFP and the Ladakh region of Kashmir (Perera 2008). The worldwide Zoroastrian population was projected to be between 124,000 and 190,000 in 2004, of which around 5000 live in Pakistan. Most of them reside in Karachi. However, in recent years. Zoroastrianism's popularity has increased due to Iranian refugees (Hinnells 2005). In 1974, the number of religious minorities, upon the inclusion of Ahmadis (or Ahmaddiyyas), increased. They were previously documented as being part of a religious sect within Islam. After the Second Constitutional Amendment Act (1974), Ahmadis were declared constitutionally non-Muslim. An estimated 0.22% of Ahmadis live across the country of Pakistan.

Manchanda (2009) expressed that religious minorities are often compelled to accept Islam under intense pressure. Religious minorities confront issues associated with forcibly embracing Islam. People generally undervalue the religious beliefs and faith of non-Muslims. Most religious minorities experience issues related to the decreased availability of their places of worship. A Parliamentary Human Rights Group (2010) found that religious minorities are under threat and that they have no freedom to practice their religion. According to Gregory and Valentine (2009), "Pakistan remains a volatile place where religious minorities face insecurity and maltreatment. Freedom of belief and expression has come under severe threat in Pakistan. Over the past few decades, violence against religious minorities is greater than before, and targeted killings are rising. This is because a specific group of religious scholars are promoting such attacks and violence in their sermons and the media". The anchor of a famous religious program, which aired on 30th September 2008, stated that Ahmadi sect members are wajib-ul-qatl, thus declaring it compulsory for Muslims to kill members of the Ahmadi wing. Two well-recognized Ahmadis were shot within forty-eight hours after the airing of this television statement (Faruqi 2011). In March 2013, during a mob attack on the Christin community in Punjab, dozens of homes were set on fire after a blasphemy allegation was made against a Christian man (Dawn.com 2013). The following year, a mob burned down a Hindu community center located in southern Pakistan following an allegation that a Hindu desecrated the Qur'an. Following this, four more Hindu temples were attacked (U.S. Commission on International Religious Freedom 2015).

Two Ahmadi mosques in Model Town and Garhi Shahu (a town in Lahore, Pakistan) were attacked by gunmen on 28 May 2010, leading to ninety-six causalities. Subsequently,

on 15 November 2010, King of Kings Church, located in Wasan Pura, Lahore, Pakistan, was attacked by an infamous landgrabber and armed men in police uniforms bulldozed the church, demolishing it using a crane. During the attack, the church was entirely razed, and holy scriptures, such as Bibles, and crosses were destroyed (Faruqi 2011). Furthermore, a terrorist bomb blast in All Saints' Church in Peshawar in September 2013 claimed 86 Christian lives (Mohsin 2013). The Human Rights Watch country representative Ali Dayan Hasan stated that it was "the deadliest attack on a church and the Christian community in Pakistan's history" (Saiya and Manchanda 2020).

The United States Commission on International Religious Freedom (USCIRF 2013), in its Annual Report, focused on Pakistan, mentioning the 200 attacks on religious groups in the country and the 1800 documented fatalities resulting from religion-related violence (among the highest in the world). Minority Rights Group International (2013), in its report, highlighted Pakistan, ranking the country top in its "People under Threat" global ranking. Likewise, a report by the Pew Research Centre during the same period underlined that "Pakistan had the highest level of social hostilities involving religion" (Pew Research 2014).

The rising trend of religious fanaticism and discrimination of religious minorities during the last few decades in Pakistan has threatened Pakistani society's very structure and damaged its democracy, simultaneously putting the lives of millions of religious minorities at risk. The reality is that the situation has become worse due to the fact that the "Pakistani state is engaged in or have tolerated severe violations of religious freedom" (USCIRF 2011). It has been observed that entire Christian families and villages embrace Islam to evade institutional ostracism and general Islamist extremist militancy (Misra 2015). Pakistani religious minorities are victims of institutional, social, and legal discrimination, as reported by the US Commission on International Religious Freedom (USCIRF 2019).

Fortunately, according to several sources (Bhattacharya 2018; Pakistan Security Report 2018), the violence against minorities has declined in the last two years (CRSS Annual Security Report Special Edition 2013–2018). However, we cannot claim that the current situation is satisfactory. Due to military operations throughout the country opposing terrorism, religion-based violence started to decrease, and only 228 fatalities were registered in 2019 compared to the 11,704 fatalities in previous years.

The bar chart in Figure 1 shows the data on fatalities due to terrorist violence in Pakistan from 2000 to 2019. The first bar of each year shows data for civilians' deaths. The second bar indicates data for fatalities among security forces. The third bar shows data for the fatalities among terrorists/insurgents. From this graph, we can conclude that, from 2000 to 2009, the fatalities due to terrorist violence increased and reached their peak in 2009.

It is instructive to mention here that every country has its problems, but how we handle these problems matters. In the Pakistani government administration, policymakers and numerous passionate individuals are doing everything they can to help religious minorities address these challenges. But the regrettable truth is that there is a lot more to be done.

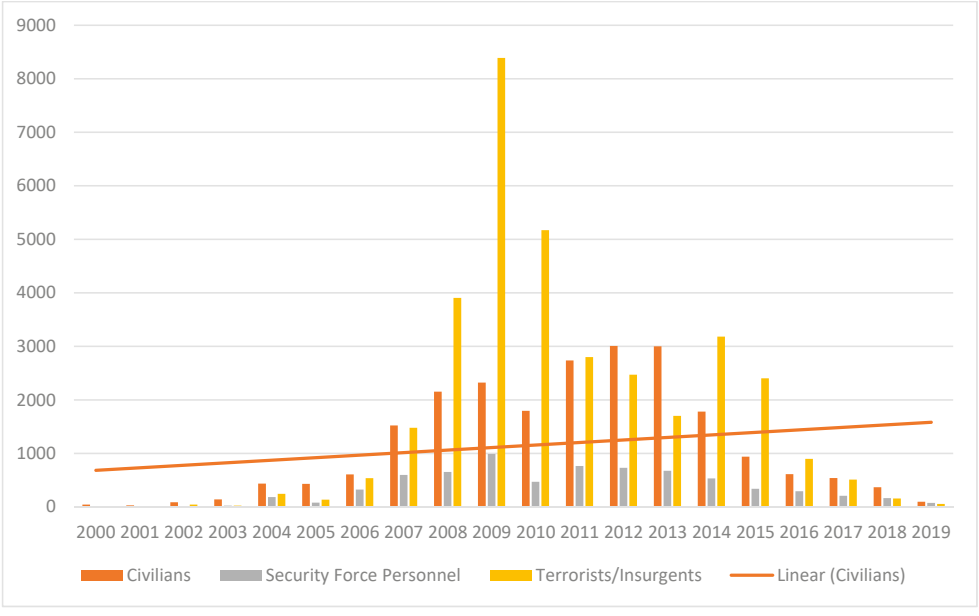

Figure 1. Sectarian violence in Pakistan (January 2000–December 2019). Source: South Asian Terrorism Portal (2020).

2. Constitution of Pakistan on Religious Minorities

Pakistan was established on 14 August 1947, based on the ideology of Islam. Most of the Pakistan population was Muslim, but non-Muslim minorities were also present in Pakistan in 1947. The founder of the Pakistan, Muhammad Ali Jinnah, known as Quaid-i-Azam (a great leader), was completely aware of this reality (Ispahani 2015). Therefore, in his initial speech to the Constituent Assembly on 11 August 1947, particular attention was paid to minorities in the following words:

> "You are free; you are to go to your temples. You are free to go to your mosques or any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State". (Jinnah 2013)

He continued,

> "Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State". (Ibid.)

This covenant is a consequence of unequivocal recurrent pledges to religious minorities that they will enjoy entire social and diplomatic rights equivalent to free state citizens. Moreover, religious views and State matters should be kept separate (Swett and Glendon 2015). These express assurances regarding freedom of religion/faith and its practice, due process, the rule of law, identical security, and an agenda of progressive legislation, presented by the leaders of the Pakistan Movement, comprise an implicit social agreement with Pakistani religious minorities (Mahmud 1995). This covenant embodies several guarantees for religious minorities that "freedom of religion and opinion will be guaranteed, and equal rights of citizenship will be enjoyed by all, irrespective of religious beliefs" (Ibid.).

When Jinnah addressed the people of the United States of America, he made the following statement: "The constitution of Pakistan has yet to be framed by the Pakistan Constituent Assembly. I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be a democratic type, embodying the essential principles of Islam. Today, they are as applicable in actual life as they were 1300 years ago. Islam and its idealism have taught us democracy. It has taught equality of men, justice and fair play" (Jinnah 2013). Following the constitution, every subsequent Pakistani constitution assured each citizen their right to propagate, practice, and profess their religious beliefs. Each religious denomination, and each sect therefrom, had the right to create, manage and sustain its religious traditions (Malik 2002).

The major constitutions of 1956,[1] 1962[2] and 1973[3] sustain the essential rights of citizens and make numerous references to the term "minority". In Article 25 (1), Pakistan's Constitution guarantees that "all citizens are equal before the law and are entitled to equal protection of the law". Article 5 provides that "adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures" (Swett and Glendon 2015). The constitution of Pakistan guarantees religious freedom for all minority communities in Pakistan.

Presented in Table 1 is the clause from Pakistan's constitution that provides minorities with their rights regarding freedom of religion and belief.

Table 1. Constitutional Provisions related to freedom of religion or belief and minority rights.

Article 36	"The state shall safeguard the legitimate rights and interests of minorities, including their due representation in the federal and provincial services."
Article 20	(1) "Every citizen shall have the right to profess, practice and propagate his religion." (2) "Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."
Article 21	"No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own."
Article 22	Safeguards as to educational institutions in respect of religion, etc. (1) "No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own." (2) "In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession concerning taxation." (3) Subject to law: (a) "No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination." (b) "No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth." (4) "Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.
Article 25	Equality of citizens." (1) "All citizens are equal before the law and are entitled to equal protection of the law." (2) "There shall be no discrimination based on sex." (3) "Nothing in this Article shall prevent the state from making any special provision for the protection of women and children."

[1] Government of Pakistan, The Constitution of the Republic of Pakistan 1956, Government of Pakistan Printing Press, Karachi, 1956.

[2] Government of Pakistan, The Constitution of the Republic of Pakistan 1962, Government of Pakistan Printing Press, Karachi, 1962.

[3] Government of Pakistan, The Constitution of the Islamic Republic of Pakistan 1973, Government of Pakistan http://www.Pakistani.org/Pakistan/constitution (as amended) (last accessed 1 July 2019).

Table 1. *Cont.*

Article 26	Non-discrimination in respect of access to public places (1) "In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth." (2) "Shall prevent the state from making any special provision for women and children."
Article 27 (1) & 28: *Subject to Article (25)*	Safeguard against discrimination in services (1) "No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth." (2) "Any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same subject to law, establish institutions for that purpose."

3. Treatment of Non-Muslim Minorities by the Primary Sources of Islam under a Muslim Polity

The epistemological foundation of Islam is based on love, affection, kindness, and mercy. Therefore, Islam strongly promotes religious freedom. The Qur'an declares that "There is no compulsion in religion. The right direction is henceforth distinct from error" (The Holy Qur'an, 2: 256). It is clear from this verse that nobody can influence another person to embrace Islam forcibly. Whosoever does this has sinned. It is instructive to discuss the fact that this verse also instructs Muslims to guard others' fundamental rights, particularly their religious freedom. People are free to accept the religion of Islam or deny it. Islam also instructs people to accept Islam through their rational investigations and examination. The Qur'an repeatedly asks for humanity to ponder, think, contemplate, and observe (The Holy Qur'an, 2: 164; 5: 58; 13: 4). So, Islam demands that people accept faith with a firm conviction via empirical examination and observation. The Qur'an calls on people to believe in God, but it never compels them to believe in God. The Qur'an acknowledges that unifying all human beings around one religion is an impossible task, and that this is not what God intends. The Qur'an says, "If it has been your God's will, He verily would have made mankind one nation, yet they continue to differ except him whom your Lord has mercy and for that, He did create them" (The Holy Qur'an, 11: 118–119). Moreover, the holy Qur'an reiterates that "People will have different religion and ways Had Allah willed; He would have made you one community?" (The Holy Qur'an, 5: 48). Thus, people will differ from one another in religion and in dealing with other people from other religions. Islam emphasizes the importance of mutual understanding, tolerance, and compassion. Moreover, the Holy Prophet Muhammad (Peace Be Upon Him)'s duty was not to force people into Islam; rather, it was his duty to teach people about the religion of Islam. It is God who judges people regarding their beliefs on the Day of Judgment.

The Qur'an never declares that wars should be fought in order to change people's religion. According to most modern scholars, all the Prophet Muhammad (PBUH)'s battles were waged in self-defense or to pre-empt an imminent attack. The early Muslims were persecuted and tortured in Makkah for ten years. However, permission for fighting was not given in the early period, and they were asked to endure their treatment with patience. The Qur'an tells the Prophet Muhammad (PBUH), "Pardon and forgive until God gives his command" (The Holy Qur'an, 2: 109). Only after they were forced out of their houses and their town and those left behind were subjected to abuse did God give His permission to fight in defense. Jihad became an obligation "for defending religious freedom and for self-defense" (The Holy Qur'an, 2: 190) and "defending those who are oppressed" (The Holy Qur'an, 4: 75).

The Holy Qur'an guides humanity to avoid any kind of conflict among people of diverse religious beliefs: "Unto you, your moral law, and unto me, mine!" (The Holy Qur'an, 109: 6). As the Prophet Muhammad (PBUH) stated, "The whole humanity is created and supervised by Allah and most beloved among them is he, who is most beneficial for mankind" (Al-Tabrani n.d., Hadith No: 10033). In his last sermon, Hajja Tul-Wada (The

last pilgrimage), the Prophet (PBUH) said, "O, people! Lo your Lord is One, no Arab is superior to a non-Arab and no non-Arab is superior to an Arab. No black is better than red and no red is better than black. Then the only criterion for superiority and honour is piety" (Ahmad 1938).

The Prophet Muhammad (PBUH) stated, regarding the rights of the religious minorities: "Beware, if anyone wrongs a contracting man, or diminishes his right, or forces him to work beyond his capacity, or takes from him anything without his consent, I shall plead for him on the Day of Judgment" (Abu Daud, Hadith No: 3052).

Elsewhere, the Prophet Muhammad (PBUH) acknowledged the honor and dignity of the lives of minorities who do not follow Islam by these words: "Whoever killed a person having a treaty with the Muslims, shall not smell Paradise though its smell is perceived from a distance of forty years" (Al Bukhari, Hadith No: 3166).

During the early period of Islam, Christians and Jews who lived under Muslim rule were considered dhimmis (non-Muslim). "The word means a protected person", and this status was subsequently expanded to other non-Muslims, such as Buddhists and Hindus. They were permitted to "practise their religion, subject to certain conditions, and to enjoy a measure of communal autonomy" (Lewis 1984). Their safety and the security of their property were guaranteed in return for paying tribute to and acknowledging Muslim rule (ibid.). Alluding to the commitment by the state under Shariah (Islamic Law) to safeguard an individual's life, religious beliefs, and property, in return for allegiance to state and Jizya (poll tax) payment, this complemented the *zakat* (obligatory alms) paid by Muslim subjects (Glenn 2007. A thorough examination of Jizya (poll tax)'s initial history, especially since Prophet Muhammad (PBUH) imposed it, has been carried out. Subsequently, in the caliphate time, Jizya was utilized as a tax and, through its payment, non-Muslims were considered to express loyalty to Islamic political authority. There is no evidence that it was enforced only to degrade, dishonor, or socially humiliate them (Ahmed and Ahmad 1975).

According to the Shibli (1985), Jizya (poll tax) is the Arabicized form of another word, Kizyat, which stands for a levy that the Persian emperor used to impose when managing the affairs of war. It does not seem that individuals who embraced Islam were given honored status over those who kept their prior faith, nor did it create the impression that non-Muslims who were paying Jizya (poll tax) were saddled with humiliating provisions as a result of this (Ahmed and Ahmad 1975). The Holy Qur'an, likewise, "allowed Muslims are permitted to eat slaughtered animals by the People of Book, to eat from their dishes, and to marry their women" (The Holy Qur'an, 5: 5). This indicates the respectable status of People of the Book in Islam. Following Islamic law, both Muslims and non-Muslims are entitled to the same rights in the state and are considered equivalent in societal status. "So the fourth caliph of Islam said, their blood is just like us" (Sayyed n.d.).

By 637 AD, during the era of Umar bin al-Khattab, the second caliph[4] of Islam, Muslim armies had conquered Jerusalem. Umar was given a tour of the city, including the Church of the Holy Sepulchre.

"When the time for prayer came, Sophronius invited Umar to pray inside the Church, but Umar refused. He insisted that if he prayed there, later Muslims would use it as an excuse to convert it into a mosque—thereby depriving Christendom of one of its holiest sites. Instead, Umar prayed outside the Church, where a mosque (called Masjid Umar—the Mosque of Umar) was later built".

Umar's above action provides safety to places of worship of religious minorities living in an Islamic state (El-Wakil 2016). During the era of the second caliph of Islam, Umar bin al-Khattab, the General of the Christian army of Mery, wrote to Shamoon of Persia and confessed that: "Arabs have blessed a great dynasty by God do not attack Christianity, even they are our supporters, respect our God and do regard our saints, give donations to our churches and monasteries. No Muslim either he is ruler, officer or an ordinary Muslim citizen is allowed to capture the property of any non-Muslim illegally" (Sayyed n.d.).

[4] "The chief Muslim civil and religious ruler, regarded as the successor of Prophet Muhammad (PBUH)".

During the whole period of the Caliphate[5], the same religious freedom was given to religious minorities as that provided by the Prophet Muhammad (PBUH) during his lifetime. The first two caliphs of Islam renewed the same constitution for the Christians of Najran[6] that was established by the Prophet Muhammad (PBUH) with the Christians of Najran during his sacred era (Shibli 1985). Their rituals, like ringing bells and blowing a conch shell (at divine worship to summon the congregation) were not forbidden in any city of the Muslim empire during the whole caliphate. On their religious festivals, they were allowed to profess the Holy Trinity (Abu Yusuf 1999). Hamidullah (1987) says that "Islam has a very soft corner towards minorities living in an Islamic state. Islamic law guarantees and protects the rights to life, property, honour and liberty of conscience, and religion to all including Muslims and non-Muslims without any type of discrimination". According to Islam's teachings, a true global brotherhood could be established if Muslims stopped discriminating against non-Muslims (Musferah and Furqan 2018).

4. Reflection on Ways to Create Social Harmony among Different Religious Groups

In Pakistan, religious extremists use harsh words and negative labels for religious minorities in order to demonstrate their hatred, both in the community and the workplace. As Bar-Tal and Teichman (2005) argue, "the majoritarian belief that there is an enemy in their midst is related to the definition of a conflict". For example, when the United States and the coalition forces began their war plan against the Taliban regime in Afghanistan in December 2001, "Pakistani Christian leaders demanded security cover for themselves and their Churches" (BBC News 2001, "Analysis: Pakistan's Christian Minority"). For instance, the United States of America, along with coalition forces, when making their war plans in December 2001 against the Taliban regime in Afghanistan, noted that "Pakistani Christian leaders, demanded security cover for themselves and their Churches" (BBC News 2001, 'Analysis: Pakistan's Christian Minority').

Later, a trend of retaliatory violence developed, where Christian communities endured the brunt of Muslims' frustration with Western policies or events that seemed anti-Islamic occurring in the West, such as a certain Danish cartoon publication. Therefore, Christians in Pakistan exist as proxies of the West proxies in the eyes of some Pakistani Muslims, and a high price is paid for that perception (Gregory and Valentine 2009). Some theorists have proposed that, whenever a community feels especially vulnerable and low, that the specific community may participate in disseminating "extreme stereotypic contents" against the less potent factions in order to release its anger against the external opponent responsible for its oppression (Bar-Tal and Teichman 2005). The leader of Tehreek-e-Taliban Pakistan (TTE-P) claimed responsibility after the All Saints' Church (located in Peshawar) terrorist bomb blast in September 2013, which caused 86 Christian fatalities, subsequently justifying these actions by advising "until and unless drone strikes are stopped, we will continue to strike wherever we will find an opportunity against non-Muslims" (Mohsin 2013).

Muslim extremist groups read Islamic texts and the statements of classical Islamic scholars out of context. This has been a common practice of some radical groups in their interpretation of some verses of the Qur'an concerning non-Muslims. Though most of the Qur'anic verses have global implications, some of the Qur'anic verses should be confined to the specific time in which they were written. A few examples of such Qur'anic verses

[5] "Caliphate, the political-religious state comprising the Muslim community and the lands and peoples under its dominion in the centuries following the death (632 CE) of the Prophet Muhammad (PBUH)" (Madelung 1997).

[6] "The Najran Covenant, in common with all other covenants, stresses the theme of protection after which the main terms and conditions that the Prophet Muhammad (PBUH) stipulated to the Christians of his time are listed" (El-Wakil 2016). These may be summarized as follows:

1. "The Muslims would protect the churches and monasteries of the Christians. They would not demolish any church property either to build mosques or to build houses for the Muslims;"
2. "All ecclesiastical property of the Christians would be exempt from every tax;"
3. "No ecclesiastical authority would ever be forced by the Muslims to abandon his post;"
4. "No Christian would ever be forced by the Muslims to become a convert to Islam;"
5. "If a Christian woman married a Muslim, she would have full freedom to follow her own religion" (El-Wakil 2016).

should clarify this point. Consider, for instance, the following text of the Holy Qur'an: "Then, when the sacred months have passed, slay the idolaters, wherever you find them, and take them captive and besiege them and prepare for them each ambush" (The Holy Qur'an, 9: 5). This verse does not contain a general injunction for all times and all ages. Rather, it was a specific injunction[7] directed at a particular group of people in the time of the Prophet Muhammad (PBUH). Moreover, if the verse is read in conjunction with verses before and after it (The Holy Qur'an, 9: 5), it becomes clear that these verses addressed the pagan of Arabs, who persecuted early Muslims with constant hostilities and attempted to expel Muslims and revert them to paganism (At-Tabari 2001). Muslims were also ordered to treat Arab pagans in the same way that they themselves treated the Muslims. Yet, some academics have made an incorrect generalization based on this verse, arguing that Islam incites the murder of non-Muslims. They argue that this verse, "Slay the idolaters or Kill the polytheists", abrogates all other verses of the Qur'an that deal with non-Muslims (Haleem 2018). This incorrect generalization has led to a negative perception of Islam and Muslims across the world. Many verses of the Qur'an speak about inter-communal relationships. We should collectively read all of those verses when formulating any concepts about Islamic views on international relationships between nations. However, some radical Muslim groups do not read the Holy Qur'an's verses in context, and consequently reach the wrong conclusions. Muslim extremists always adhere to literalism in Islamic texts. They tend to only focus on the words used in Islamic texts and therefore fail to appreciate changing social conditions and the inner meanings and dimensions of these texts. For instance, when they read a verse such as "Do not take unbelievers as your friends" (The Holy Qur'an, 4: 144), they take its literal meaning without considering its inner meaning or implications. There are many kinds of unbelievers. Humanist unbelievers wish to get on well with Muslims, as do many innocent unbelievers who have not yet learnt about the teachings of Islam. Unless we differentiate between these people, it would be wrong to perceive that every unbeliever is the enemy of Muslims.

Furthermore, today, a crucial factor must be the development of mutual respect and the reinforcement and enhancement of the relationships between multi-religious believers (Abdullah et al. 2016). Moreover, Rahman and Khambali (2013) claim that individuals ought to respect religious doctrines and respect believers of their respective religions. Therefore, in this context, this mutual respect belies that every religious adherent, whether Buddhist, Muslim, Christian, or Hindu must respect one another, particularly in terms of faith, doctrines, festivals, and religious teachings (Talib et al. 2014a). The values of cooperation, mutual respect, understanding, goodwill, and tolerance are substantial elements that must be practiced in order to survive in a religious and multi-racial society.

When we threaten to burn the sacred scriptures of other religions, we are fueling conflict and hatred. When devoid of discussion and dialogue, there can be no cooperation or understanding. The deadlock of interreligious conversation is caused by the fact that every religion asserts that it possesses absolute truth, and that no truth exists beyond itself. However, victors are not required in every race. One ought to pardon others when it is conceivable, since one backward step creates a wider path in front of oneself. It is stated in the Bible that "if someone strikes you on the right cheek, turn to him the other cheek". The Earth's disagreements could be halved if we practiced tolerance to the fullest possible extent. Living together would be much easier if religions were less exclusive and more inclusive, and we should accept our social responsibilities collectively in order to encourage religious harmony in society. When every religion steps forward and accepts its responsibilities, then its effect will increase exponentially. A great scholar from ancient China, Xunzi, stated that "Harmony gives rise to unity; unity gives rise to strength. When combining strengths, we gain power, and with this power we conquer" (Wang 2013).

[7] "Then, when the sacred months have passed, slay the idolaters, wherever you find them, and take them captive and besiege them and prepare for them each ambush" (The Holy Qur'an, 9: 5).

Mutual trust and respect among the various religious groups could be created by the experience of working together and sharing responsibilities. To encourage religious harmony, we should resist using religion for cruel intentions. Historically speaking, there have always been people, factions, and groups who try to abuse faith for negative purposes. All religions ought to safeguard the purity of faith and restore religion's true face in order to eradicate any room for wrongdoing by individuals or groups. Likewise, we ought to oppose and censure the usage of religion as a banner in order to give sacred ground to differences. To encourage religious concordance, we must protect against religious fanaticism and extremism. Every religion pursues peace, advocates universal love, preaches goodness, and opposes violence. However, when individuals deviate from the correct path, they can become vulnerable to fanaticism and bigotry and ultimately drawn into fanaticism. The provocation of animosity and terrorist attacks being carried under the flags of religion are incredibly devastating and endanger the entire world. Moreover, all religions should utilize their teachings and carry forth compassion, love, restraint, and moderation.

5. The Initiatives Undertaken in Pakistan

Likewise, acknowledging the various religious foundations in a multi-religious society is vital for guaranteeing solidarity and harmony in a nation (Talib et al. 2014b). For instance, if the majority of the Muslim population welcomed various religious factions. like Hindus, Christians, and Buddhists, this would reinforce inter-religious relationships. Moreover, recognizing and welcoming religious diversity must be considered a necessary factor for the Pakistani community (Abdullah et al. 2016).

To preserve inter-religious harmony, Pakistan's government can play a significant role by implementing numerous endeavors and strategies. Thus, the government implemented various activities, policies, and programs to guarantee all of Pakistani society with various religious and ethnic backgrounds the opportunity to socialize with one another. Since the last decade, the protection of social harmony has become the state's national agenda. The Supreme Court of Pakistan ordered the Government of Pakistan to create a National Council for Minorities' Rights. It was recommended that a National Council for minorities' rights be established, under the Supreme Court of Pakistan's Judgement under Para (IV). The function of the National Council for minorities should be to *inter alia* monitor the practical implementations of constitutional rights and protections provided to minorities under the Constitution of Pakistan. The Council would also require the structuring of policy proposals in order to preserve and protect the rights of minorities by the Federal and Provincial Government (Supreme Court of Pakistan: Original Jurisdiction 2014).

Unfortunately, serious consideration has not been given to this significant initiative until 2018. However, the election campaign of the political Party "Pakistan Tehrik-e-Insaf" introduced, in their manifesto, a promise to establish a "legally empowered, well resourced, independent National Commission on Minorities, followed by provincial Commissions/Departments" (Akhtar 2020). Despite those pledges, however, no autonomous and independent minority commission has been established. In response to the lack of implementation of the Supreme Court's directive and order, on 8 January 2019, the Supreme Court of Pakistan appointed Dr. Shoaib Suddle to lead this commission. The committee aimed to "take all necessary steps to execute" the verdict passed by the Ex-Chief Justice Tassaduq Hussain Jillani on 19th June 2014, and provided the following seven directions to the Government:

(a) "Develop appropriate curricula at school and college levels of education to promote religious harmony and social tolerance.
(b) Constitute a task force at the federal level for developing a strategy for promoting religious tolerance
(c) Curb hate speech in social media
(d) Constitute a national council for minorities' rights
(e) Establish a special police force with professional training to protect the places of worship of minorities

(f) Ensure enforcement, at Federal and Provincial levels, of the relevant policy directives regarding quotas for minorities in all services
(g) Prompt action, including registration of criminal cases, whenever constitutional rights of religious minorities are violated, or their places of worship are desecrated" (Rehman 2019).

It is necessary to note that, in maintaining interreligious ties, religious harmony is essential. The government attempts to maintain a harmonious community and, for this purpose, a National Narrative (Paigham e Pakistan) for Peaceful and Moderate Pakistani Society based on Islamic Principles was presented under the supervision of government authorities on 16 January 2018 in Islamabad. At the launching ceremony of this National Narrative, the Ex-President of Pakistan, Mamnoon Hussain, said:

"The national counter-terrorism narrative would help eradicate terrorism and prove instrumental in reforming the people who lost their path due to negative propaganda of aberrant elements".

Aayesha Rafiq (2019), referring to Paigham e Pakistan, stated that:

"It is a national narrative manifested into action at every level for shaping out the local events to counter the negative impacts of so-called terrorism or violent radicalization in the name of Islam".

Since 2018, Paigham-e-Pakistan has been fighting to end religious extremism by organizing workshops, seminars and conferences in academic institutions, colleges and universities in order to promote religious harmony and unity in diversity. The Paigham-e-Pakistan Centre for Peace and Reconciliation Studies issued a fatwa (verdict) from more than 1800 Pakistani religious scholars in January 2019, condemning suicide attacks, armed uprisings, and acts of terrorism in the name of Sharia.

"The Paigham-e-Pakistan narrative talks about national integration which is achieved through a process of national cohesion, stability, prosperity, strength and feeling of being united as a nation, an essential prerequisite for the survival of a country" (Ibid.).

We also cannot ignore the role of the Christian Study Centers Rawalpindi (CSC), Pakistan. The CSC was established in 1967 as an extension of the Henry Martyn Institute (HMI, Hyderabad, India) to promote interfaith dialogue, harmony, and good relationships among the followers of different faiths in Pakistan (Uzmā and 'Ashar 2008). The Christian Study Centre Rawalpindi provides great services and contributions to interfaith dialogue, social harmony, and peaceful coexistence in Pakistan (Saeed 2017). It would be instructive to mention here that, due to these efforts, the Pakistani government has started to provide armed forces for the protection of temples and churches in Pakistan from extremists. In Lahore, the Forman Christian College and University are run by Christians, and many Christians from all over Pakistan go there for education. These Christian institutions are run freely, without interference from government or any other segment of society (Khalid and Anwar 2018).

To promote tolerance, moderation, and minority rights, interfaith dialogue and sectarian harmony have been persistently called for by the government at a senior level (Pakistan International Religious Freedom Report 2019). Meetings were held where religious tolerance issues, interfaith dialogue, religious liberty were discussed, which were attended and hosted by embassy officers alongside government officials, leaders of all religions and faiths, and non-government organizations. Embassy officials also explored these groups for the development of programs and projects to promote religious tolerance (Ibid.).

In Pakistan, the administration, policymakers, and numerous passionate individuals are doing everything they can to help religious minorities address the challenges described in this paper. Religious segregation has been an effective way in which the religious and political elite in Pakistan can gain more power, and leaders of political and religious parties have used religion to this end, focusing on "divide and rule" and discouraging the viewpoint of "unity in diversity". The concept of religious segregation has become a part of Pakistan's culture and a great source of promoting violence against non-Muslims. Extremist groups have accomplished their brainwashing in an incredibly comprehensive

way, particularly of the students of *madras*ahs (the religious schools), leading them to believe that, other than Muslims, all are infidels and enemies of Islam and Muslims (Ahmar 2010). This promotes extremism by using jihadist ideology to motivate the followers of extremist groups to kill people of other religions in the name of God. As a result, it is imperative that any use of religion for ill purposes is opposed. Likewise, we also ought to oppose and censure the usage of religion as a banner to give sacred ground to conflicts. To encourage religious harmony, we must protect against religious fanaticism and extremism. The incitement of hatred or even terrorist activities under the banner of religion is destructive and is a threat to the world.

6. Conclusions

Pakistan is blessed with the presence of many major world religions. Pakistan's varied cultural and religious heritage beautifies its multicultural history, and should not lead to communal and religious conflicts. Unfortunately, tolerance for religious minorities is lacking in Pakistan today. Pakistan's situation stands in stark contrast with the plural vision of a tolerant Pakistan articulated by Muhammad Ali Jinnah at the state's founding. Minorities are facing exploitation by extremist groups, and some segments of society show hatred towards them, excluding religious minorities from mainstream society simply because of their religion. To do away with this situation, there is an urgent need to educate new generations in the country that both Islam and the national Constitution seek to treat religious minorities with justice and fairness. Each person who lives in any multi-religious society must accept and understand religious diversity. Understanding other religious groups' faith and teachings could encourage an individual to accept and respect other religious beliefs. The freedom of practicing religion is the fundamental right of humanity, regardless of whether a person is Muslim or non-Muslim, and must not be ignored in any society or country.

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References

Abdullah, Muhammad Ridhuan Tony Lim, M. Nuri Al-Amin, Atifah Yusoff, Azizan Baharuddin, Faizal Abdul Khir, and Ahmad Tarmizi Talib. 2016. Socio-religious harmony index instrument indicators for Malaysia. *Journal of Al-Tamaddun* 11: 29–44. [CrossRef]

Abu Yusuf, Yaʿqūb. 1999. *Kitab al-Kharaj*. Beirut: Dār al-al kutub al-ʿilmmiyya, pp. 72–77.

Affolter, Friedrich W. 2007. Resisting educational exclusion: The Baha'i Institute of Higher Education in Iran. *Diaspora, Indigenous, and Minority Education* 1: 65–77.

Ahmad, bin Hanbal. 1938. *Al-Musnad*. Beirut: Al-Maktab Al-Islami, Lebnon, p. 411.

Ahmar, Moonis. 2010. Sectarian Conflict in Pakistan: Some Lessons from Irish Experience. Available online: http://ipripak.org/journal/winter2010/Article3.pdf (accessed on 19 September 2020).

Ahmed, Ziauddin, and Ziauddin Ahmad. 1975. The concept of Jizya in early Islam. *Islamic Studies* 14: 293–305.

Akhtar, Shakil, III. 2020. Political Agenda of Imran Khan Government: A Content Analysis of Speeches. *Al-Qalam* 25: 289–308.

Al-Tabrani. n.d. *al-Muajam al-Kabeer*. Beirut: Dār al-Kutub al-'Ilmīyyah, Hadith No: 10033.

At-Tabari. 2001. *Jamih al-Bayan an Tawil al-Quran, Dār al-Kutub al-'Ilmīyyah*. Beirut: Lebnon.

Barrett, David B., G. T. Kurian, and T. M. Johnson. 2000. *World Christian Encyclopedia*. Oxford: Oxford University Press, vol. 3.

Bar-Tal, Daniel, and Yona Teichman. 2005. *Stereotypes and Prejudice in Conflict: Representations of Arabs in Israeli Jewish Society*. Cambridge: Cambridge University Press, p. 71.

BBC News. 2001. Analysis: Pakistan's Christian Minority. *BBC News*. October 29. Available online: https://www.bbc.com/news/world-asia-35910331 (accessed on 12 September 2019).

Bécares, Laia, and Naomi Priest. 2015. Understanding the influence of race/ethnicity, gender, and class on inequalities in academic and non-academic outcomes among eighth-grade students: Findings from an intersectionality approach. *PLoS ONE* 10: e0141363. [CrossRef]

Bhattacharya, Sanchita. 2018. Internal Conflicts in Pakistan. In *Emerging Conflicts and Regional Security in South Asia*. Edited by Pramod Jaiswal. New Delhi: Adroit Publisher, pp. 83–98.
Bureau of Democracy Human Rights and Labor. 2006. International Religious Freedom Report 2006. Available online: http://www.state.gov/j/drl/rls/irf/2006/71443.html (accessed on 4 March 2013).
Christen, T. Joanssen. 1981. Towards Standardization of a Conceptual Scheme for Minority Group Research. *Ethnicity* 8: 121.
Congressional Research Service. 2008. Iran: Ethnic and religious minorities. Available online: www.fas.orgsgpCRSMideast1.pdf (accessed on 18 July 2013).
Corbridge, Stuart, and John Harriss. 2013. *Reinventing India: Liberalization, Hindu Nationalism and Popular Democracy*. Hoboken: John Wiley & Sons.
Curtis, Lisa. 2016. Religious Freedom in Pakistan: Glimmers of Light on a Darkening Horizon. *The Review of Faith & International Affairs* 14: 23–30. [CrossRef]
Dawn.com. 2013. Dozens of Houses Torched as Mob Attacks Lahore Christian Locality. Available online: http://www.dawn.com/news/791408/mob-attacks-Christian-neighbourhood-in-Lahore (accessed on 9 March 2020).
El-Wakil, Ahmed. 2016. The Prophet's Treaty with the Christians of Najran: An Analytical Study to Determine the Authenticity of the Covenants. *Journal of Islamic Studies* 27: 273–354. [CrossRef]
Faruqi, Mariam. 2011. *A Question of Faith*. Islamabad: Jinnah Institute.
Fouzia, Naveed, Maryam Munir, and Yasir Saeed. 2014. Unveiling the Situation of Religious Minorities: A Case Study of Marginalized Groups Living in Lahore. *International Journal of Asian Social Science* 4: 41–50.
Glenn, H. Patrick. 2007. *Legal Traditions of the World*. Oxford: Oxford University Press, pp. 218–19.
Gravers, Mikael. 2015. Anti-Muslim Buddhist nationalism in Burma and Sri Lanka: Religious violence and globalized imaginaries of endangered identities. *Contemporary Buddhism* 16: 1–27. [CrossRef]
Gregory, Shaun. 2012. Under the shadow of Islam: The plight of the Christian minority in Pakistan. *Contemporary South Asia* 20: 195–212. [CrossRef]
Gregory, Shaun, and Simon R. Valentine. 2009. *Pakistan: The Situation of Religious Minorities*. United Nations High Commissioner for Refugees' report. Writenet: UK.
Haleem, MAS Abdel. 2018. The Role of Context in Interpreting and Translating the Qur'an. *Journal of Qur'anic Studies* 20: 47–66. [CrossRef]
Hamidullah, Muhammad. 1987. *Muslim Conduct of State*. Lahore: Noor sons Publishers.
Hinnells, John R. 2005. *The Zoroastrian Diaspora: Religion and Migration*. Oxford: Oxford University Press.
IHH, I. Y. V. 2012. Arakan Report 2012. Available online: http://www.missionislam.com/conissues/books/fogotmuslimburma.pdf (accessed on 22 April 2013).
India: International Religious Freedom Report. 2019. Available online: https://www.state.gov/wp-content/uploads/2020/06/INDIA.pdf (accessed on 29 September 2020).
Ispahani, Farahnaz. 2015. *Purifying the Land of the Pure: Pakistan's Religious Minorities*. New Delhi: Harper Collins.
Jinnah, Ali. 2013. *Jinnah Speeches as Governor-General of Pakistan, 1947–1948*. Lahore: Sang-e-Meel Publications.
Khalid, Iram, and Maqbool Anwar. 2018. Minorities under Constitution(s) of Pakistan. *Journal of the Research Society of Pakistan* 55: 51–62.
Lewis, Bernard. 1984. *The Jews of Islam*. Princeton: Princeton University Press, pp. 10–20. ISBN 978-0-691-00807-3.
Madelung, Wilferd. 1997. *The Succession to Muhammad: A Study of the Early Caliphate*. Cambridge: Cambridge University Press.
Mahmud, Tayyab. 1995. Freedom of Religion & (and) Religious Minorities in Pakistan: A Study of Judicial Practice. *Fordham Int'l LJ* 19: 40.
Malik, Iftikhar H. 2002. *Religious Minorities in Pakistan*. London: Minority Rights Group International, vol. 6.
Manchanda, Rita. 2009. *Living on the Margin*. Kathmandu: European Commission.
Marzoli, Riccardo. 2015. The Protection of Human Rights of Rohingya in Myanmar: The Role of the International Community. Master's thesis, LUISS Guido Carli, Roma, Italy; pp. 144–45.
Minhas, Majeed Khan. 2013. US Foreign Policy and the Future of democracy and Religious Freedom in Pakistan. *The Review of Faith & International Affairs* 11: 84–86. [CrossRef]
Minority Rights Group International. 2013. *MRG Condemns Attack on Christians in Pakistan and Calls for Increased Protection of Minorities in the Country*. September 23. Available online: https://www.refworld.org/publisher,MRGI,,,50ffbce5799,,0.html (accessed on 17 May 2014).
Misra, Amalendu. 2015. Life in brackets: Minority Christians and hegemonic violence in Pakistan. *International Journal on Minority and Group Rights* 22: 157–81. [CrossRef]
Mohanty, Ajit. 2010. Languages, inequality and marginalization: Implications of the double divide in Indian multilingualism. *International Journal of the Sociology of Language* 2010: 131–54. [CrossRef]
Mohsin, Sheikh. 2013. Tackling religious intolerance and violence in Pakistan. *CNN*. September 24, p. 8. Available online: http://www.cnn.com/2013/09/24/world/asia/pakistan-christians-mohsin/ (accessed on 2 September 2014).
Musferah, Mehfooz, and Ahmad Furqan. 2018. Significance Of Tolerance in Revealed Religion & Indispensability of Inter-Faith Dialogue in Present. *The Scholar* 4: 57–80.
Osuri, Goldie. 2013. *Religious Freedom in India: Sovereignty and (Anti) Conversion*. Abingdon-on-Thames: Routledge, vol. 60.

Population by Religion', 2017 Census, Pakistan Bureau of Statistics. Available online: http://www.pbs.gov.pk/sites/default/files//tables/POPULATION%20BY%20RELIGION.pdf (accessed on 19 October 2020).
Pakistan International Religious Freedom Report. 2019. Available online: https://www.state.gov/wp-content/uploads/2020/05/PAKISTAN-2019.pdf (accessed on 27 September 2020).
Pakistan Security Report. 2018. Available online: https://www.pakpips.com/article/book/pakistan-security-report-2018 (accessed on 19 September 2020).
Parliamentary Human Rights Group. 2010. Report of the PHRG Fact-Finding Mission to Pakistan to Examine the Human Rights Situation of the Ahmadiyya Community. Available online: www.refworld.org/pdfid/4cc7ea9c2.pdf (accessed on 13 April 2013).
Perera, John. 2008. Pakistan's Buddhist Gandhara Heritage, Asian Tribune, 18 June 2008. Available online: http://www.asiantribune.com/?q=node/11832 (accessed on 19 May 2019).
Pew Research: Religion and Public Life Project, Religious Hostilities Reach Six-Year High. 2014. January 14. Available online: https://www.pewforum.org/2014/01/14/religious-hostilities-reach-six-year-high/ (accessed on 29 September 2020).
Rafiq, Aayesha. 2019. National Narrative for Peaceful and Moderate Pakistani Society Based on Islamic Principles. *Research Journal al-Basirah* 7: 13–22.
Rahman, Nur Farhana Abdul, and Khadijah Mohd Khambali. 2013. Religious tolerance in Malaysia: Problems and challenges. *International Journal of Islamic Thought* 3: 81. [CrossRef]
Rehman, Javaid. 2019. Religious Minorities of Pakistan: Report of a Parliamentary Visit. pp. 1–91. Available online: https://appgfreedomofreligionorbelief.org/media/190918-Full-Report-Religious-Minorities-of-Pakistan-Report-of-a-Parliamentary-Visit.pdf (accessed on 19 October 2020).
Saeed, Riaz Ahmad. 2017. Muslim-Christian Dialogue from Pakistani Perspective: Evaluation of the Contribution of Christian Study Center. *Journal of Islamic and Religious Studies* 47: 1–18. [CrossRef]
Saiya, Nilay, and Stuti Manchanda. 2020. Anti-conversion laws and violent Christian persecution in the states of India: A quantitative analysis. *Ethnicities* 20: 587–607. [CrossRef]
Sayyed, Amer. Ali. n.d.a. *Rooh-ul- Islam*. Karachi: Dār al-ashat, p. 462.
Sayyed, Amer. Ali. n.d.b. *A Restatement of the History of Islam and Muslims*. Stanmore: World Federation of KSI Muslim Communities, Available online: http://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-ashgar-razwy/expeditiontabuk (accessed on 18 January 2015).
Shibli, Naumani. 1985. *Seert-ul-Nabi*. Karachi: Dar al-asahat, p. 287.
Smith, Martin. 1996. *The Muslim Rohingyas of Burma. Rohingya Reader II*. Amsterdam: Burma Centrum Nederland, p. 10.
Sookhdeo, Patrick. 2002. *A People Betrayed: The Impact of Islamization on the Christian Community in Pakistan*. Fearn: Isaac Books.
South Asian Terrorism Portal, Sectarian Violence in Pakistan. 2020. Available online: www.satp.org/satporgtp/countries/Pakistan/database/sect-killing.htm (accessed on 1 November 2020).
Supreme Court of Pakistan (Original Jurisdiction) 19.06.2014 PLD 2014 SC 699 para 37 (IV). Available online: https://www.supremecourt.gov.pk/downloads_judgements/c.a._1772_2008.pdf (accessed on 29 September 2020).
Swett, Katrina, and Marry Ann Glendon. 2015. Pakistan must protect religious freedom. National Interest. Available online: http://www.uscirf.gov/news-room/op-eds/the-national-interest-pakistan-must-protect-religious-freedom (accessed on 3 June 2020).
Talib, Ahmad Tarmizi, Sarjit Gill, and Muhammad Rahimi Ramli. 2014a. Pengaruh Agama Terhadap Identiti Politik: Kajian Kes Belia di Malaysia. Paper presented at the Seminar on National Resilience: Diversity in Creating Unity Premiera Hotel, Kuala Lumpur, Malaysia, 20 November 2014.
Talib, Ahmad Tarmizi, Muhammad Isa, Sarjit Gill, Zaid Ahmad, Jayum Jawan, and Abd Hakim Mohad. 2014b. Persepsi terhadap toleransi sosio agama di Sabah dan Sarawak. Paper presented at the Seminar Antarabangsa Dakwah & Etnik 2014: Da'wah & Ethnicity: Multidisciplinary Perspective, Pusat Kajian Dakwah Orang Asli dan Pribumi, UKM, Bangi, Selangor, Malaysia, 20 November 2014.
The Constitutional (2nd Amendment) Act 1974, Act XLIX 1974. 1974. Available online: http://www.pakistani.org/pakistan/constitution/amendments/2amendment.html (accessed on 12 August 2020).
The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights reprinted in 7 HUM. Rrs. Q. 3, 12. 1985. Available online: https://www.icj.org/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights (accessed on 29 May 2019).
Thornberry, Patrick. 1980. Is There a Phoenix in the Ashes? *International Law, and Minority Rights. Tex. INT'l LJ* 15: 421.
U.S. Commission on International Religious Freedom. 2015. Annual Report, "Pakistan Chapter,". pp. 109–13. Available online: http://www.uscirf.gov/sites/default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf (accessed on 21 June 2019).
United States, Department of State. 2004. International Religious Freedom Report 2004: Pakistan. Available online: https://www.state.gov/international-religious-freedom-reports (accessed on 9 June 2019).
Universal Declaration of Human Rights. 1948. Art. 18, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) [hereinafter Universal Declaration].
USCIRF. 2011. *United States Commission on International Religious Freedom—Annual Report 2011*; Washington: USCIRF. Available online: https://www.uscirf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf (accessed on 2 July 2019).
USCIRF. 2013. *United States Commission on International Religious Freedom—Annual Report 2013*. Washington: USCIRF.

USCIRF. 2019. *Annual Report on Religious Freedom (Covering 2018)*. Washington: USCIRF, pp. 72–79.
Uzmā, Tāhir, and Jāvīd ʻAshar. 2008. *A Journey from Dialogue to Practice*. Rawalpindi: CSC, p. 1.
Walia, Marayada. 2003. May Be in Danger, but Sikhs Are Special in Pakistan, The Tribune [Chandigarh], 12 April 2003. Available online: http://www.tribuneindia.com/2003/20030412/windows/main1.htm (accessed on 16 May 2009).
Wang, Zuoʻan. 2013. Religious harmony: A fresh concept in the age of globalization. *Procedia-Social and Behavioral Sciences* 77: 210–13.

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Sufi and Bhakti Performers and Followers at the Margins of the Global South: Communication Strategies to Negotiate Situated Adversities

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Abstract: Throughout the globe (particularly in the global South), religious orthodoxy and their discriminatory intolerances are negatively impacting religious freedom of underserved populations, particularly those who practice/follow alternate spiritual praxis, like the Sufi and Bhakti performers from rural and geographically remote spaces of South Asia. Hindu and Islamic fundamentalist discourses/doctrines are propagating their conservative religious agendas and thereby creating tensions and separatism across the subcontinent. Such religious extremism is responsible for the threatening and even murdering of nonsectarian torchbearers, and their free thoughts. This study focused on various alternate communication strategies espoused by Sufi and bhakti performers and followers in order to negotiate and overcome their marginalized existence as well as to promote the plurality of voices and values in the society. This article identified the following communication strategies—innovative usages of language of inversion or enigmatic language; strategic camouflaging of authors'/writers' identity, and intergenerational communication of discourses and spiritual values to ensure freedom and survival of their traditions.

Keywords: Sufi; bhakti; South Asia; enigmatic language; performance

1. Introduction

Throughout the globe, religious dogma and orthodoxies are negatively affecting, and even sometimes destroying, religious freedom of underserved and marginalized populations, particularly those who practice and follow alternate spiritual praxis (Mamoon 2008; Robinson 2001). Rural and geographically remote spaces of South Asia are not an exception. In various parts of India, Pakistan, and Bangladesh, several Islamic and Hindu fundamentalist groups are pushing their rigid religious agendas and thereby creating tensions and separatism across the subcontinent (Siddiqui 2016; Umashankar 2012). For instance, *jihadis* from Islamic communities, *hindutvadis* from right-wing Hindu-dominated societies are active in ripping apart the fundamental fabric and bonding of the society as well as the peaceful and harmonious co-existence by propagating religious and ideological intolerance (Das 2014; Zecchini 2014).

Such acts of religious extremism are responsible for threatening and murdering nonsectarian torchbearers as well as their free thoughts and open-mindedness (Karolia 2011). For example, in south Asia many Sufi and (*nirguni*) Bhakti (S&B) singers (and other liberal artists/performers) have been murdered in the last few years; including Amjad Sabri of Pakistan (2016), Ahmad Khan of India (2017), and Mohammed Shahidulla of Bangladesh (2016). Apart from that, several performers at the margins are experiencing threats/*fatwa* and abusive behaviors from orthodox religious and/or sociopolitical groups and institutions (Jha 2014). In other words, through discursive and physical violence, mainstream religious practices are trying to kill, co-opt, canonize, and dilute/distort alternate

spiritual discourses; in this way, the dominant religious forces are attempting to weakening and marginalize (if not obliterate) S&B practices and activisms (Manuel 2008).

By saying 'bhakti', this paper primarily focuses on *nirgun* bhakti. Unlike *sagun* bhakti followers (who perform external forms of worshipping and rituals), *nirgun* bhakti followers love formless, all-encompassing almighty; in their journey towards reflexivity and knowledge, they reject the doctrine of orthodox religions. Mentioning Lorenzen's work, (Bahuguna 2009) opined, "*saguna* Bhakti was elite, hegemonic and Brahmanical" (p. 6), whereas *nirgun* bhakti was anti-dominant, egalitarian and was practiced by underserved and lower-caste populations. Some medieval *nirguni* saints, namely Kabir, Dadu, and Namdev, have crossed social, cultural, religious frontiers, and have followers among both higher- and lower-caste populations as well as among Hindus and Muslims. *Nirguni* saints' teachings, wisdom, and memories still serve as inspiration and guidance to everyday negotiations of many 'backward-caste' and marginalized populations. However, consistent marginalization of Sufi and bhakti followers by British colonizers and upper-caste (including Brahmanical) stakeholders force many followers to adopt some elements of mainstream religions. For instance, several medieval *nirguni* saints now portrayed as divine incarnations by their followers and many of the followers (and their groups) have created mutually competing organizational entities. Again, scholars have argued that Sufi and bhakti poets and saints, over the last few centuries, influenced each other by exchanging ideas and philosophies (e.g., between *Chistiyya* Sufis and *nirguni* yogis). Consequently, S&B followers share some commonalities; for instance, they pay enormous respect and gratitude to their gurus/*murshids*/*pirs*, and they value qualities like diversity and inclusivity irrespective of caste, creed, and religion.

For centuries, S&B poets and singers are painstakingly playing crucial roles in creating a more humane and religiously tolerant society (Saikia 2008), in spite of active opposition and oppression from the dominant religious and sociocultural institutions (Amandeep 2010; Grover 2015). While their freedom, voices, and discourses were continually erased and delegitimized in the discursive spaces, the S&B artists and their followers learned over time to adopt and practice alternate communication strategies for their survival and spiritual sustenance (Novetzke and Patton 2008). This paper discusses various alternate communication strategies espoused by S&B performers and followers in order to negotiate their oppressed/marginalized existence as well as to promote the plurality of voices and values in society. This article discusses the following communication strategies:

- creative usage of language of inversion or enigmatic language;
- strategic camouflage of writers'/performers' identities and discourses from the mainstream;
- intergenerational communication of discourses and values to ensure survival of cultural traditions.

2. Sufi and Bhakti Practices: Sociohistorical Context

Over the centuries, in South Asia, persistent tensions and conflicts between dogmatic and alternate religio-spiritual populations are a reality (Mahbub-ul-Alam et al. 2014; Agrawal 2010). Being in command, dominant sociopolitical groups and religious institutions constantly tried to control and abuse S&B artists and followers (Hess 2015). For instance, in the western part of India as well as in Pakistan, Sufi artists faced death threats and active opposition from orthodox Muslim communities and fundamentalists (Mamoon 2008; Grover 2015). Similarly, in Eastern India and in Bangladesh, bauls[1] and fakirs experienced disrespectful behaviors, abusive criticism and even *fatwas* (or equivalent) from both Muslim and Hindu institutions (and their followers) (Jha 2014; Sengupta 2015). Thus, owing

[1] Bauls, the wandering minstrels, are one of the socioreligiously marginalized cultural populations from rural Bengal (from both India and Bangladesh). The poets, performers, and followers who belong to Hindu and Muslim societies are called bauls and fakirs, respectively; but in general, the term baul is used to represent bauls, Fakirs, and practitioners of similar spiritual traditions. Confluence of three spiritual traditions—*Bajrayana* Buddhism, Hindu *Vaishnavism*, Islamic *Marifat*—mark the foundation of their epistemology.

to discursive and structural oppressions, the S&B practitioners, being members of lower socioeconomic strata of the society, experience both material and communicative marginalization (Dutta 2018).

According to hegemonic and die-hard religious leaders and organizations, these S&B practitioners and their followers are 'heretics' for not complying with the normative/classical religious canons, for their cult-like behaviors as well as for their infidel and rebellious nature (Grover 2015; Novetzke and Patton 2008). However, such claims of the mainstream religious institutions are intentional and distorted (Amandeep 2010); scholars have shown that S&B leaders were well versed in the prominent religious legacies, arguments, and philosophies practiced in South Asia and Middle East (Nasr 2007; Verma 2017). They further argue that the S&B practitioners and performers, over the centuries, mindfully studied and got inspired from seminal texts of several religions/orders, including *Sahajia Vaishnavism*, *Vajrayana Buddhism*, and Islamic (*Marifat*) Sufi traditions as well as from various local/indigenous religious practices of South Asia (Mondal 2015). Sociocultural and spiritual consciousness at the margins is foundational to S&B messages and communicative practices, which potentially cultivate polymorphic possibilities in resisting/challenging mainstream misrepresentations. Rooted in local contexts and praxis, S&B poets, practitioners, and their discourses carefully engaged with key philosophical debates and spiritual arguments. For instance, these poets and artists were cognizant about Buddhist philosophy of nirvana, Hindu '*darshan*'s (philosophical foundations) such as *karma*, *atma-jana* (self-realization), *kaivalya* (non-identification) and *samadhi* (experience of ultimate reality), and the stages/stations of Sufism including *Syariat*, *Tarikat*, and *Hakikat* (Mahbub-ul-Alam et al. 2014; Salomon 1995).

Historically, the S&B communities and their practices evolved from politico-economic crisis and the absence of religious freedom (Dasgupta 2005; Das 2014). The colonial oppression and exclusionary politics of *Brahminical* (and upper-caste Hindu) and Islamic society caused major social, political, religious, and economic uncertainty in the lives of the people of the lower-strata/section of society. Eventually, in responding to such crises, many so-called 'deviant' religio-spiritual sects emerged at the margins (Urban 2001). From the lens of the mainstream, those S&B practitioners are considered as misfits; they were portrayed as irreverent, madmen, and out-of-place populations (Zecchini 2014; Grover 2015). Scholars have argued that these conscious countercurrents that emerged from the marginalized section of the society primarily consisted of lower-caste communities. Communicative practices of the underprivileged spiritual communities and their discursive engagements essentially interrogate dominant social political and religious structures (Agrawal 2010; Mahbub-ul-Alam et al. 2014). In other words, when the hegemon intentionally and actively sought to erase such collective voices from the margins; the oppressed populations exerted their communicative agencies to ensure their freedom and survival, both physically and ideologically (Dutta 2018).

As living spiritual traditions of South Asia, *nirguni* bhakti cultural traditions (and the Sufis) discursively challenged social malpractices such as caste-related discriminations, and foregrounded love and harmony as inspiring forces of everyday life towards creating nonsectarian counter-hegemonic cultures (Mahbub-ul-Alam et al. 2014; Manuel 1996). These so-called outcasts and excluded cultural communities, who were primarily muted, and accustomed to a culture of silence, adopted communicative strategies that were exemplified by their spiritual gurus for centuries (Novetzke and Patton 2008; Van der Veer 1992). Such discursive responses often follow seemingly nonconfrontational communicative practices, which Scott (1985) termed as 'hidden transcripts'—the discursive responses that take place covertly and passively, i.e., not in public and beyond direct observation of dominant stakeholders (Mukharji 2012). Such communicative acts are oftentimes ambiguous, coded, nonhierarchical and informal in nature, where the marginalized populations are conceptualized as 'stubborn bedrock' of sociopolitical counter-currents.

One example of such communicative practices is innovative usages of enigmatic languages; such usages are termed differently in various parts of South Asia, some of the names are *ulat-bhasa* or

ulat-bashi (upside-down language/verse), *sandhya-bhasa*[2] (intentional/twilight language), *araler-bhasha* (veiled or screened language), and the languages for *ujan-sadhan* (reverse path) (Ferrari 2012; Lorea 2017). This paper uses a term 'enigmatic language' to capture and portray the essence of S&B followers' mindful/strategic usages of language in an ambiguous/hidden/esoteric or (intentionally) reverse/veiled way. Paradoxical and inverted usages of language and their dialectical dance between various contradictory concepts makes such discourses difficult to translate and/or interpret. Many times decoding such esoteric utterances yields multiple interpretations and yet largely remains elusive (Zecchini 2014). In other words, positioning such discourses at the critical juncture of apparently oppositional entities such as days and nights makes the language 'twilight' in nature (which is neither day nor night), but embodies characteristics of both lightness (knowledge) and darkness (ignorance) (Kumar 1983). Moreover, by camouflaging actual identities of writers and performers, the S&B communities, through the strong group-based actions, mobilize solidarity and communicate strategies to (a) protect in-group members and their spiritual freedom from the dominant threats and oppressions, and (b) challenged the conventional notion of authorship/'propriety' of literary creations (Karwoski 2012).

Again, the implications of the hegemonic abuses and discursive violence are often long term in nature, which structurally threaten the sustainability and survival of their cultural and religious freedom in many places of South Asia. S&B practitioners, through intergenerational communication, actively try to ensure the endurance of their intellectual and ideological traditions. While the research on overt discursive strategies and resistive communication has received some attention in culture and communication studies, covert or hidden (and camouflaged) communication strategies are under-researched, specifically in the underserved context of the Global South. A better understanding of such communicative practices would potentially prevent us from making blanket assumptions about marginalized populations and stereotyping them as inferior and agency-less. This paper, focusing on historical, religio-political and contextual realities, discusses disenfranchised cultural-communities' discursive strategies by interrogating dominant discriminations, contextual inequalities, and marginalization of S&B practitioners (Halualani et al. 2009; Shome and Hegde 2002).

3. Method

An extensive web search and literature search was conducted via internet to explore S&B-related texts. For mediated discourses such as songs, interviews, and documentaries, several media files (various formats of media files, primarily audio, and audio-visuals) were searched through internet search engines, video hosting platforms (e.g., YouTube, Vimeo) and web archives. Several key words used in the search were Sufi, Bhakti, Baul, Fakir, Jogi, Nath, etc. S&B songs and other discourses lately received attention from few urban elites and academicians in contemporary era; some of them made documentaries (e.g., Shabnam Virmani's Kabir project) and some enthusiasts regularly recorded and uploaded videos of S&B songs and related conversations in video-hosting platforms. A comprehensive search identified approximately 2000 songs, interviews, and documentaries. For this study, I focused attention on the songs and other discourses, which were about communicative strategies of the S&B practitioners specifically to negotiate situated adversities and to ensure sustainability of their traditions. After careful listening/watching, approximately 75 songs, interviews, and documentaries were selected for content analysis for this paper.

Academics, scholars, and freelance researchers prepared most of the online videos used in the paper. Interviewees' (e.g., S&B artists' and followers' and accomplished scholars' [with vast experiences]) voices were given priority while analyzing the data, and emphasis was given to those

[2] (Eliade 1970) argued that Haraprasad Shastri's translation of the term *sandhya-bhasa* as 'twilight' (or *sandha*) language was a potential error, and preferred 'aim at'/'having in view'/'intentional' language as an appropriate translation. On the other hand, (Staal 1975) noted that 'esoteric'/'secret' language would be a meaningful interpretation of the term.

words that interviewees themselves brought into the table to explain/describe their views. Most of the scholars and researchers involved in the video-production processes (as both interviewers and interviewees) were believers/admirers of *nirguni* bhakti and Sufi traditions. This paper closely and critically examined moments/instances of exclusive and/or sole emphasis on a particular organization/sants/panths (e.g., ekalavya, an organization viewed Kabir as inspiration vis-à-vis kabirpanthis of Dhamakhera [and of other centers] saw Kabir as divine incarnation). Again, mythological stories and/or unsupported claims with little or no historical basis were not paid much attention; moreover, this article never used any interpretive/axiological statements or summarization presented by the interviewers or filmmakers. In other words, this research sought to listen to the grounded voices to represent marginalized views and narratives.

First, the media discourses (i.e., songs, interviews. and documentaries) were translated into English and transcribed verbatim by the author, who is fluent in a number of Indian languages, primarily in Bengali, Hindi, and who understands local languages/dialects. To ensure the authenticity of the translation of local expressions, dialects, and vocabularies, local people and scholars of universities from north, central, western, and eastern India were consulted. Initial versions of transcripts were shown to several of the author's colleagues who were conversant in those Indian languages (Lincoln and Guba 1985). Disagreements were resolved by discussion with them, and further correction and transcription modifications were conducted based on consensus.

An approach based on grounded theory was employed for analyzing the data (Charmaz 2000). The discourses (e.g., lyrics of the songs and translated transcripts of conversations) were carefully examined and several categories/codes were created using open, axial, and selective coding process. Open coding was useful in identifying discrete concepts; these concepts were then labeled and sorted by using the constant comparison technique. This process helped to understand various contextual aspects (e.g., sociocultural and spiritual aspects) of S&B practices of South Asia. In this step, the data was examined sentence by sentence, and the process yielded several open codes. Axial coding was conducted after the open-coding process. In this stage, various discrete concepts were grouped, and relationships (e.g., causal and contextual connections within and among the initial open codes) were identified. This process helped to relate the conceptual categories with groups of similar/like phenomenon. Then, through the selective coding process, theoretical integration was accomplished. In this stage, by synthesizing and organizing the categories, theoretical inferences and conceptual underpinnings were integrated. As an outcome of the coding processes, four overarching themes emerged from the transcripts of songs: social/cultural realities, usage of enigmatic language, strategic camouflage of discourses, and intergenerational communication.

4. Discursive Practices at the Margins

4.1. Social/Cultural Reality

S&B artists and practitioners are ceaselessly experiencing dominant oppressions and intolerances from both Hindu and Muslim orthodoxies. According to Islamic orthodox authorities, Quran, Hadith, or other holy Islamic texts do not approve the act of performing songs (and dances) in public; therefore, such practices are considered as '*haram*' or committing sin, and as a violation of ideal Islamic behaviors. On the other hand, according to the Sufis, singing is inseparable from the praxis of Sufism. Singing to Sufis is not just a simplistic act of performance, but rather the discourses of songs are their sacred verses and a vehicle for communicating with their beloved. During a mediated interview, a contemporary Sufi practitioner from the Western part of India, Mukhtiyar Ali, commented, "they (religious fundamentalists) are the ones who have banned music, not the Allah. If the song was banned in this home of the Allah, he would not have made singers." By questioning mainstream religious practices, the Sufi followers legitimized alternate rationalities in the spaces of discursivity.

The situation for women practitioners is even worse; their participation in spiritual activities and performances in public is prohibited in most parts of South Asia. One female Sufi performer from West

Bengal, India, Sufia Begam, commented in an interview, "it is a great problem for the women in our Muslim society to sing. They (dominant religio-political institutions) do not even allow us to go out of our homes; they do not allow us to listen to any singing." Her words demonstrated how sociocultural orthodoxies restrained religious freedom of women at the margins in their everyday existence.

Similarly, being members of lower socioeconomic strata and "backward caste", and for being nonconformists to mainstream religious practices, many bhakti practitioners face threats of untouchability (primarily in the Hindu society because of normative disliking among orthodox *Brahminical* and upper-caste populations) in the contemporary society. A bhakti follower from Malwa, Madhya Pradesh shared his experience in the documentary 'Chalo Hamara Desh':

> Earlier if you went out carrying our tambura (a musical instrument), people would recoil and say, 'sprinkle water here!' The path has been polluted! They would keep away from us and not touch us! For untouchability, we the lower caste had no entry to house/temple.

Banishment of marginalized spiritual communities in the name of untouchability (and other forms of discrimination) is brought forth through voicing their experiences; such acts of foregrounding lived realities are precursors to dismantle the foundations of existing social ills.

In their practice, S&B practitioners discursively challenge and question mainstream religious and social norms; they pray to the Almighty in their own ways without following any established rituals and traditions. One Sufi singer from western India, in the documentary "Had Anahad," opined, "*Sufiana* breaks away from the Hadith[3]. . . . the *Qawwali* (a form of Sufi song) follows the holy Books but Sufi songs are not tied to a book. They speak only of the Master, who's one for all!" In similar tone, in another documentary "Kabira Khada Bazar Mein," one performer-scholar from Indore, India commented on the practices and approaches of accomplished spiritual masters such as Kabir,[4] "Kabir's vehicle is made of words or discourses. Kabir did not do any formal practice. He did not say to do yoga, pray, chant 'om'. He (Kabir) showed us how in our everyday life by connecting with other humans we can connect with the One." Thus, by fundamentally questioning mainstream practices (including scriptures, hymns, and pilgrimage) and performing alternate spirituality, they search for their god among human beings. The discursive journey of S&B practitioners can be characterized by their creative embracing of several communicative strategies, including the use of enigmatic language and camouflaging authorships/identities.

4.2. Usage of Enigmatic Language

A close analysis of the data revealed that S&B artists and practitioners at the margins often talk in a coded and esoteric language, i.e., in enigmatic language, primarily to protect their spiritual values and ideologies as well as their community of followers. Scholars have noted that usages of such 'languages of absurdity' (Kumar 1983) or veiled/upside-down language by S&B practitioners are often difficult to understand for the commoners because such languages embody contradictions and contrariness. Some examples of such usage are, 'in the river that is drowned in the boat,' and 'the oil oozing out of sand. In the documentary, 'Had-Anahad' an interviewer was asking about the meaning and usage of *ulat-bashi* (upside-down language/verse):

Interviewer: "What do these upside words mean? For example, the lotus is raining, the sky is drenched!"

Interviewee: "When it rains within, the body gets drenched. Our body is the sky. The lotus rains... the lotus is a flower inside our heart."

Interviewer: "Dada, where do you learn these songs?"

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[3] Hadith: It is a 'prophetic tradition,' a record of the words and actions Prophet Muhammad (PBUH). It is a major source of Islamic law and moral guidance.

[4] Kabir: An accomplished mystic poet and spiritual leader from medieval India.

Interviewee: "Me? Certainly not from England! Where else would I learn, but from here itself?! Lorea (2017) opined that oftentimes researchers experience difficulties to understand 'extremely multilayered and polysemic' alternate spiritual discourses. These discourses are not naïve expressions of spiritual wisdom; they are, on one hand, deeply grounded in profound philosophies, and spiritual pedagogy of South Asia and the Middle East, and on the other hand, strategically hide the core meaning and message from the uninitiated people and the dominant institutions. A renowned researcher of folk culture (including Ethnomusicology), and an admirer of Kabir, Kapil Tiwari, during a mediated interview, commented that for spiritual-preparedness, Kabir learned various philosophies, and religious arguments from Hindu, Buddhist as well as Islamic schools. In his words, "Kabir was drawing from the Sufis, from Islam, from the Upanishads, from the *Vaishnavs*, the *Jogis*, the *Kapaliks*, the *Tantriks*." Therefore, alternate spiritual utterances were not casual or whimsical communications; rather, they were representatives of core spiritual wisdoms and philosophical foundations of South Asia.

Maintaining spiritual secrecy as a discursive strategy is one of the characteristics of the enigmatic language. Oftentimes, S&B spiritual masters emphasize maintaining caution in communicating to uninitiated/naïve populations; who (commoners), according to them, might misinterpret/defeat the key purpose(s) of the message. A song, performed by Parvati Baul, is arguing about the secrecy and reverse usages of spiritual discourse:

> "Speak in hints by immersing in love,
> So that no one could guess,
> No one could hear,
> No one could know…
> … If you are headed north, be alert.
> Tell everybody that you are headed south.
> Lovers delight in this nectar's secret.
> What will a dry heart understand?"

The writer of the baul song (Gonsai Uttam Chand) is fully cognizant of the fact that messages of love are neither apolitical nor naïve; it has significant consequences in the social and personal lives of the practitioners/followers. Espousing the aforementioned discursive strategies, the songwriter warns the followers, and tries to prevent them from sharing the core message directly with outsiders; the writer urges that such messages should be shared through hints/codes, so that mainstream population should not be able to decode the message with ease. The baul composer is also talking about the necessity of a reverse path in communicating the message; e.g., the writer advises when you are going north you might strategically say that you are going south. The lyricist argues that the core message (or nectar's secret) is not for everyone (or uninitiated ones), only those who can love and understand the value of love have the right to enjoy the essence of love.

In the path of love, compassion, and emancipation, the S&B followers practice *sadhana* (spiritual striving) under intimate guidance of their gurus/murshids (masters). In their praxis of worshipping, S&B practitioners consciously maintain two aspects simultaneously—hidden and open. Such innovative usages of languages help them to communicate (with the followers and like-minded people), and at the same time hide their messages (from the commoners). In the documentary, "Songs of the Bards of Bengal: The Bauls and Fakirs," Dr. Sudhir Chakraborty, a scholar, commented,

> There is an inside-outside story to this culture. They call it '*zahir*' (open) and '*baltul*' (hidden). Main aim of their practices is to hide their *sadhana* from the public eye. They do not share it with outsiders. They speak in coded language among themselves. For example, a Sufi or baul makes different interpretations of traditional/religious texts than we do. This is a parallel tradition. It looks fine from outside, but they are distinct and different inside. They all wanted to keep their procedures of worship and secret practices hidden from the mainstream society. Therefore, their songs, rich in spiritual thoughts, have symbolic language, and allegorical meaning.

In addition, their thoughtful and esoteric interpretations of commonplace words and concepts are different from the mainstream conceptualizations. For instance, the words 'Allah' and '*Iswar*'/'*Bhagwan*' are generally understood as the representations of God by the Muslim and Hindu populations, respectively; but S&B artists and followers understand the words/concepts by going above and beyond the religious sectarianism or connotations. Dr. Chakraborty further added, "One thing must be clarified about them... They are indifferent to so-called "religion." They do not follow conventional norms of religion. To them, this is a way of life. When they utter *Devta* (God) or Allah, they do not mean the commonly understood icon of God. They refer to an internalized awareness."

Jha (2010) opined that the songs are their mantras/hymns performed in local languages, which is equivalent to chants/hymns. These songs come out of their own spiritual experiences; they use codes and layers to communicate to commoners as well as to the followers of spiritual paths. Sadhan Das Bairagya, a performer and a guru from Burdwan, West Bengal, while conversing in a mediated interview, explained,

> Consider any song, this song has been written focusing a topic right? Usually, the topic is a superfluous topic... has an outer meaning, and another is inner meaning. These are the two meanings. The commoners who are for the outer meaning... they hear the words in a light-hearted or superfluous way . . . like "*Golemale peerit koro na*" (Do not engage in love in a hurry and chaotic situation)... this is the superficial connotation. But the theory that is imbibed in this that-only the people who are *ontorongo* (Sensitive to subtlety) and are dealing with those *sadhana* or theories, only they will be able to go into it.

In other words, S&B practitioners and performers use their languages in several layers; in surface layer, they use catchy words and phrases to attract common audiences, whereas they use the deeper layers to talk about the intricate details and the complexity of *sadhana* and their spiritual experiences. Such usages are intimately tied to their practices of carefully crafting and mindful delivering of discourse, which is discussed in the next section.

4.3. Strategic Camouflage of Discourses

S&B artists/practitioners present their arguments in a seemingly nonconfrontational or casual way; while at the same time, deep commitment for their mission of communicating the message of love and harmony is also evident from their utterings. One example is the practices of Sufi practitioners and followers of rural Rajasthan, who demonstrate their deep involvement and immersion in everyday lives. In their locally based spiritual sessions, they welcome people from every faith and tradition. During the evening/late evening (when most people/commoners attend spiritual sessions), they listen or perform mainstream prayers or religious songs; but when most of the commoners go to bed, they begin to discuss Sufi and *nirguni* bhakti discourses. In the words of a Sufi performer, who participated in a mediated interview, "We have all-night song sessions here; in which both Hindus and Muslims participate. Until midnight, we will have songs of the Gods, Goddesses, *Hanumanji*, *Rama-Chandraji*. However, after midnight, it is only songs of the mystics. In addition, we participate in discussions. Like . . . One song and a discussion for two hours!" Their two-pronged approach, i.e., communicative silence/nonconfrontational reluctance towards institutional discourse/concerns (i.e., surface-level acceptance of mainstream religious songs during evening sessions) and deep immersion and involvement for studying and spreading S&B discourses are evident from their day-to-day praxis. Spiritual vocabularies rooted in S&B teachings provide them the opportunity to collectively discuss/explore the key messages, their philosophical nuances, as well as their relevance in contemporary contexts.

While studying the S&B discourses, many research scholars sought to learn the foundation of their liberal viewpoints, arguments, and implications. Particularly in this turbulent time of religious and sociopolitical conflicts, the lives and discourses of S&B leaders are particularly inspiring to wider academic communities. In a documentary 'Had Anhad: Journeys with Ram & Kabir', Fariduddin Ayaz,

a Pakistani Sufi (and bhakti) singer, shared his learning approach to the spiritual foundations of great Sufi/Bhakti saints, "You cannot get Kabir's knowledge from universities, scholars, or professors. For that, you will have to go to Kabir himself . . . . Kabir cannot be understood through information. You will have to enter the world of experience . . . . To have a spiritual experience it is not necessary to join a sect, go to the jungle, do yoga or do some *tantrik* practice." In other words, for S&B practitioners, it is the direct experience, introspection, reflexivity, and realization which matter the most. Similarly, in the aforementioned documentary, Prahlad Tipaniya, a bhakti singer from central India, commented, "in the world of the mystics . . . be it Kabir, Bulle Shah, Shah Hussain, Shah Bahu. They set aside religion and spoke of their personal experience. . . . They remove all supports of religion and speak directly." Therefore, for S&B practitioners, it is not the interpretation or imagination of the supreme power, or transcendental reality, but it is about introspectively walking the path, and intimately experiencing the reality in his or her own way. Such an experiential journey is foundational to their anti-dominant and emancipatory utterances.

In this reflexive journey, the practitioners often feel a close kinship with their spiritual predecessor and, thereby, they become united/one with them in some way. Therefore, according to them, Kabir or Lalon are not the only awakened humans in the world of reflections and experiences; rather, anyone can become a Lalon or a Kabir thorough spiritual attainment. A contemporary performer, Prahlad Tipaniya, in the documentary "Kabira Khada Bazar Mein" said, "Kabir is not the name of an individual. We are totally ignorant if we believe that. Kabir is a stream, a flow! Kabir is a sign, a message!" Espousing the aforementioned essence, composers of every era used the name of Kabir or other saints as the writer of their song (even if Kabir or others died few centuries ago); e.g., one can find phrases like '*Kahato Kabir, Shuno Bhai Sahdo*' (As Kabir says, oh dear spiritual-followers) in many contemporary songs. Such communicative acts can be seen in two ways; on one hand, they are expressing their sincere gratitude to their spiritual lineages/leaders as well as celebrating the experiential unity with the renowned saints. On the other hand, they carefully hide and/or strategically camouflage their actual identity for protecting themselves and their spiritual followers. Referring to one of the contemporary poets Kolatkar, who intentionally wanted to blur the line between his poems and Saint Tukaram's [more specifically, to Tukaram (a seventeenth century Bhakti poet) Kolatkar wrote, "I will create such confusion that nobody can be sure about what you [Tukaram] wrote that what I did"], (Zecchini 2014) opined, "He (Kolatkar) sabotages all the questions of a 'propriety' and 'property' . . . Celebrating this owned and dis-originated voices, they (S&B writers) also subvert the politics of identity and the quest for origins (p. 274)." She further showed that Kolatkar's act is not a new invention in S&B tradition; rather he, in a sense, followed the path of Tukaram. According to (Zecchini 2014), "He (Kolatkar) claims the right to use and recreate Tukaram, just like Tukaram has himself borrowed, cannibalized, or scavenged Namdeo, the thirteenth-century bhakti poet from the *Varkari* tradition. Namdeo transmuted in Tukaram is in turn digested by Kolatkar (p. 265)." Envisioning poetic/discursive ownership in a new light, practitioners of alternate spirituality explore avenues for protecting (and hiding) their identity and religious freedom. Similar conversation can be noticed, when a baul follower was commenting about the insignificance of keeping strict literary records of their spiritual creations; several decades ago, Kshitimohon Sen in his work showed that a baul artist from Bangladesh poetically said,

> We follow the *sahaj* (uncomplicated) way. (We) leave no trace behind us. (Do the) soil over the flooded river leave any mark? It is only the boatman of the muddy track, urged on their petty needs that leave a long furrow behind. This is not the *sahaj* way. The true endeavor is to keep oneself afloat in the stream of devotion that follows through the lives of the devotees, and to mingle one's own devotion with theirs.

To bauls and fakirs as well as other S&B followers, performers and writers will come and go, the discourses, essence, and teachings will remain. Moreover, S&B discourses are constantly emerging and evolving, and, therefore, such texts are continually changing over time and across different spaces. Songs of Kabir and Lalon are great examples of it. Talking about a famous singer of Kabir's song, Kumar Gandharva, Ashok Vajpeyi, a scholar, in the documentary "Koi Shunta Hai," said, "Most of the

verses Kumarji sang, do not belong to the *Bijak* (a compilation of Kabir's songs). They are not part of the written text . . . There is a lot of Kabir. Self-created Kabir, folk-invented Kabir." Such nature of the literary scholarship makes authenticity and origins of songs of *nirguni* bhakti saints (for example, *Dohas* [couplets or songs] of Kabir) a matter of debate/ambiguity. As the followers from various parts of south Asia immersed themselves in these spiritual traditions, their contributions and involvements yielded a variety of creative possibilities. Linda Hess, an American scholar, in the documentary "Chalo Hamara Desh" commented,

> . . . his (Kabir's) language changes . . . . He (Kabir) changes colors, he changes musical styles, and he takes on the colors of the art from which his lover springs! (Kabir) probably was illiterate, and never wrote anything down, and yet we have hundreds, maybe thousands of poems attributed to Kabir...the texts are—very much alive.

Deeply committed to communicating alternate spiritual philosophies and teachings, S&B practitioners carefully espouse local belief systems, values and praxis. While commenting over such age-old practices, Dr. Sujan, a researcher, in a mediated interview, said,

> In India, it is literature, but more than that, it is oral, performative, musical, living utterances! Most traditions of storytelling relate to a particular community. It is around these local communities, and local customs, and local tribes, and local practices, as well as local ecologies that many of these story-telling traditions evolve.

In similar ways, songs of the S&B practitioners are also coming from, as well as nourished by, the contemporary local cultures/contexts. Another important aspect of S&B discourses is the appearance of terminologies, words, expressions, aspirations, and local contexts in the songs of respective era; contemporary time is not an exception. While commenting on the matter, Kapil Tiwari, in the documentary "Koi Shunta Hai", opined,

> They (S&B songs) are part of a living folk tradition. They are not a frozen thing of the past . . . Because the singer is singing the poem belongs to his age . . . . And this is very important to understand that for a singer who wants to work with Kabir's truth, for him it makes no difference at all . . . for example, if a train, photo, plane, or a gun enters the song, what difference does it make?

On one hand, the use of contemporarily relevant words makes the S&B vocabulary a living tradition for wider populations; on the other hand, their mindful communications help them to strategically share and simultaneously camouflage their discourse without losing quality/essence of the messages. After learning such communicative strategies from their masters (and sometimes from their parents), they pass them along to their disciples/children.

4.4. Intergenerational Communication

Data analysis revealed another aspect of the S&B tradition—intergenerational communication of spiritual values, and ensuring sustainability in continuing spiritual communities, especially in the long run. While doing so, they remain deeply cognizant about the teachings and ideologies of their spiritual inheritance and intellectual lineages. An example about a cultural community would be useful here—the word 'Jogi' usually refer to Hindu spiritual practitioners; however, there is a community in Western India called Muslim 'Jogi' community, which embraces and follows lessons from both Nath Jogis (Hindu) and Sufi saints (Muslim). In some way, their identity is both a unique and complex one; consequently, they have to face many religious and sociopolitical obstacles and tensions in order to sustainably communicate their identity and values. As they were trying hard to communicate their spiritual values and discourses to the next generation, they remained respectful to their artistic and ideological ancestry; an artist from western India, in the documentary "Three Generations of Jogis," commented,

> I am from the Muslim Jogi community, and am a worshipper of the Lord Shiva (a Hindu god) and I keep a special feeling in my heart for him (Lord Shiva). We keep the Gita in our hands and the Quran in our hearts. Whatever I have learned is from my papa (father).

Many of the S&B performing communities are performing for many generations; they are well aware about their aesthetic heritage and cultural commitments. A member of a Sufi Qawwal family from Rajasthan, in a mediated interview, commented,

> Our family has been singing *Qawwali* for many centuries. For several generations, we have been performing for them (i.e., the royal families of Rajasthan). In the morning, we sing Hindu devotional songs of bhakti saints Meera-Bai (about Lord Krishna), and Kabir. After that, we sing Muslim devotional songs. We visit Hindu temples and offer our reverence. We also chant the name of Allah and our saints. It is believed that the traditions of our community are older than seven centuries.

In sustaining their tradition, they consciously and consistently sought to overcome the boundaries of organized religion. Such deep dedications to spread messages of secularity and humane values is particularly relevant in this contemporary time of religio-political hostility and turbulence.

Another example of such community is *Meerasi* from Western India; according to one of the community members, "Though we are Muslims, we write *Meerasi* with our names, a caste whose identity is through music." Thus, they associate themselves with a 16th-century female saint and frontrunner of bhakti movement, Meera-Bai, who belonged to a Hindu royal family. In other words, the community prioritized their identities as singers over their gender markers and religious roots.

Embracement and celebration of feminine persona/characteristics is an important attribute and contribution of the S&B practitioners. Spiritual lineages starting from Amir Khashru of the 16th century to the contemporary practitioners, Sufi practitioners envision themselves as female companions of the supreme Almighty. Similar utterings are also evident among bhakti followers who consider themselves as female counterparts of Lord Krishna.

To communicate their devotional selves, S&B community members, who are illiterate and uneducated (in a conventional academic sense), oftentimes actively contribute in creating new poetic discourses. Such contributions and participations made the discursive/creative tradition active, living, and inclusive. In this effort to ensure sustainability of cultural/spiritual heritage, they seek to overcome barriers such as illiteracy and lack of access to formal education. In the documentary "In search of Darbeshi Songs," Shubhendu Maity, a Bengali scholar, based on his observations commented, amidst strategic ignorance, contempt, and distortion from the mainstream, "the common people (S&B followers) have kept their musical traditions alive, and used songs to express their philosophy and views on society, and they continue to do so even today."

Apathy from the contemporary mainstream populations as well as from dominant institutions further marginalizes the spiritual performers. Kapil Tiwari (former head of the Adivasi Lok Kala Academy, Madhya Pradesh), in the documentary "Koi Shunta Hai," expressed his concern about growing cultural blindness among urban/mainstream audiences about S&B literature and practices,

> Increasingly, I find the majority of the so-called 'educated' to be culturally speaking, entirely illiterate! Cultural literacy is the biggest problem of our time! Those who are culturally educated are being taught the alphabets, as though it is the only marker of the development. However, they (the state) do nothing about this growing urban ignorance on culture, art, life, and experiences.

Cultural unawareness, incompetence, and aggression from most of the (so-called) formally educated people, pose severe challenges to sustainability and recognition of alternative spiritual discourses. Consistent disengagement with and exclusion of S&B voices make the spiritual communities further marginalized and disenfranchised.

Poverty and other socioeconomic challenges and consistent intolerance from the mainstream constitute threats to the survival of cultural practices for many S&B practitioners. Late Jogi Dinanath, a performer and teacher, in the documentary "Three Generations of Jogis," articulated, "I do not simply know for how long these songs or traditions can be kept alive. I am afraid whether after a generation these may become museum pieces." Another challenge they face is an economic one, i.e., meager income poses threats to the sustained subsistence of many S&B communities. Again, threats from the mainstream, and increasingly reducing audience for bhakti and Sufi songs in this multimediated and technology-savvy entertainment age are some of the causes of such crisis. In a mediated interview, a Sufi artist from the Indo-Pakistan border shared his experiences:

> Many of our elders left the arts; they could not provide sufficiently for their family. If we do not play and sing, then how our children will learn? For how long can they beg? We went through a bad time. Often there was not enough food to eat. I would not return home for days, and would sleep at temples and pirs (*dargas*).

Such voicings, rooted in experiential realities, depict material and communicative absences and negotiations of impoverished cultural populations at the margins.

In the case of many such communities, for example, bauls of rural Bengal, spiritual performers sing the songs not just for monetary income or livelihood (which of course is very much needed for their material sustenance) or for becoming popular; but one of their primary missions is to sing songs to train their disciples, and communicate spiritual messages to their next generations. In the documentary "Songs of the Bards of Bengal: The Bauls and Fakirs," Dr. Shaktinath Jha, a scholar, commented, "As they (bauls and fakirs) did not believe in propaganda or conversion, the songs were made by the practitioners themselves and for their disciples' education. Through music they pay respect to their masters and their traditions." Therefore, music is not just a medium of entertainment/worship for them; such performances are deeply tied to their identity, pedagogy as well as endurance of their spiritual practices.

To address and overcome the challenges of sustainability of S&B practices, many communities are actively trying to pass along their traditions to the next generation as well as to preserve the voices and recordings of senior performers to save the S&B cultural inheritance. Muslim Jogi community is one of them; Umer Farukh, one of the Muslim Jogis, in the documentary "Three Generations of Jogis," shared his dreams,

> Promoting our traditional folk artists was an aim of us, particularly those artists who have not received any attention. In addition, we must work to save our culture by creating a community of artists. Therefore, I am in the mood to record performances of our masters as much as possible. Further, we must organize workshops for kids so that they can learn our arts, this is particularly important when many of them are interested only in laborers' job primarily to earn daily-wage. Most importantly, what is needed is that we should break social and cultural barriers such as caste systems, and create such a social order in which all arts are respected, and those who have the talent can freely choose to practice their arts.

Through their engaged and mindful communications of discourses (including performance of songs), and by sharing their cultural heritage with the next generations, S&B artists and followers, on one hand, attempt to ensure sustenance of their spiritual traditions; and on the other hand, seek to create avenues for a religiously free, just and equal society.

5. Discussion

Bhakti/Sufism conceptualizes ordinary people as agents of creative dissent for redefining spiritual values through envisioning egalitarian, emancipatory, and transformative possibilities. S&B ideologies and epistemologies value engaged services to humanity to bring about equal access and rights, which was foregrounded in their discursive engagements in both mediated

and everyday communicative acts. Such cultural and spiritual poetics question/resist discursive violence, material disenfranchisement, and cultural discriminations in ensuring religious freedom at the margins. Voices of underprivileged cultural communities from the global south legitimize diversity of perspectives and thought processes as well as plurality of values, worldviews, and spiritual imaginings. Communicative performances of songs that bring forth experiential narratives from below not only interrogate religio-political orthodoxies and power disparities, but also foster the processes of revisiting dominant material/discursive violence as well as reinterpreting/reconfiguring sociocultural structures and practices. Alternate discursive strategies of S&B communities by gestating and delineating creative/intellectual ownership as well as layered/enigmatic communications generate new cultural alphabets to address cultural illiteracies (in affluent and so-called 'educated' spaces), and legitimize reflexive spiritual commitments to build a harmonious, secular and just world.

In this contemporary world, where freedom of religion and cultural expressions are under threat in various parts of the globe, it is important to ensure the ecology of voices and values (Sorrells 2015). In the discursive conflicts of reductionist versus pluralist, of dogmatic versus tolerant, it is crucial to go beyond and above prosectarian ethnocentrisms. Owing to persistent discriminations by religious orthodoxy and hegemonic power structures, the spiritual performers at the margins such as S&B practitioners became (and are becoming) social outcasts (Grover 2015). Again, due to the punishments like *fatwas* (and murder) or social sanctions like untouchability, the artists from the lower strata of society remain/become further marginalized in the spaces of discursivity; for several centuries, S&B artists have been experiencing such oppressions and destructions from the hegemon (Urban 2001). Moreover, religious fundamentalists also seek to co-opt, distort, and dilute the key messages and contributions of S&B poets and performers towards weakening and defaming their discursive practices (Knight 2010). Such traumatic experiences and history of social exclusion compelled the spiritual performers to fight the adversities and intolerances discursively in order to make their spiritual/ideological tradition alive and sustainable.

In sharp contrast to dominant praxis, by being mindful and espousing alternate spiritual ideologies, S&B artists, poets, and practitioners actively argue for peaceful coexistence of communities as well as freedom and plurality of values and faiths (Togawa 2008). By considering love, harmony and tolerance as their central communicative commitments for teaching and being, spiritual practitioners and their communities raise above and beyond the narrow and dogmatic religious segmentations. They played an instrumental role to bridge various sociocultural barriers: both at the individual and community level, as well as the regional, national, and international level. Deeply grounded in key philosophical foundations, and rooted in local culture and contexts, the discourses and messages of S&B performers from the margins address the spiritual, emotional, and existential needs of the lower-caste and marginalized populations. In most cases, their voices are *emic* and therefore representative of the realities and aspirations of the under-represented communities.

In order to negotiate the atrocities, inequalities, and discriminations, the spiritual performers embrace a multipronged communicative approach to protect and promote their values and messages. As a cocultural group, rooted in the tradition of interrogation, the S&B followers on one hand exhibited nonconformity and skeptic attitudes towards immoral normative and the doctrines of the dominant socioreligious institutions, and on the other hand, consistently worked towards imagining an antidiscriminatory and prohuman equitable society. In doing so, one of the communication strategies they embrace is the usage of enigmatic language. This intentional usage of seemingly absurd, secret, or inverted words helps them communicate with/teach in-group members as well as strategically hide their message from the commoners and the hegemon. Such strategic ambiguous codes (e.g., in forms of riddles and bafflements) are the building blocks of their esoteric discourses, which usually remain hidden beneath lighthearted and superficial discourses (Lorea 2017). Similar strategic usages of equivocal and subversive languages are noticed in many cultural communities across the globe; performances of western Apache Indians (Basso 1970), early African Americans (Sullivan 2001), and some Haitian artists (Hemmasi 2013) are some such examples. However, communication scholars

need to investigate further to understand, conceptualize, and theorize such covert communication strategies in the spaces of the Global South, which until now remain largely under-researched. Such communicative applications of 'hidden transcripts' (Scott 1985), on one hand, help them in silently and/or politely avoiding direct confrontations with religious fundamentalists and orthodoxies; and, on the other hand, such discursive engagements potentially bolster their spiritual delineations towards strengthening their core community values, and spreading the message of universal brotherhood and harmony (Zecchini 2014).

In addition, with conventional West-centric lens, it is extremely difficult (if not impossible) to understand authorship and true identities of the authors, who contributed to and shaped the S&B literatures in South Asia. Premodern South Asian vernacular literatures approached the matter of 'authorship' in a different way, which challenges/destroys logical reasoning of understanding authorship in terms of proprietary and originality. In the process of negotiating prolonged exclusions and oppressions communicatively, the S&B leaders embraced a strategy of camouflaging their identities, which went beyond the conventional conceptualization of legacy and legality (Karwoski 2012). Further, such approaches opened up avenues for multiple interpretations by multiple interpreters, which not only made the S&B texts alive, organic, and ever-emerging, but also protected the actual identity of the author/group of authors. It is important to note that, while using the enigmatic languages and/or camouflaging their identities, the S&B artists did not neglect to respect and embrace local customs/practices and the spiritual lineages. In a way, they creatively democratized South Asian vernacular languages and successfully created invaluable literary treasures, many of which were sung and admired by people for several generations.

In addition, to make S&B movement sustainable, they emphasize intergenerational communication and inclusive contributions from community members and well-wishers. Emphasizing the importance of local resources and active cooperation, they seek to protect their spiritual and ideological lineages from getting co-opted/abused by the dominant social, cultural, and religious institutions. With limited material resources, these co-cultural groups are not only fighting an uneven battle against poverty and resource-scarcity but also expressing concerns about the sustainability of their artistic traditions. Such efforts are particularly crucial when the S&B practitioners are forced to abandon performances for contextual reasons, and are experiencing steep challenges due to unprecedented proliferation of mediated spaces. While documenting and archiving artistic treasures (especially the performances of senior or elderly performers) is an important cultural preservation initiative, to them it is far more crucial to ensure sustainable cultural survival and freedom of their community members who are the creators, performers, and teachers of S&B discourses.

Owing to lack of knowledge about alternate spiritual communicative praxis at the margins, historically these communities remained largely misunderstood (Lorea 2017). A better understanding about their cultural and communicative practices would open up newer dialogic/discursive spaces to learn more about their narratives and lived-realities in a multiperspectival way. Unobtrusive and informed interactions could also open up avenues for us to be self-reflective about our preconceptions and ethnocentrism (Martin and Nakayama 2017). Moreover, the communication strategies practiced by alternate spiritual practitioners also influence the lives of many other marginalized populations who remained underserved over the years; in-depth knowledge about various communicative practices at the margins would also help us to learn about religio-political dynamics and negotiations in the context of broader marginalized societies (e.g., untouchables and indigenous communities).

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References

Agrawal, Purushottam. 2010. But for Kabir in this Kaliyuga... *India International Centre Quarterly* 37: 36–45.
Amandeep. 2010. Dalit aesthetics: A study of Bhakti period. *Asian Journal of Literature* II: 1–20.

Bahuguna, Rameshwar P. 2009. Conflict and Assimilation in Medieval North Indian Bhakti: An Alternative Approach. *SAP-History Monograph* 6: 1–48.

Basso, Keith H. 1970. "To Give up on Words": Silence in Western Apache culture. *Southwestern Journal of Anthropology* 26: 213–30. [CrossRef]

Charmaz, Kathy. 2000. Grounded theory: Objectivist and constructivist methods. In *Handbook of Qualitative Research*. Edited by Norman K. Denzin and Yvonna S. Lincoln. Thousand Oaks: Sage, pp. 509–36.

Das, Abhishek. 2014. Religion of rebellion, voices from eastern India: Hinduism, caste and resistance. *Research Scholar* 2: 170–76.

Dasgupta, Atis. 2005. Empirical search for the radical roots of the Bauls. *Social Scientist* 33: 80–86.

Dutta, Uttaran. 2018. Negotiating structural absences: Voices of indigenous subalterns of eastern India. *Journal of Intercultural Communication Research* 47: 52–71. [CrossRef]

Eliade, Mircea. 1970. *Yoga: Immortality and Freedom*. Princeton: Princeton University Press.

Ferrari, Fabrizio. M. 2012. Mystic rites for permanent class conflict: The Bauls of Bengal, revolutionary ideology and post-capitalism. *South Asia Research* 32: 21–38. [CrossRef]

Grover, Mansi. 2015. An analysis of transgressive voice in Sufi poetry. *International Journal of Interdisciplinary and Multidisciplinary Studies* 2: 85–87.

Halualani, Rona Tamiko, S. Lily Mendoza, and Jolanta A. Drzewiecka. 2009. "Critical" junctures in intercultural communication studies: A review. *The Review of Communication* 9: 17–35. [CrossRef]

Hemmasi, Farzaneh. 2013. Intimating dissent: Popular song, poetry, and politics in pre-revolutionary Iran. *Ethnomusicology* 57: 57–87. [CrossRef]

Hess, Linda. 2015. *Bodies of Song: Kabir Oral Traditions and Performative Worlds in North India*. Oxford: Oxford University Press.

Jha, Shaktinath. 2014. *Baul-fakir dhwongso-andoloner itibritto (Bengali)*. Kolkata: Manfakira.

Karolia, AbuBakr. 2011. *Sufism—Between Hegemony, Moderation and Humanness*. Final Research Paper. Johannesburg: University of Johannesburg.

Karwoski, Christine Marrewa. 2012. Paradoxical authorship: Tracing authority in the Gorakhbāṇī. *Acta Poética* 33: 167–80.

Knight, Lisa I. 2010. Bāuls in conversation: Cultivating oppositional ideology. *International Journal of Hindu Studies* 14: 71–120. [CrossRef]

Kumar, Sehdev. 1983. Kabir: Communicating the incommunicable. *India International Centre Quarterly* 10: 206–15.

Lincoln, Yvonna S., and Egon G. Guba. 1985. *Naturalistic Inquiry*. Newbury Park: Sage.

Lorea, Carola Erika. 2017. The difference between a paṇḍit and a wise man: A study of Bengali songs as literature against literature. *Cultural Studies* 1: 1–15.

Mahbub-ul-Alam, Ahmad, Mohammad Ehsanul Islam Khan, and Md Tariqul Islam. 2014. A study on spiritualism in the lyrics of Shah Abdul Karim. *International Journal of Multidisciplinary Research and Development* 1: 29–33.

Mamoon, Trina R. 2008. Conversions/subversions: Sufi subtexts of Bangladeshi indentity. *Comparative Civilizations Review* 59: 127–48.

Manuel, P. 1996. Music, the media, and communal relations in north India, past and present. In *Making India Hindu: Religion, Community and the Politics of Democracy in India*. Edited by David Ludden. Delhi: Oxford University Press, pp. 119–39.

Manuel, Peter. 2008. North Indian Sufi popular music in the age of Hindu and Muslim fundamentalism. *Ethnomusicology* 52: 378–400.

Martin, Judith N., and Thomas K. Nakayama. 2017. *Intercultural Communication in Contexts*. New York: McGraw-Hill.

Mondal, Anirban. 2015. Searching for Moner Manush (man of heart): Bauls of Bengal and fakir Lalon Shah. *Journal of Bengali Studies* 4: 58.

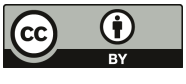
Mukharji, Manjita. 2012. Ek rājye hale dujonā rājā, kār hukume gata hoy prajā: Metaphors of everyday peasant resistance in Bāul songs of colonial Bengal. *South Asian History and Culture* 3: 47–69. [CrossRef]

Nasr, Seyyed Hossein. 2007. *The Essential Seyyed Hossein Nasr*. Bloomington: World Wisdom.

Novetzke, Christian Lee, and Laurie Patton. 2008. Subaltern. In *Studying Hinduism: Key Concepts and Methods*. Edited by Sushil Mittal and Gene Thursby. Abingdon-on-Thames: Routledge, pp. 378–99.

Robinson, Rowena. 2001. Religion on the net: An analysis of the global reach of Hindu fundamentalism and its implications for India. *Sociological Bulletin* 50: 212–21. [CrossRef]

Saikia, Rahena. 2008. Sufism and Ajan Fakir of Assam. *Ishani* 2: 1–3.
Salomon, Carol. 1995. Baul songs. In *Religions of India in Practice*. Edited by Donald S. Lopez Jr. Princeton: Princeton University Press, pp. 187–207.
Scott, James C. 1985. *Weapon of the Weak Everyday Forms of Peasant Resistance*. New Haven: Yale University Press.
Sengupta, Jayita. 2015. The Baul sursadhak: The tradition and individual talent. *Journal of Literature and Art Studies* 5: 151–57.
Shome, Raka, and Radha S. Hegde. 2002. Postcolonial approaches to communication: Charting the terrain, engaging the intersections. *Communication Theory* 12: 249–70. [CrossRef]
Siddiqui, Kalim. 2016. The political economy of religion and politics in India. *Journal of Economic and Social Thought* 3: 79–100.
Sorrells, Kathryn. 2015. *Intercultural Communication: Globalization and Social Justice*. Thousand Oaks: Sage.
Staal, Frits. 1975. The concept of metalanguage and its Indian background introduction. *Journal of Indian Philosophy* 3: 315–54. [CrossRef]
Sullivan, Megan. 2001. African-American music as rebellion: From slavesong to hip-hop. *Discoveries* 3: 21–39.
Togawa, Masahiko. 2008. Syncretism revisited: Hindus and Muslims over a saintly cult in Bengal. *Numen* 55: 27–43. [CrossRef]
Umashankar, Rachana Rao. 2012. Defending Sufism, Defining Islam: Asserting Islamic Identity in India. Ph.D. thesis, University of North Carolina, Chapel Hill, NC, USA.
Urban, Hugh B. 2001. The marketplace and the temple: Economic metaphors and religious meanings in the folk songs of colonial Bengal. *The Journal of Asian Studies* 60: 1085–114. [CrossRef]
Van der Veer, Peter. 1992. Playing or praying: A Sufi saint's day in Surat. *The Journal of Asian Studies* 51: 545–64. [CrossRef]
Verma, Vinod. 2017. Pilgrimage upside-down: Kabir ulatbansi pilgrim. *International Journal of Religious Tourism and Pilgrimage* 5: 43–49.
Zecchini, Laetitia. 2014. Contemporary Bhakti recastings: Recovering a demotic tradition, challenging nativism, fashioning modernism in Indian poetry. *Interventions* 16: 257–76. [CrossRef]



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Religious Freedom and the Limits of Propagation: Conversion in the Constituent Assembly of India

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Abstract: In discussions about religious freedom in India, the country's conflict regarding conversion plays a central role. The Constitution's freedom of religion clause, Article 25, grants the right "freely to profess, practise and *propagate* religion," but this has generated a dispute about the meaning of the right 'to propagate' and its relation to the freedom to convert. The recognition of this right is said to be the result of a key debate in the Constituent Assembly of India. To find out which ideas and arguments gave shape to this debate and the resulting religious freedom clause, we turn to the Assembly's deliberations and come to a surprising conclusion: indeed, there was disagreement about conversion among the Assembly members, but this never took the form of a debate. Instead, there was a disconnect between the member's concerns, objections, and comments concerning the draft article on the one hand, and the Assembly's decision about the religious freedom clause on the other. If a key 'debate' took this form, what then could the ongoing dispute concerning conversion in India be about? We first examine some recent historiographical accounts of the Indian conflicts about conversion and proselytization. Then we develop a hypothesis that aims to make sense of this enduring conflict by identifying a blindness at its core: people reasoning against the background of Indian traditions see 'propagation of religion' as the human dissemination of tradition; this is incompatible with a religious conception where conversion and propagation of faith are seen in terms of God's intervention. These two ways of seeing 'propagation' generate two conflicting experiences of the Indian dispute about religious freedom and conversion.

Keywords: freedom of religion; conversion; the right to propagate religion; India; Constitution of India; Indian traditions; Christianity

1. Introduction

The issue of religious conversion complicates any discussion about the right to freedom of religion in post-Independence India. Disputes about conversion and religious truth have led to mutual incomprehension between different groups in Indian society for at least two centuries. Over the past decades, calls for restrictions on certain types of conversion have frequently been made in political and legal debate. Several Indian states passed bills banning the use of force, fraud, and allurement in conversion, called 'Freedom of Religion Acts'. This type of legislation has led to concerns about religious intolerance and discrimination against Christian and Muslim minorities: the legal restrictions on conversion are said to threaten the right to freedom of conscience and religion (Ahmad 2018; Coleman 2008; Huff 2009; Jenkins 2008). Others, however, argue that the practice of conversion itself constitutes a violation of the freedom of religion; in their eyes, the attempt to try and convert others to one's own religion involves a violent intrusion into a person's religious life (Dayananda 1999).

Article 25(1) of the Constitution of India of 1950 often makes its appearance in these disputes: "Subject to public order, morality and health and to the other provisions of this Part, all persons

are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Scholars suggest that the Constituent Assembly, the body that drafted the Indian Constitution between 1946 and 1949, decided to include the right to propagate religion among the fundamental rights of India's citizens after a key debate, which ended in a victory for the more liberal-minded Assembly members over Hindu traditionalists who had opposed conversion and the right to propagation of religion (e.g., Josh 2009, p. 101; Jaffrelot 2010, pp. 155–56). According to this account, the Assembly's deliberations led to the recognition of a constitutional right which grants the freedom to propagate *and* convert.

Given the importance attributed to this debate, we will start by raising some questions: What was the nature of the Assembly's deliberations about the right to propagate religion? Why did this constitution-making body decide to add the term 'propagate' to the more common 'profess' and 'practise' in this clause? What were the different standpoints and arguments that gave shape to the debate and how did these lead to the approval of Article 25 and the right to freely propagate religion? The Constituent Assembly took years to draft the Constitution. It is reasonable to expect that this body would formulate and discuss the problems related to religious freedom in India with some care, since its aim was to provide the fundamental principles according to which the Indian nation should be governed. Hence, we turn to the Assembly's records to discover what its members had to say about religious freedom, conversion, and the propagation of religion.

2. Propagation and Conversion in the Constituent Assembly

How was the right to propagate religion introduced into the text of the Indian Constitution? Several earlier documents—such as the *Constitution of India Bill* (1895), *The Commonwealth of India Bill* (1925), *The Nehru Report* (1928), and *Karachi Resolution* (1931)—had recognized religious freedom as a fundamental right that should be part of a new constitution; some mentioned the freedom 'to profess and practise' but none included a right 'to propagate religion'.[1] The only text with a similar formula was a note titled *States and Minorities*, composed by B. R. Ambedkar, the later chairman of the Drafting Committee. It said: "The State shall guarantee to every Indian citizen liberty of conscience and the free exercise of his religion including the right to profess, to preach and to convert within limits compatible with public order and morality" (Ambedkar 1947). Ambedkar submitted this note to the Assembly's Sub-committee on Fundamental Rights in 1947, but it did not play any central role in the drafting of the new Constitution.

Two other preparatory notes served as the starting point for the discussions of the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas and its Sub-committee on Fundamental Rights[2]: one by K. M. Munshi, a member of the Indian National Congress and lawyer, and the other by B. N. Rau, a colonial civil servant and former judge who had been appointed as the Constitutional Advisor. Neither of these mentioned the freedom to propagate religion. In fact, Munshi's initial draft articles concerning the right to religious freedom had sub-clauses that put restrictions on conversion:

> (6) No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian. (7) Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union. (Rao 2015, p. 76)

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1 These were significant documents, since the members of the Constituent Assembly made use of them for their preparations. For instance, K. M. Munshi in his preparatory note on fundamental rights, referred to *The Nehru Report*, the *Karachi Resolution* and the *Sapru Report* to advocate the inclusion of fundamental rights in the new Constitution (Rao 2015, p. 71)).

2 On 27 February 1947 this Advisory Committee created five Sub-committees, including one that would deal with Fundamental Rights and another that focused on Minorities.

At the first meeting, the Sub-committee on Fundamental Rights decided to examine Munshi's draft in conjunction with other drafts. His draft clause was adopted with minimal revisions, without any discussion about the phrase "freely to profess and practise religion" (Rao 2015, pp. 116–24). The clause that prevented minors from changing religious persuasion without the permission of the parents or guardian was accepted in a revised form, which now just banned conversion of any person under the age of 18 (Rao 2015, pp. 124–25). All these clauses were included in the draft report of the Sub-committee on Fundamental Rights with minor changes (Rao 2015, p. 140).

Next, the question of fundamental rights was examined by the Sub-committee on Minorities and it is here that the term 'propagate' suddenly made its appearance (Rao 2015, pp. 208–9). From the minutes, it may be noted that a Tamil member educated at the Universities of Oxford and Cambridge, Mariadas Ruthnaswamy, argued "that certain religions, such as Christianity and Islam, were essentially proselytizing religions, and provision should be made to permit them to propagate their faith in accordance with their tenets . . . " (Rao 2015, p. 201). No further reasons were offered as to the necessity of such a provision or why it should take the form of a fundamental right to propagate religion.

From the discussion in the Advisory Committee, we know that it was a priority to reach decisions that would fully satisfy the minorities. Its chairman, Vallabhbhai Patel, reminded the Committee members of their task to protect minorities and referred to a discussion in the British Parliament where it had been claimed "on behalf of the British Government that they have a special responsibility—a special obligation—for the protection of the interests of the minorities." "They claim," so the chairman continued, "to have a more special interest than we have." He objected: "It is for us to prove that this is a bogus claim, a false claim, and that nobody can be more interested than us in India in the protection of our minorities." "Our mission," Patel concluded, "is to satisfy every one of them and we hope we shall be able to satisfy every interest and safeguard the interests of all the minorities to their satisfaction" (Rao 2015, pp. 61–66). One could infer from this that the right to propagate religion was introduced to 'fully satisfy' the Christian minority and safeguard its interests, but this is not stated anywhere in the Committee proceedings.

In fact, when the Advisory Committee turned to the religious freedom clause, several members argued that the freedom to 'propagate' was superfluous, since it fell under the freedom of speech and expression. As one member put it: "The propagation of religion is amply assured in clause 10 dealing with freedom of speech and expressions." Moreover, she argued: "Since conversion by force or undue influence only is to be banned, it follows that conversion of an adult to any religion by reason of conviction will be permissible" (Rao 2015, pp. 211–13). Several others agreed that granting the freedom of speech and expression should be sufficient, since 'propagation of religion' was but a specific instance of speech. In response, Ruthnaswamy defended the inclusion of the phrase 'to propagate'—a well-known word, according to him, including "not only preaching but other forms of propaganda made known by modern developments like the use of films, radio, cinemas and other things." Munshi then argued that it was precisely because of this wide-ranging meaning of 'propagation' that he opposed including it in the Constitution: "The word might be brought, I think, to cover even forced conversion." "So far as the 'freedom of speech' is concerned," he suggested, "it carries sufficient authority to cover any kind of preaching." He again stressed the lack of clarity as to the meaning of the term: "If the word 'propaganda' means something more than preaching, you must know what it is and therefore I was opposed to this introduction of the word 'propaganda'" (Rao 2015, pp. 267–68).

The Committee members were unclear as to what 'propagating religion' meant. Several members appeared to equate it to 'doing propaganda' and used the terms as though they were synonyms. The 'propagation of religion' would then become a form of propaganda, like propaganda for any set of ideas or ideologies or social and political movements. In that case, it is but a specific instance of speech already protected by the right to freedom of speech and expression. Ruthnaswamy and Munshi exchanged a few sentences about the meaning of 'propagate' but this did not clarify the meaning of the word in the constitutional clause. Instead of figuring out the nature of the disagreement, the exchange ended as follows:

> *Govind Ballabh Pant*: At worst it is redundant and as so many members want it we had better introduce it.
>
> *K. M. Munshi*: It is not a redundant word.
>
> *Chairman*: Let us takes votes on it. Those who are in favour of retaining the word "propagate" may raise their hands. (The amendment was accepted). (Rao 2015, p. 268)

This does not tell us much: the 'arguments' for and against introducing the right to propagate religion were limited to a handful of rudimentary claims that mentioned 'proselytizing religions' and 'propaganda'; the disagreement about the clause was not explored further; consequently, no clarity was created about the points of disagreement to be discussed in the plenary Assembly. It was simply set aside by reducing the question to one of voting for or against retaining a specific word in the Constitution, without knowing what this word 'propagate' meant and what the right would imply.

2.1. Conversion as a Fundamental Right?

The next relevant exchange took place in a plenary meeting of the Constituent Assembly on 1 May 1947, where the Interim Report on Fundamental Rights was to be discussed. Initially, the proposed clause 13, which included the right "freely to profess, practise and propagate religion", was accepted and nothing noteworthy happened during the meeting.[3] However, when Munshi moved an amendment about the conversion of minors, this caused upheaval: "Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or *of a minor under the age of 18 shall not be recognized by* law" (CAD, 1 May 1947; italics ours).[4] At stake was the second part of this amendment, which would in effect prohibit conversion under the age of 18. Immediately, several members interfered by pointing out that Munshi's amendment implied a negation of the previously endorsed clause on the freedom to propagate.

From the proceedings, however, we cannot get clarity as to what the disagreement was about. Two Christian Assembly members stated that the right to propagate religion had been recognized but would now be taken away by the proviso 'of a minor under the age of 18'. The Anglo-Indian representative Frank Anthony emphasized that "conversion under undue influence, conversion by coercion or conversion by fraud should not be recognized by law." He added: "My community does not propagate. We do not convert, nor are we converted. But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion." Therefore, Anthony objected to the attempt to restrict this right:

> I want to congratulate the major party for having, in spite of its contentious character, retained the words 'right to practise and propagate their religion'. Having done that, I say that after giving with one hand this principal fundamental right a right [sic] which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, 'or of a minor under the age of 18'. (CAD, 1 May 1947)

To Anthony, the right to propagate was a "principal fundamental right," which would be undermined by adding the amendment about minors: "I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor, you will place an embargo absolutely on the right of conversion." He concluded: "You will virtually take away the right to convert." This

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[3] Clause 13 read: "All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part" (CAD, 1 May 1947, Vallabhbhai Patel).

[4] Our references to the Constituent Assembly Debates (CAD) give the date of the discussion and the name of the Assembly member making the intervention. This information allows the reader to consult the relevant records which are available online. We made use of the version on the website of the Lok Sabha, the lower house of the Indian Parliament, via the following direct link: http://164.100.47.194/Loksabha/Debates/cadebadvsearch.aspx. We also consulted the version on a website developed by the Constitutional and Civic Citizenship Project (http://cadindia.clpr.org.in/).

will be the result, because no parent will adopt Christianity when the effect is that of creating a divide between children and parents. Anthony reiterated: "You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life." He also appreciated the safeguards about undue influence, fraud and coercion and realized "how deeply certain sections of this House feel on this question of conversion." "But," he asked, "having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and justice" (CAD, 1 May 1947, Frank R. Anthony).

Another member, the Reverend J. J. M. Nichols-Roy stressed that the amendment would prevent minors from exercising *their own consciences*. Drawing on his own conversion experience at age fifteen, Nichols-Roy argued as follows:

> . . . [T]o think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. . . . There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspect of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. (CAD, 1 May 1947)

Emphasizing the spiritual dimension, Nichols-Roy insisted that the amendment about minors was "absolutely wrong," for it "will oppress the consciences of the youths who want to exercise their religious faiths before God." Since the freedom to convert is inherently connected to the relation between the conscience and the spiritual forces of God, Nichols-Roy argued, a law that puts an age limit would be oppressive to the conscience. This implies not only that the freedom to convert should be guaranteed by law, but also that other laws must be subordinated to it: "This freedom I consider to be a Fundamental Right of the youths. No law should be made which will work against good spiritual forces." Nevertheless, Nichols-Roy clearly expressed his objections "against any conversion by undue influence or by fraud or coercion" (CAD, 1 May 1947).

Several elements are significant in these two interventions. Firstly, it is crucial for these members that the fundamental right to propagate religion implies a recognition of the freedom to convert for all persons, including minors. This "is regarded as perhaps the most fundamental of Christian rights." Any attempt to curb the right to propagate religion, by introducing an age limit or similar constraints, amounts to placing an "embargo absolutely on the right of conversion." Secondly, this is clarified by introducing the idea that each human being has a conscience connected to God and each individual can feel that he or she is being called by Him. One should always be free to convert from one religion to the other, if this happens under the influence of spiritual forces. Thirdly, the use of force, fraud and allurement in attempts to convert people is unacceptable and falls outside the boundaries of genuine conversion. But if conversion is a free act of the conscience, then it should not be restricted in any way, for the conscience cannot be oppressed by any law. In this sense, the freedom to propagate and convert is a fundamental and inalienable human right. Finally, Anthony suggests that other Assembly members are inspired by *prejudices* against conversion and propagation. He understands the objections raised against the conversion of minors as a result of preconceived opinion, ignorance or bias about the subject.

These interventions were followed by a long statement by Purushottamdas Tandon, a famous Congress leader and freedom fighter, who claimed to speak on behalf of other Congress members. Tandon voiced his surprise: "Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren." "Some of them have said that in this Assembly we have admitted the right

of every one to propagate his religion and to convert from one religion to another." This is wrong, he argued:

> We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accept this. Now it is said that they have a right to convert young children to their faith. *What is this?* Really this surprises me very much. (CAD, 1 May 1947)

For Tandon, the right to propagation of religion did not entail a *general* freedom to try to convert others to one's religion. He considered converting others to one's faith as a futile endeavour, which becomes improper when it involves children. Tandon also said that the right to propagate was kept "out of regard for our Christian friends," as a pragmatic step to include the Christians in 'the national endeavour'. He suggested that the Congressmen wanted to carry the Christians along, by accommodating their insistence on the right to propagate (CAD, 1 May 1947). In spite of his surprise, Tandon makes no effort to make sense of what the Christian representatives had said about the right to propagate and convert. In fact, when he and other Congress members intervene, they largely ignore the statements and concerns voiced by Anthony and Nichols-Roy. There is no attempt to find out why these two find the freedom to convert so important and what their claims about the conscience and God mean. Instead, these other members expressed utter astonishment at the claim that the Assembly had recognized a right to convert young children to Christianity.

Tandon used an analogy to clarify the difficulty: "If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful," but "our brethren come forward and say that the boy has *enough sense* to change his religion." This is both improper and unreasonable, in Tandon's eyes: "You can convert a child below eighteen by convincing and persuading him but he is a child of *immature sense* and legally and morally speaking this conversion can never be considered valid" (CAD, 1 May 1947; italics ours). From this perspective, conversion of a child *can only* take place through force, fraud or allurement. Therefore, Tandon could also suggest the following: "It is proper that a boy should be allowed to formally change his religion only when he attains maturity." He did not advocate a general rejection of 'conversion' as the changing of one's religion, since this act is unproblematic once one attains 'maturity'. Countering Anthony's remark that what had been given with the right hand (clause 13) was taken away with the left hand (clause 17), Tandon stressed: "What we gave them with our right hand is that *they have a right to convert others by an appeal to reason and after honestly changing their views and outlook*. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts" (CAD, 1 May 1947; italics ours). The gap between Nichols-Roy and Tandon is striking: the first assumed that minors, like adults, have an innate conscience that should always be free to respond to God's call; the second emphasized reason or intellect, which needs to be cultivated and formed before individuals can make appropriate decisions about changing religion. But this gap between their respective understanding of 'conversion' is not even noted, let alone debated.

More generally, the participants in this discussion made no attempt to understand or address each other's concerns and arguments. Algu Rai Shastri explained why the conversion of minors was deplorable: "We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one" (CAD, 1 May 1947). Shastri too emphasized that the problem is not the change of religion per se. If a mature person comes to the realization that he wants to change his religion, this is perfectly acceptable, but not for children:

> If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion

> under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realize tomorrow that God is a farce and an aberration of human mind then I can become an atheist. *If I think that the Hindu faith is false, I, with my grey hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age*)? (CAD, 1 May 1947, Algu Rai Shastri; italics ours)

Again, the suggestion is that citizens should be allowed to convert, only if this happens after 'cool' deliberation and reasoning. The idea that conversion is a question of 'cool deliberation' and 'mature discretion' is far away from the Christian conception of this process as a response of the conscience to God's spiritual forces, which had come to the surface in Nichols-Roy's intervention. Even though Shastri stressed how absurd it would be for him to give a minor a right to change religions, he did not pause to think about why this was not absurd at all to his Christian colleagues.

Yet another Assembly member, Jagat Narain Lal, pointed out that the right to propagate had not been included to such an extent in the Constitution of any other country: "My submission is that this House has gone to the farthest limit possible with regard to minorities, knowing well the fact that there are a few minorities in this country whose right to carry on propaganda extends to the point of creating various difficulties." Lal supported Tandon's standpoint that the inclusion of this "right to do propaganda" is a concession towards the Christians, granted in spite of the fact that "most of the Congress members of this House" did not want to keep this right. "The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda" (CAD, 1 May 1947). The recognition of this fundamental right is about having the minorities *feel* that they will continue to enjoy the same rights but *within reasonable limits*. The language use again suggests that the right to propagate religion is equivalent to the right to 'do propaganda'. For the Christian members, however, the right to propagate religion clearly meant something very different, since it is rooted in the relationship between the conscience and God.

The different participants in this exchange agreed about banning the use of fraud, coercion or undue influence in conversion; they also admitted that changing between religions should be possible. What was the problem then? Some interventions emphasized the freedom of conscience of minors. Others reflected concerns about mass conversions or about the status of children whose parents have converted. Yet others stressed that children are too immature to make decisions about changing from one religion to another. We also know that there were worries about the impact of Christian schools and their attempts to convert Hindu children, or about the minorities and their position in post-Independence India. Judging from the reports, however, it is unclear what exactly was at stake, beyond the fact that the Assembly members disagreed about the conversion of minors.

This intense disagreement stands in contrast to the way in which the exchange about Munshi's amendment was brought to an end. Ignoring the above interventions, the discussion was ended by Ambedkar, who intervened and asked Munshi to drop the amendment. The gist of Ambedkar's argument was that this clause would end up forcing parents to be separated from their children merely because they adopted another religion. He did not clarify how the amendment could be modified to avoid this, but only made a mysterious reference to the 'several Assembly committees' that had already dealt with this issue. He then rejected the proposition, because it "would lead to many disruptions, to so many evil consequences" (CAD, 1 May 1947). In other words, Ambedkar announced that the amendment should be rejected without addressing any of the objections. Consequently, it was decided to refer clause 17 back to the Advisory Committee on Fundamental Rights and Minorities, which eventually rejected it.

2.2. What Is Propagation?

When the Assembly discussed the religious freedom clause once more in December 1948, the use of the word 'propagate' generated more discontent and confusion; hence, several members moved

amendments to remove the term or revise the clause. However, rather than being a debate about the disagreements and the proposed amendments, the meeting took the form of a seemingly random sequence of statements of opinion by Assembly members, who neglected to respond to each other and eventually did not even defend their own objections to the clause.

Tajamul Hussain, a Muslim representative, suggested replacing the words "practise and propagate religion" by "practise religion privately." "Why should you interfere with my religion," he asked, "and why should I interfere with your religion?"

> Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or why should you ask me to attain salvation according to your way? (CAD, 3 December 1948)

If we accept this proposition, he asked, then "why propagate religion?" "Do not demonstrate it for the sake of propagating," he continued: "Do not show to the people that this is your religion for the sake of showing." Hussain's conclusion was clear: "If you start propagating religion in this country, you will become a nuisance to others. So far it has become a nuisance" (CAD, 3 December 1948). Clearly, this Indian Muslim shared the objections against granting a constitutional right to propagate religion and found interfering with the religions of others objectionable.

Several Assembly members moved other amendments to curb the right to propagate. The socialist K.T. Shah argued for a prohibition against propagation of religion in educational institutions, asylums and hospitals, institutions for the elderly, etc. What one should recognize is "the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others." But conversion can only happen after mature consideration, which is impossible for children, people of unsound mind, etc. Shah wanted to make sure that "minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced." This provision was necessary, according to him, to prevent abuse of the freedom to propagate. As he put it, this was a question of decency: "When you meet at a social gathering or congregational union this much decency should be observed that you shall not carry on your influence in an undue manner, but only rely upon the convincing character of your arguments" (CAD, 3 December 1948). Again, we note the emphasis put on the role of the intellect and reason in deciding about religion and conversion.

The Assam delegate Rohini Kumar Chaudhari contributed by stating that he had no objection to the propagation of any religion: "If anyone thinks that his religion is something ennobling and that it is his duty to ask others to follow that religion, he is welcome to do so." But, he continued, "what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion." 'Throwing mud' referred to the fact that missionaries had gone around the country and "described Sri Krishna in the most abominable terms" and decried the worship of idols and called them names. According to Chaudhari, it made no sense for followers of one specific religion to denigrate another simply because it had unsatisfactory features. More objections to the right to propagate religion were voiced by Lokanath Misra, who called the religious freedom clause, then Article 19, "a Charter for Hindu enslavement" (CAD, 3 December 1948). In his eyes, the introduction of this right created a great danger: on the one hand, the Constitution was "tabooing religion" in the sense that the secular state would by-pass the ancient culture of the land; on the other hand, it showed the "unjust generosity" of making propagation of religion a fundamental right. Together, this could only "mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners." Like others before him, Misra concluded with a plea to drop the word 'propagate' (CAD, 6 December 1948).

Each of these interventions was largely disconnected from the others; only very rarely did members address the statements made by their fellow members. The meeting meanders between speeches about the survival of the Hindu religion, the place of religion in educational institutes and

hospitals, the meaning of 'secularism', 'religion' and 'dharma', etc. In other words, the Constituent Assembly 'debates' about the fundamental right to religious freedom show an absence of debate. Again, all the interventions and amendments concerning the clause were ignored in the drafting of the Constitution. In fact, when the Vice-President concluded the debate, he called upon Ambedkar to reply to the amendments in his role as the chair of the Drafting Committee. Ambedkar said he had nothing to add to the speakers who spoke in support of this article and that he was prepared to accept only one amendment (CAD, 6 December 1948). A member was dissatisfied: "May I ask whether it will be enough if Dr. Ambedkar says: 'I oppose: I have nothing to say'. I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate" (CAD, 6 December 1948, H. V. Kamath). The Vice-President replied: "I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments." With this, the debate came to an end, all amendments excepting one were rejected, and the right to propagate religion was incorporated into Article 25 of the Constitution.

Ambedkar's role epitomizes the nature of these exchanges in the Constituent Assembly. As the chair of the Drafting Committee, he had no special power to decide about the fate of amendments in the plenary Assembly. Still, his choosing to accept or reject amendments to the religious freedom clause ended up playing a decisive role. He refused to give reasons for rejecting the proposed amendments and ignored whatever had been said by his fellow Assembly members in favor of the amendments. Yet, these members did not attempt to intervene or defend their objections to this clause on the freedom of religion. Once they had to vote about the constitutional clause and the amendments, they appeared to become indifferent to their own objections and concerns. As a result, the Assembly's vote simply followed Ambedkar's dictate.

Moreover, even though many of the interventions revealed ignorance about the right to religious freedom, conversion, and the meaning of 'propagation of religion', the Assembly never called upon any experts, available scholarship, or background information to clarify the issues at hand. Consequently, at the end of the discussion, it remained equally unclear as before as to what the relation was between the right to propagate religion and the freedom to convert, what 'propagating' religion meant, and how the dispute about religious conversion should be made sense of. To conclude, the Assembly's sessions did not consist of a reasonable debate which could lead to justified decisions about the content of the constitutional religious freedom clause. Instead, in a matter as significant as the right to freedom of religion, there was a major disconnect between the utterances and concerns of the Assembly members on the one hand, and the eventual decisions about the clause that would become Article 25 of the Constitution on the other.

3. Historiographical Accounts

How can we make sense of the Constituent Assembly's debates about the right to profess, practice, and propagate religion? We could turn to the wide range of scholarship on religious conversion and proselytization in India. Most of this scholarship consists of historical, descriptive, and anthropological works (e.g., Harding 2008; Heredia 2007; Roberts 2016; Robinson and Clarke 2003). Some authors address the conflicts related to conversion, proselytism, and religious freedom in India (Adcock 2014; Bauman 2015; Osuri 2013; Sarkar 2007; Viswanathan 1998); a few works also examine the relevant debates in the Constituent Assembly (Josh 2009; Kim 2003). What the historiographical accounts have in common is that they focus on the decades preceding the Indian Independence of 1947 to explain the disputes that occurred in the Constituent Assembly and afterwards, that is, they connect the controversies about conversion and propagation of religion in post-Independence India to a set of historically specific concerns and discourses which emerged from the events and developments of the late colonial period.

Consider one such historiographical account. In her *Limits of Tolerance* (Adcock 2014), C. S. Adcock explains the distrust towards conversion and proselytization in contemporary India in terms of a distinctive Indian ideal of "Tolerance," which was central to the Gandhian tradition and became

a commonplace of Indian secularism. This ideal rests on a distinction between "proselytizing" and "non-proselytizing" religions and is critical of "proselytizing religion" because of its alleged intolerance stemming from dogmatic and exclusive truth claims. Adcock claims that the "Tolerance" discourse builds on this distinction to develop a specific critique of religious freedom; it suggests that recognizing the freedom to convert and proselytize as a part of the right to religious freedom privileges "proselytizing religions" and is unsuited to the Indian cultural context. This ideal of "Tolerance" should not be viewed as a timeless Hindu attitude, she argues, since it emerged from specific historical and political conditions, such as the disputes about the *shuddhi* movement of the Arya Samaj (a Hindu reform movement which sought to convert Muslims and others to 'the pure and eternal religion of the Vedas') and its Islamic counterpart of *tabligh* during the 1920s and 1930s. Moreover, this discourse drew upon the conceptual vocabulary developed by the comparative study of religion in Britain and Europe (Adcock 2014). Continuing along the lines of Adcock's argument, one could suggest that the participants in the Constituent Assembly debates were the heirs to this historically specific set of discourses about conversion, which had emerged from the interreligious polemics in British India (involving organizations such as the Arya Samaj, Tablighi Jamat, the Society for the Propagation of Christian Knowledge, etc.) and borrowed from British colonial law and politics and the language of European comparative religion. In brief, the disputes about conversion and proselytization in the Assembly were shaped by historically specific ideas and events that unfolded during the first half of the 20th century.

This type of account is home to basic problems. For one, the specific vocabulary used by some members of the Constituent Assembly undoubtedly borrowed from the discourse of the Gandhian political tradition and from verbiage popular in the 'interreligious' polemics of earlier decades; some of these terms and phrases also originated in the comparative study of religion in Europe. However, the relevant Assembly members used this English-language vocabulary to try and articulate particular concerns and stances which were already visible from the early 18th century. Moreover, several members also used a different conceptual vocabulary that cannot be attributed to late colonial interreligious polemics or the discourse about "Tolerance." In fact, as we have shown elsewhere, the conflicts about conversion in India show recurring concerns, patterns, and clusters of ideas that have surfaced again and again from the early modern period to contemporary disputes (Claerhout and De Roover 2005, 2008).

On the one hand, Christian Assembly members drew upon centuries of conceptual developments within Christian theology when they invoked the oppression of the conscience, the connection between the soul and God, and spiritual forces working upon the individual as factors central to the process of conversion. Naturally, Christian thinking concerning conversion has shown discontinuities, shifts, and distinct conceptual elaborations from the early middle ages until today. Nevertheless, it does reveal a central set of concerns and concepts that recur over and over again. For instance, the question of whether the conscience should always be free and forced conversion ought to be off limits; the nature and steps of the process whereby the individual believer can turn towards Christ, submit to God, and find spiritual freedom; the way in which conversion depends on the workings of the Holy Spirit rather than on human effort; etc. For more than fifteen centuries, the process of conversion and its relation to the spreading of Christian religion has been one of the major concerns of Christians from different denominations, eras, and regions.[5] That terms such as 'proselytization' and 'religious freedom' were introduced only at a particular point in time to conceptualize dimensions of this process cannot deny the recurrent patterns in Christian reasoning and practices related to conversion.

On the other hand, the interventions of the Assembly members with a background in the Hindu traditions reflected stances and concerns that had been expressed regularly in the period from the late

[5] From the vast literature on the process of conversion, see: (Armstrong and Wood 2000; Citron 1951; Harran 1983; Morrison 1992; Muldoon 1997; Tellenbach 1991; Wicks 1992).

17th century to the mid 19th century: the incomprehension towards the idea that one 'religion' could be 'true' and all others 'false'; the refusal to accept that religions are engaged in rivalry over this type of truth; the belief that people should continue to follow the 'ancient' traditions of their forefathers; the claim that attempts to convert people from one religion to another are futile and inappropriate; the aversion towards Christian missionaries' harangues about the 'false' gods and idolatry of the Hindus; etc. These issues were already visible in the early 18th-century reports of encounters between the Protestant missionary Bartholomäus Ziegenbalg and the 'Malabarian Brahmins' he addressed (Ziegenbalg 1719; Grafe 1972); they surface explicitly in late 18th-century and 19th-century debates between British officials and missionaries and Hindu pundits and others (Young 1981; Ali 1965). What is perhaps most striking throughout these encounters is the incomprehension on both sides; participants with a background in the Hindu traditions use the relevant vocabulary in ways very different from the language use of Western Christians and some of their Indian converts; this regularly leads to a breakdown of the conversation (Claerhout and De Roover 2005). Clearly, these recurring patterns in the conflicts about conversion cannot be attributed to a set of historically specific discourses that emerged in the first half of the 20th century. The continuity of these underlying patterns is not denied by the fact that concerns and ideas were at times articulated with new vocabulary.

Another difficulty becomes apparent when we juxtapose different historical studies concerning the tensions about conversion in India. These studies relate the conflicts to a variety of factors: Christian efforts to convert Dalits and Hindu (nationalist and upper-caste) resistance against these efforts; the historical interrelations between Hindu reform, colonial policies, cultural nationalism, concerns about minorities and their interests, mass conversion movements among the 'oppressed', etc.; the emerging Hindutva ideology ('soft' and 'hard') and the opposition by religious minorities and secularists against its claims; the fear of losing one's Hindu identity and resentment against Christian conversion as a symbol of colonial oppression; the articulation of a distinct Indian form of secularism (e.g., Bauman 2008; Chatterjee 2011; Harding 2008; Jaffrelot 2010, pp. 155–56; Josh 2009; Kim 2003; Tejani 2008). But how does one determine which among all of these factors gave shape to the post-Independence conflicts about religious conversion in India and what their respective role was?

One can point to many sets of events and discourses that preceded the Constituent Assembly and claim that these played some 'decisive' role in giving shape to the arguments of its members. But what would count as evidence for the claim that one set of factors (rather than other factors) was crucial in determining the positions and stances of these members? Of course, one could also argue that the discourses about religious freedom, conversion, and the right to propagate in the Assembly were constituted by the interplay among all of the above-mentioned factors. Thus, one ends up with Herbert Butterfield's conclusion that "the only safe piece of causation that a historian can put his hand on, the only thing which he can positively assert about the relationship between past and present" is the following: "It is nothing less than the whole of the past, with its complexity of movement, its entanglement of issues, and its intricate interactions, which produced the whole of the complex present" (Butterfield 1965, p. 19).

A third problem is the manner in which some of these accounts go about with the text of the Constituent Assembly debates. Rather than examining what its members said about the question of conversion and propagation and trying to make sense of their statements, scholars attribute positions and sentiments to these members which are not apparent from the interventions in the Assembly. Thus, Sebastian Kim explains the Constituent Assembly's disagreement as follows:

> For Hindus, Hindu culture and tradition were such an integral part of their identity that religious conversion meant changing one's heritage and thus losing one's identity. It went against the tradition of 'social, moral and religious order', established by dharma (*CAD* Vol. 7:824–26). While Christians feared that the majority Hindus would use their social and political power to suppress conversion, Hindus resented the fact that Christians were determined to have their way over the right of conversion, which they saw as a symbol of colonial oppression. (Kim 2003, p. 58)

Surprisingly, in the report of the session that Kim refers to, the claim that religious conversion went against the social, moral, and religious order established by dharma is nowhere to be found. One member just argues that the state should not identify with any specific religion, but that *dharma* does have something to contribute to the welfare of the world. In other words, Kim's interpretation not only postulates claims that are absent from the debate, but also speculates about a 'resentment' that supposedly motivates these members but which is not explicitly present in their interventions.

Similarly, Christophe Jaffrelot says the following about the debate in the Assembly: "The word 'propagate' was here a euphemism for 'proselytizing activity' and even 'conversion', terms whose emotional charge was too great" (Jaffrelot 2010, p. 155). In other words, the right to 'propagate' was inserted into the Constitution because some members had 'emotional' objections to two other words, even though these objections were not stated explicitly. Jaffrelot focuses on one intervention by Lokanath Misra, a Congress representative from Orissa, who called the Constitution "a Charter for Hindu enslavement" and objected to recognizing propagation of religion as an inalienable right (CAD, 3 December 1948, Lokanath Misra). In so doing, he ignores dozens of very different interventions equally critical of the right to propagate, but still insists that Misra's "speech" was "a good reflection of the thinking of Congress traditionalists and even of Hindu nationalists" (Jaffrelot 2010, p. 156). Thus, in today's academic study of India, it has become common to claim that the insertion of 'propagate' into Article 25 counted as a victory for the liberal forces and a defeat of Hindu traditionalists and nationalists. In the words of the historian Bhagwan Josh:

> The debate in the Assembly revealed two broad ideological tendencies. On one side were those Congressmen who were, like the Hindu Mahasabha and Rashtriya Swajamsevak Sangh (RSS), opposed to the very idea of conversion and therefore did not want the word 'propagate' to be included within the Fundamental Rights. The other comprised those who were more liberal minded, aware of new developments in world public opinion and not opposed to the idea of conversion as such. But they understood it as pertaining to an 'individual' conversion. (Josh 2009, p. 101)

Finally, Josh claims that "the idea of conversion was included in the Constitution as a fundamental right despite the resistance exerted by anti-Christian forces" (Josh 2009, p. 101). Now, several members of the Assembly indeed expressed reservations vis-à-vis the constitutional recognition of a general right to convert. However, this group did not consist of Hindu nationalist and anti-Christian forces, but of people with different backgrounds: Congress members from various Hindu and other Indian traditions, a Muslim representative (Tajamul Hussain) and a secularist socialist (K. T. Shah). They argued for specific restrictions on the right to propagate religion; for instance, they objected to the converting of minors and other vulnerable groups or to the reviling of other traditions. These members were not opposed to "the idea of conversion as such," since they agreed that changing from one religion to another should always remain possible for adults, and many insisted that the right to propagate should be included in the Constitution as a concession to the Christian minority. Moreover, the advocates of a universal right to conversion in the Assembly were not "liberal minded" cosmopolitans. They were Christians, inspired by religious concerns about the relation between the conscience and God and the fundamental right to religious freedom. Hence, Josh's account superimposes a contemporary explanatory template—namely, the representation of Indian politics as an ideological struggle between Hindu nationalists and liberal minded secularists—onto a debate that occurred in the 1940s.

4. Making Sense of the Conversion Conflict

To gain insight into the disagreements in the Constituent Assembly, we aim to elucidate some of the recurring patterns in the Indian conflicts about conversion. From the beginning of the Independence struggle, it had been stated that the right to freedom of religion would be crucial in India given the country's religious diversity. Since conversion had long been a sensitive issue, the Constituent Assembly would need to address this in its deliberations about the constitutional clause on the freedom

of religion. It failed to do so. As a result, religious conversion continued to generate conflict in India for decades to come, while the constitutional right to 'propagate religion' only added to this conflict. Consider the Supreme Court's landmark decision in the case of *Rev. Stainislaus v. State of Madhya Pradesh* (1977). Here, the Court cited a dictionary definition of 'propagate' as "to transmit or spread from person to person or from place to place" and concluded:

> We have no doubt that it is in this sense, that the word 'propagate' has been used in Article 25(1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike. [1977 AIR 908/SCR (2) 611]

In other words, aiming to convert others to one's own religion constitutes an infringement of the freedom of conscience. Hence, according to the Supreme Court, the right to propagate religion cannot entail a right to convert other persons to one's own religion, but only allows one to transmit a religion by the exposition of its tenets. Predictably, this judgment caused further conflict, since it ignored the fact that certain groups in Indian society understood the freedom of conscience and the right to propagate religion very differently. Thus, two scholars have recently submitted that "the right to convert was actually included in Article 25, and, as such, the decision of the Supreme Court in *Stainislaus* was not only erroneous, but also led to instability in society, as Indian Christians feel they have been cheated in this matter" (Mustafa and Sohi 2017, pp. 942–43). In several ways, the ongoing disputes about conversion in India are similar to the 'debate' in the Constituent Assembly: there is strong—sometimes violent—disagreement about issues related to conversion and the propagation of religion; still, it remains unclear what the disagreement is about, what is at stake, what the conflicting positions are, and why the different parties are so emotionally involved in the issue.

Clearly, a new hypothesis is needed to begin to make sense of the Indian disputes about conversion, religious freedom, and the right to propagate religion. This hypothesis should take into account that similar discussions about questions of conversion and religious truth had been going on for more than two centuries in India before the Constituent Assembly took up this matter. In this section, we will take the first steps towards building such a hypothesis. We look at some dimensions of the dispute to develop an analysis that should also throw light upon the concerns and utterances of the Assembly members. That is, the challenge for this hypothesis is to make sense of the many disparate statements made in the Assembly and in other forums such as the Supreme Court. It should also allow us to come to some predictions about the dynamics of this conflict in India.[6]

4.1. A First Approximation

In India, the constitutional right to propagate religion has a conflict at its heart, which came to the surface in the disagreement about the conversion of minors in the Constituent Assembly. When the phrase 'to propagate religion' was introduced into the religious freedom clause, its primary reference was to Christian practices of conversion and proselytizing. In India, as elsewhere, Christians had used the word 'propagate' in relation to religion, as in 'propagation of the Gospel' or 'the propagation of

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[6] In today's scholarly landscape, any hypothesis that seeks to account for the Indian conflicts about conversion by conceptualizing their recurring patterns faces a risk: the charge of being 'essentialist' and 'essentializing' Christianity or the Hindu traditions. To avoid going into philosophical discussions about 'essentialism', we just wish to note the following: recognizing continuity is the precondition for describing discontinuities; that is, one is compelled to accept that there are phenomena such as Christian religion or the Hindu traditions, which show certain patterns and characteristics, in order to be able to speak about the internal diversity, plurality, and historical changes and shifts within these phenomena.

faith'. When non-Christian Assembly members adopted the term, they initially had Christian practices in mind, for they considered the recognition of the right to 'propagate' as a concession to this minority.

The reason as to why 'propagate' was used instead of 'convert' or 'proselytize' is not of great significance to our argument: it might indicate an attempt to use more neutral and less contested wording, or it may be a coincidence. Yet, the consequences of this language usage are crucial: the inclusion of the term 'propagate religion' allowed for several conflicting understandings of the meaning and implications of the right to religious freedom. Initially, the fact that the different participants in the discussion used the same terminology led to the assumption that they were referring to the same set of phenomena when they spoke of the 'propagation of religion'. However, the situation changed when Christian representatives began to argue that the freedom to convert should be extended to minors and human beings in general as an inalienable right. This caused astonishment and surprise among other members. Suddenly, it appeared that 'the right to propagate religion' meant something different to these Christians than it did to the others.

We propose that the Assembly members who objected to conversion of minors had a shared understanding of the right to propagate which remained implicit and vague in their reasoning. Some indications are given by the fact that they referred to conversion as a Christian *practice* and suggested that the constitutional right to propagate simply allowed this minority to continue its practice. When these members looked at Christian practices of conversion, they saw these as this particular community's way of disseminating or spreading its religion. Therefore, the freedom to propagate religion should merely permit the Christian minority to continue this practice.

However, several members argued that the right to 'propagate' was intended for other communities also. One representative pointed out that Hindus should also educate their people "on religious tenets and doctrines" (CAD, 6 December 1948, L. Krishnaswami Bharathi). Another suggested that the Hindus and the Arya Samaj should be able to carry on their 'propaganda', much like Christians, Muslims, Jains, and Buddhists (CAD, 6 December 1948, Shri T.T. Krishnamachari). Yet another said that the freedom to propagate religion would allow any citizen "to place the benefits or beauties of his particular form of worship before others" (CAD, 3 December 1948, K. T. Shah). Thus, these speakers explained that 'propagation' also encompassed certain practices of different religions and traditions in India. The propagation of religion was not a practice unique to the Christians, but referred to a more general category of practices shared across religions. It involved educating people on the tenets and doctrines of their religion and showing others how beneficial or beautiful one's religion and its practices are; roughly then, propagation was understood as the dissemination of a religion.

The many traditions that existed on the Indian subcontinent had a variety of ways of disseminating and sharing their ideas, stories, and practices. Among the various Hindu, Jain, Sikh, and Buddhist groups in India, this could take several forms in the first half of the twentieth century: public events like festivities and processions, including amplified speeches and music; education in traditional schools; swamis giving lectures and gurus instructing pupils; teaching Sanskrit slokas to children; debates between representatives of different traditions to demonstrate which is better than the other; distributing pamphlets and copies of books; etcetera. For Assembly members who hailed from such traditions, these practices must have been familiar. We propose that they shared an intuitive categorization, however rough or fuzzy, that encompassed this type of practices.

From this perspective, Christian conversion and proselytizing become instances of this wide range of practices. These Christian practices may have some peculiar and objectionable aspects, but they happen to be the practices whereby Christians disseminate their religion and spread its tenets. Consequently, when the term 'propagation of religion' was adopted by these Assembly members, they were referring to Christian practices of 'propagation' *as instances of this intuitive category of dissemination of religions.* That is to say, they *saw* these practices in terms of characteristics that appeared to be shared with the aforementioned practices from various Indian traditions. They attributed certain salient features to the practices in question, which allowed them to recognize all these practices as instances of a category now referred to with the term 'propagation of religion'.

As a first approximation, then, 'propagation' was understood by the majority of the Assembly members (and later by the Supreme Court judges) as the *dissemination of a religion and education concerning its tenets and practices*. The right to freely propagate religion entailed that the Christian minority should be free to engage in such practices, even if its specific form of propagation ('conversion') involved certain aspects which antagonized people from other communities.

4.2. A Second Approximation

All of this generates a basic problem: for Christians, this way of seeing conversion cannot possibly comprehend the nature of this process and the related practices of propagating religion. Naturally, these *also* involve sharing Christianity's 'message' through preaching and distributing pamphlets and bibles, holding public events like festivities, lectures and processions, and trying to persuade others of the value of this religion. But these are only secondary aspects of conversion. What are its primary characteristics then?

Consider the following set of claims: the God of the Bible, who is the sovereign Creator of the universe, has revealed his will in Scripture, which is his Word and not a doctrine of human origin. Therefore, propagating the Gospel is a question of spreading God's Word, rather than teaching any human idea, message, or doctrine. Being taught Christian doctrine may help a potential convert, but ultimately, the process of conversion depends upon the intervention of the biblical God into the human soul and conscience. Rather than any human practice of dissemination, it revolves around the Holy Spirit's working upon the soul because of which the sinner embarks on a process of turning to the one true God. Conversion is not a question of accepting some set of doctrines, but of submitting one's own will to God's will. Maximally, human practices can contribute to preparing people for this process—by creating 'a fertile soil', so to speak—but it is fundamentally dependent on his divine grace. Among other things, this preparation consists of creating the conditions that allow people freely to convert and respond to God's call.

While Christian groups and thinkers have conceptualized the process of conversion in many distinct ways throughout the two-thousand years of Christian history, several characteristics attributed to it have kept reoccurring: the primordial role of God in the process, the need for freedom of conscience, the restrictions on forced conversion, the limited role played by human reason and human works in the process, etc. Even if we allow for disagreement on some points, there is a simple consequence: Christian conversion *cannot be* a sub-set of the practices that come under the intuitive category of 'propagation of religion' held by others. For the Christian representatives who intervened in the debate, the right to propagate religion was *not* equivalent to the freedom to disseminate and share their traditions, tenets and practices. It was an essential right that should protect the conditions under which the soul can freely respond to God's call and to the work of the Holy Spirit, without being constrained by human fetters. 'Conversion' here could never just refer to the practices of dissemination that happen to be specific to the Christians.

In other words, for Christians, conversion is fundamentally different from any *human* practices of dissemination, since its essential dimension is *the biblical God's intervention* in the human soul and conscience and his revelation in his Word. This is why the freedom of conscience and the right to 'propagate religion' always entail the freedom to convert, and why this is "perhaps the most fundamental of Christian rights," as Frank Anthony put it (CAD, 1 May 1947). Within this framework, constraining the freedom of conversion amounts to human beings attempting to put legal and political restrictions on God's work.

4.3. Blindness on Both Sides

These two groups in the Constituent Assembly, and in Indian society more generally, *see different things*, when they look at the phenomena to which they refer as 'propagation of religion'. Both operate with a set of background ideas that have them perceive certain salient features in these phenomena. But the two ways of seeing 'propagation' are incompatible. One group sees a range of human practices

of disseminating traditions, within which Christian practices of conversion have a place. The other group would also recognize such a category, but Christian conversion is of a different order and cannot fit along the same range. In both cases, human beings are involved, who 'preach', teach, and discuss about ideas and practices. However, because conversion ultimately embodies the biblical God's intervention, this process and the related practices make up a distinct and unique category. As a consequence, to incorporate conversion into this general set of practices of 'propagating religion' entails a denial of the core nature of this process as Christianity conceives of it.

Because of this, the two groups inevitably understand propagation of religion very differently, and use the relevant terms ('propagate', 'conversion', 'religion', 'freedom' . . .) in distinct and often incompatible ways. But this incompatibility generally remains invisible to the two parties, as it does to today's readers of these disputes, because the speakers assume that they are talking about the same things when they discuss the freedom to 'propagate religion'. It is only at certain *points of rupture* that the conflict suddenly becomes visible at surface level. When this happens, both groups feel misunderstood and claim the other group is inspired by prejudices. In the Constituent Assembly's exchanges about the right to propagate religion, we are witness to such moments of rupture. Most prominently, the implicit conflict of views as to the nature of propagating religion becomes explicit in the disagreement about the conversion of minors and the age of discretion.

If religious conversion is an instance of the category of practices involved in the human dissemination of 'religions', then it should stay within the limits of reason and ethics that apply to all such practices. The conversion of minors and the mentally disabled self-evidently violates these limits: it is both unreasonable and unethical, when this is what 'propagation of religion' means. It is unreasonable, as several Assembly members argued, because a child does not yet have the maturity, capacities, and experience required to determine the relative value of 'religions' and choose between them on reasonable grounds. His or her intellect and reason have not yet been sufficiently formed and cultivated. The converting of minors is also unethical because it generally involves a disruption of family life, the misleading of 'gullible' youth, and tearing up the social fabric.

However, when Christian conversion is the unique process of turning to the true God, for which the ground can be prepared by fellow humans, but which ultimately consists of the soul and conscience's response to the workings of this God, then this same set of limits cannot apply. In fact, within this framework, restricting conversion, as one would any human practice of propagation, becomes unreasonable and unethical. This is what the Christian representatives in the Assembly attempted to convey: minors also have a conscience before God, and when they feel called by him to convert to another religion, no law should ever prevent them from doing so. Since all human beings are the creatures of God, who has given each of them a conscience that can respond to his call, the act of religious conversion cannot require as a precondition a mature and well-formed intellect and knowledge of different religions and traditions.

This is not to deny that there are strands in the Christian thinking about conversion which emphasize the role of persuasion and reasoning in the act of converting and which question the legitimacy of attempts to convert children from one religion to another. Even in those arguments, however, the same basic challenge remains relevant: putting legal restrictions on the freedom of conversion would amount to subordinating the will of God to human laws; it is equivalent to oppressing the consciences of individuals simply because of their age, intellectual capacities, and origin. This should not happen, since all human beings—regardless of ethnic or religious origin, age, gender, or mental capacities—ought to be free to respond to their Creator's call to conversion. Consequently, curbing the right to propagate religion in this way is to place an "embargo absolutely on the right of conversion," as one Christian participant in the debate put it (CAD, 1 May 1947, Frank R. Anthony). Additionally, it is also unethical because parents who go through conversion cannot bring their children to the religion which they believe is the only genuine response to God's call and the sole way of saving their souls.

4.4. A Culture Constituted by Tradition

How do we account for this incompatibility between two ways of seeing 'propagation of religion' and for the fact that it generally remains implicit and invisible but only becomes explicit in certain circumstances? To address this question, we first need to figure out the Indian conception of traditions and characterize how these traditions are culturally different from religions such as Christianity.

In his studies of the cultural differences between Asia and the West, S. N. Balagangadhara has theorized tradition as a type of phenomenon distinct from religions like Christianity, Judaism, and Islam (see Balagangadhara 1994, 2005, 2012). 'Tradition' refers to the ancestral traditions of different groups and communities in Asia (and elsewhere, ancient Rome, for instance). The members of such traditions continue them, not because of the alleged truth or validity of some set of beliefs or reasons, but because they have been passed on by the ancestors and transmitted from generation to generation. Such traditions, including their practices and stories, constitute communities as they evolve over time. They are both conservative and flexible: conservative because practices are generally retained unless there are good reasons to modify or discard them; flexible because the process of transmission always involves the modifying or rejecting of practices and the revising of stories and ideas.

Naturally, the Indian traditions (and Asian traditions in general) consist of more than ancestral practices and stories alone. They provide heuristics and ways of teaching which enable their members to learn to think about experience and act in the world. Generally, the many Indian traditions are oriented towards enabling the practitioner to move in the direction of 'enlightenment' or 'the dawning of knowledge'; hence, they provide a multiplicity of heuristics, signposts, and teaching methods to this effect (Balagangadhara 2005). The efficacy of such heuristics and methods depends on a range of factors, from the psychological inclinations of individuals, and their cognitive and other capacities, to the cultural context in which they have been raised. As a consequence, it does not make much sense to *persuade* individuals or groups of the virtues of such heuristics or methods; these are not doctrines that can be preached and accepted, since predicates of truth and falsity are not applicable to them. Rather, the question is whether or not a tradition and its heuristics are appropriate, helpful, and suitable for a certain individual. In this sense, people cannot be 'converted' into a tradition, even though they may move from one tradition to another for a variety of reasons; similarly, there may be attempts to spread a tradition, but this does not amount to having more and more individuals accept the 'truth' of a set of doctrines.

In a culture constituted by tradition, certain widely accepted clusters of ideas will dominate the reasoning about the shared practices, stories, and ideas of human groups. One such commonplace idea relates the venerability of traditions to their past and antiquity; that is, traditions are considered significant in so far as they have been transmitted and refined over many generations. Second, there is a tendency to connect each tradition to some community that claims a distinct past or to a more recent group that has crystallized around a specific teacher. Third, traditions (and their diverse practices, ideas, and stories) are considered as phenomena of human origin—implicitly so, since no need is felt to state this explicitly. Fourth, another common idea about traditions has to do with the spreading of their heuristics: these are to be disseminated in so far as they are useful to people. Members of a tradition may argue that the heuristics taught by their teachers are superior to those of any other tradition. But to suggest that one tradition should be followed by all of humanity because of its unique truth becomes implausible or even absurd against this background.

Finally, traditional practices can give rise to excesses and, when this is the case, human reason plays the role of putting constraints on these excesses. Thus, *human reason* plays a vital role in these traditions. It does not aim to provide the foundation for traditional practices in the sense of providing reasons or beliefs that should justify them. Instead, it puts reasonable constraints on traditions and their practices. That is, the role of reason is to prevent and constrain excesses and to allow one to carefully select and modify practices, whenever changing circumstances, differing conditions or other factors call for this.

We suggest that this cluster of ideas about the nature of traditions is widely present in Indian society and, together with other related conceptual clusters, this constitutes the background framework which guides the intuitive reasoning of people about the traditions and practices of human communities. It provides them with a common vocabulary; it plays a central role not only in formulating thoughts about human traditions, but also in assessing the plausibility, significance, and reasonableness of such thoughts. This conception of tradition and the related cluster of ideas also determine the way in which followers of Indian traditions categorize and see the practices of other communities.

Another phenomenon of vital importance is one which we will not consider in any depth here, but which we have examined elsewhere: these widely shared clusters of background ideas concerning tradition gave shape to how Indians adopted the English language from the colonial period onwards and how they use its relevant vocabulary such as 'religion', 'conversion', 'propagation', 'freedom', and the 'right to religious freedom' (Claerhout 2014; De Roover et al. 2011). Inevitably, English-language terminology is mapped onto the natural language usage of the Indian vernaculars and their relevant vocabulary. This often results in statements that look peculiar, bizarre, and incoherent, such as several of the Assembly members' claims about the constitutional 'right' to propagate religion.

4.5. Tradition, Propagation, and Conversion

This hypothesis about the nature of tradition allows us to take the next step in characterizing the problems in the Indian dispute about conversion and propagation of religion. Consider the positions of Assembly members and Indian judges with a background in the Hindu, Jain, or Sikh traditions. Predictably, their reasoning with regard to 'the propagation of religion' will be shaped by the typical cluster of ideas about the nature of tradition. They see the practices, ideas, and stories of different groups in Indian society as so many traditions transmitted from generation to generation. As a consequence, in their experience, a religion like Christianity becomes just another tradition or set of traditions, which has some peculiar characteristics but constitutes a form of tradition nonetheless.

That is, in a culture dominated by tradition, Christianity comes to be viewed as the specific tradition of a community and not as the one true religion for humanity. However, this way of seeing Christianity makes one oblivious to its core structure, since this religion is held not as a human tradition but as the revelation of the biblical God to humanity. This phenomenon is confounding, since Christianity shares many elements that traditions also have: throughout their past, Christian communities also developed a set of practices and doctrines, which are products of human origin and are transmitted from generation to generation and should be assessed by means of reason. However, in their experience, the core of Christian religion is the revelation of the biblical God to humanity, which expands and spreads because of His intervention, rather than purely by human transmission. To ignore this and to see Christianity as one more tradition is perfectly understandable from the perspective of a culture dominated by tradition, but it is equivalent to being blind to the crucial difference between traditions and a religion like Christianity.

This is what happens in the Indian debate about the right to propagate religion. People with a background in the Indian traditions approach the Christian religion as *one more* tradition. Consequently, the propagation of religion becomes the equivalent of the dissemination of traditions and their ideas and practices. That is, they draw upon the cluster of ideas about tradition to make sense of Christian conversion and proselytization: against this background framework, conversion is no more than a transmitted practice characteristic of this tradition. In this way, the practices of dissemination of traditions, with which they are already familiar, can also serve as models to make sense of these practices of the Christians. In other words, their intuitive category of 'propagation of religion' is constituted by this conception of tradition. Inevitably, this makes them blind to the distinct nature of the Christian process of conversion, because it has them view this process as a variant of the practices whereby Indian traditions are disseminated.

This has another consequence: if the propagation of religion is equal to the dissemination of tradition, then it has a status similar to other means of spreading human ideas and practices. That status explains why the freedom of conversion should remain within the limits of reason and ethics that apply to all such human practices. The Indian cluster of ideas concerning tradition make it *unreasonable* (and even absurd or unintelligible) to insist that minors or the mentally disabled should share the same freedom to convert as adults with well-developed cognitive capacities. Since moving from one tradition to another is a process guided by human deliberation, and a potentially life-changing step, it requires cognitive and emotional maturity. Hence, trying to convert children or the mentally disabled is an excessive form of the Christian practice of propagation, which should be constrained by reason.

Under these conditions, it also becomes a possibility to equate 'propagation of religion' to 'propaganda', and to see 'the right to propagate religion' as equivalent to a 'right to propaganda', as several Assembly members did. Here, 'propaganda' refers to actions aimed at spreading human ideas and institutions, including political ideology and spiritual discourse. The 'propagation of religion', to these people, becomes just a special form of propaganda, or 'propagating' and 'preaching' human ideas. Unavoidably, this generates a question: why should the propagation of religion then acquire a special status in the Constitution? From this perspective, the right to propagate religion appears redundant, since 'the right to propaganda' is already encompassed by the constitutional clauses that protect the right to free speech and freedom of expression. As Munshi put it, even if the word 'propagate' were not there, "I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith" (CAD, 6 December 1948, K. M. Munshi). Or, in the words of another member, "after all, propagation is merely freedom of expression" (CAD, 6 December 1948, Shri K. Santhanam).

In contrast, in Christianity, the propagation of faith (or '*propagandum Fidei*' in Latin) cannot merely be a specific form of propaganda to be subsumed under the right to freedom of expression. For Catholic Christians, the propagation of faith is intertwined with the very nature of the Church. As the Bible has it, the Church is divinely sent to the nations of the world to be unto them "a universal sacrament of salvation" (Mark 16:16). Following in the footsteps of Christ, the Apostles "preached the word of truth and begot churches" and it is the duty of the Church to continue this task "so that the word of God may run and be glorified" (2 Thess. 3:1). In other words, the kingdom of God should be proclaimed and established throughout the world. This also describes the duties of the Church's Society for the Propagation of the Faith. Things are not so different for Protestants, even though they would deny the status of the Roman-Catholic Church as a divinely-sent institution. For instance, the Society for the Propagation of the Gospel in Foreign Parts, an Anglican missionary organization active on the Indian subcontinent, had as its objective to show "the greatest Charity" to the souls of men by bringing the natives into "the Sheep-fold of our blessed Saviour" through "the use of the means of Grace" (Pascoe 1901, p. 8). However, unless blessed by God, this charitable work is worth nothing, as a popular English hymn about missionary work from this period, titled *God is working his purpose out*, made clear: "All that we do can have no worth, unless God bless the deed; vainly we hope for the harvest-tide, till God gives life to the seed" (Pascoe 1901, p. iii).

For Christians, then, the propagation of faith has an extraordinary status: it is propagating the Word of God, rather than any human message or ideology; it is part of proclaiming and establishing the kingdom of God throughout the world, rather than spreading the scope of some human tradition, movement, or institution. Here, it would be unacceptable to reduce the propagation of religion to 'propaganda', similar to propagating mere human ideas and institutions, and to suggest that the right to propagate religion is redundant since it is already covered by the freedom of speech or expression. This would be to reduce the Word of God to the status of human opinion and the doing of God's work to the equivalent of ideological propaganda. In the Christian religion, this will always be intolerable.

4.6. The Limits of Propagation?

By now, it should be clear that the conflict about conversion in India is not a clash between a party that opposes the freedom to propagate religion and one that defends this freedom; it is not a question of being pro- or anti-conversion; and it is certainly not a conflict between Hindu nationalists, who feel threatened by the recognition of the right to convert, and progressive or liberal-minded secularists, who wish to safeguard this fundamental right for the minorities and lower castes. This type of explanation amounts to misrepresentation of the Indian dispute about the right to propagate.

The intensity of the conflict over conversion has only grown in India in the decades that followed the enacting of the Constitution in 1950. The challenge confronting our alternative analysis is to make sense of this enduring conflict. How would our proposal allow us to predict the structure and dynamics of the lasting disputes about conversion?

Currently, we can only take a few steps towards answering this question. One crucial step is the realization that we are not only facing a conflict between two background frameworks or clusters of ideas: an Indian conception of the dissemination of tradition and Christian claims about the process of conversion. The two parties involved in the dispute also experience the conflict in *two incompatible ways*. One sees it as a question of imposing reasonable limits on (the excesses of) the Christian practices of conversion, which are viewed as instances of the human dissemination of tradition; for them, attempts to convert others that go beyond these limits are violations of the freedom of religion and conscience. The other sees it as the imposition of unreasonable limits on the process of conversion, which is primarily shaped by the biblical God; for them, it is obvious that the freedom to convert is essential to the freedom of religion and conscience. Both share a blindness to each other's experience of the conflict.

If this is the case, we can infer some basic predictions as to the further development of the conflict over conversion in India. The same set of issues should recur over and again, without giving rise to effective legal solutions. In fact, as the implicit clash becomes visible at surface level, these issues will get exacerbated. People reasoning against the background of one framework will find it increasingly difficult to digest that the propagation of religion should allow certain groups to try and convert members of other groups by means considered intrusive and unreasonable. When it becomes clear to them that Christian conversion cannot fit within the propagation of religion, as they intuitively understand this category, they will find this practice objectionable and call for legal restrictions. They will not see any conflict between recognizing the constitutional right to propagate religion and yet imposing such restrictions on conversion. Groups reasoning against the second background framework, in contrast, will find it increasingly objectionable that their practices of conversion are subordinated to unreasonable and discriminatory legal constraints.

Do these predictions help us to understand the clash over conversion in India as it has developed since the 1950s? This is what future research will have to examine. At first sight, the hypothesis looks promising, since it appears to allow us to make sense of specific developments. For instance, during the past decades, legislation has been passed by several state governments that seeks to restrict conversion *in the name of freedom of religion*. As noted, the Supreme Court also argued that the freedom to propagate religion does not entail a right to convert others, since conversion conflicts with the freedom of conscience once it goes beyond propagation understood as the transmission of the tenets of a religion. Our proposal holds the potential to show why such apparently unreasonable laws and legal decisions nevertheless make sense to Indian legislators and judges.

5. Conclusions

Before concluding, we need to highlight some potential risks of misunderstanding our analysis. The first can be put in the form of a question: Are we arguing that Indian Christians or Muslims are any less Indian, because they do not share the same conception of tradition? This type of question is misguided, since there is no sound way of conceptualizing and measuring the 'Indianness' of individuals. Moreover, it is also unproductive, for it conceals far more promising research questions.

In the Constituent Assembly, we saw a Muslim representative take positions that appear to be constituted by the Indian conception of tradition. He questions the right to propagate religion: "Why should you interfere with my religion and why should I interfere with your religion?" (CAD, 3 December 1948, Tajamul Husain). From this, we can infer that some Indian Muslims adopted these background ideas about tradition. A similar phenomenon is visible in Frank Anthony's explicit declaration that his community of Anglo-Indian Christians neither propagates nor converts (CAD, 1 May 1947). To allow for this, the way in which such Indian Muslims and Christians experience and practice their respective religions in India must have taken a distinct form, where the spreading of 'true religion' is subordinated to other dynamics.

This raises the general question as to how religions like Islam and Christianity begin to change when they are embedded in a cultural setting constituted by the phenomenon of tradition, such as Indian culture. How do their attitudes and ideas concerning religion take new and different forms, when they operate in a larger framework of Indian traditions? Obviously, formulating and answering this question requires extensive research, but it indicates that there are routes to think about the relationship between Indian culture and a religion like Christianity, which are more fruitful than the increasingly barren debates about religion and conversion in contemporary India.

A second risk of misunderstanding the hypothesis is that we are merely suggesting that the Constituent Assembly members failed to understand Western-Christian notions of 'religion', 'conversion', 'rights', and 'freedom'. This is not our claim. Instead, we wish to draw attention to the fact that cultural difference is relevant to understanding the dispute about conversion and religion in India. When people with a background in the Indian traditions voice concerns about propagation and conversion, they are implicitly stating a cultural conception of tradition, which has so far been ignored in the debate and in academic analysis. The fact that they appear to use the English language—and its vocabulary like 'religion', 'propagate', and 'conversion'—fluently has been misleading. Because of their usage of these words, their concerns are easily distorted. Many of their concerns about conversion and propagation of religion have been swept under the rug as though they simply reflect a 'Hindu nationalist ideology' and are irrelevant to the question of religious freedom. This not only misrepresents the Indian conflict about conversion but also prevents us from understanding the real concerns and finding solutions.

Even more, it covers up another question: how is it possible that Indian 'secularists' and political leaders like Nehru and Ambedkar found it obvious that the freedom of conscience and religion should entail the right to convert others to one's own religion? Why did they ignore the reasoning of the critics of conversion in the Constituent Assembly and elsewhere? And why is it so self-evident to Western commentators and to international bodies like the United Nations that the legal restrictions on conversion in India constitute violations of the right to religious freedom? These questions are significant because the secular intelligentsia seem to be reproducing a Christian position on the freedom of conscience and the right to convert, as though this is *the* self-evident and rational option, while ignoring the concerns generated by the Indian conception of tradition.

Understood against the background of a culture constituted by tradition, the fact that one argues for constraints on religious conversion is not incoherent with simultaneously advocating the freedom to propagate religion. From this perspective, the freedom of religion includes the freedom for the Christians to continue their practices, even if one of those practices comprises a peculiar and often objectionable form of 'transmitting the tenets of religion'. So long as this practice of conversion remains within certain limits of reason and ethics, Christians should be free to partake in it; when it goes beyond those limits, it becomes an intrusion into the freedom of religion of others. Against this background, then, Article 25 includes the freedom for Christians to continue their practices ('conversion') but within the limits set by the Indian conception of tradition and its notions of dissemination ('propagation'). Future research will have to show whether this hypothesis can help unravel the continuing dispute about conversion and religious freedom in India.

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References

Adcock, Catherine S. 2014. *The Limits of Tolerance: Indian Secularism and the Politics of Religious Freedom*. New York: Oxford University Press.

Ahmad, Tariq. 2018. Report: State Anti-Conversion Laws in India. The Law Library of Congress: Global Legal Research Center. Available online: https://www.loc.gov/law/help/anti-conversion-laws/india-anti-conversion-laws.pdf (accessed on 2 November 2018).

Ali, Muhammad Mohar. 1965. *The Bengali Reaction to Christian Missionary Activities 1833–1857*. Chittagong: Mehrub Publications.

Ambedkar, Bhim Rao. 1947. States and Minorities. Available online: https://cadindia.clpr.org.in/historical_constitutions/states_and_minorities__dr__b_r__ambedkar__1945__1st%20January%201945 (accessed on 24 October 2018).

Armstrong, Guyda, and Ian N. Wood, eds. 2000. *Christianizing Peoples and Converting Individuals*. Turnhout: Brepols Publishers.

Balagangadhara, S. N. 1994. *"The Heathen in His Blindness . . . ": Asia, the West, and the Dynamic of Religion*. Leiden: Brill.

Balagangadhara, S. N. 2005. How to Speak for the Indian Traditions: An Agenda for the Future. *Journal of the American Academy of Religion* 73: 987–1013. [CrossRef]

Balagangadhara, S. N. 2012. *Reconceptualizing India Studies*. New Delhi: Oxford University Press.

Bauman, Chad. 2008. *Christian Identity and Dalit Religion in Hindu India, 1868–1947*. Grand Rapids: Wm. B. Eerdmans Publishing Co.

Bauman, Chad. 2015. *Pentecostals, Proselytization, and Anti-Christian Violence in Contemporary India*. Oxford: Oxford University Press.

Butterfield, Herbert. 1965. *The Whig Interpretation of History*. New York and London: W.W. Norton. First published 1931.

Chatterjee, Nandini. 2011. *The Making of Indian Secularism: Empire, Law and Christianity 1830–1960*. New York: Palgrave Macmillan.

Citron, Bernhard. 1951. *New Birth: A Study of the Evangelical Doctrine of Conversion in the Protestant Fathers*. Edinburgh: Edinburgh University Press.

Claerhout, Sarah. 2014. Gandhi, Conversion, and the Equality of Religions: More Experiments with Truth. *Numen: International Review for the History of Religions* 61: 53–82. [CrossRef]

Claerhout, Sarah, and Jakob De Roover. 2005. The Question of Conversion in India. *Economic and Political Weekly* 40: 3048–55.

Claerhout, Sarah, and Jakob De Roover. 2008. Conversion of the World: Proselytization in India and the Universalization of Christianity. In *Proselytization Revisited: Rights Talk, Free Markets and Culture Wars*. Edited by Rosalind I. J. Hackett. London: Equinox, pp. 53–76.

Coleman, Jennifer R. 2008. Authoring (In)authenticity, Regulating Religious Tolerance: The Implications of Anti-Conversion Legislation for Indian Secularism. *Cultural Dynamics* 20: 245–77. [CrossRef]

Dayananda, Saraswati Swami. 1999. Conversion is Violence: Open Letter to His Holiness the Pope John Paul II. *The Indian Express*, October 29.

De Roover, Jakob, Sarah Claerhout, and S. N. Balagangadhara. 2011. Liberal Political Theory and the Cultural Migration of Ideas: The Case of Secularism in India. *Political Theory* 39: 571–99. [CrossRef]

Grafe, Hugald. 1972. Hindu Apologetics at the Beginning of the Protestant Mission Era in India. *Indian Church History Review* 6: 43–69.

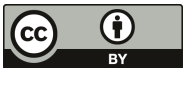
Harding, Christopher. 2008. *Religious Transformation in South Asia: The Meanings of Conversion in Colonial Punjab*. Oxford: Oxford University Press.

Harran, Marilyn J. 1983. *Luther on Conversion: The Early Years*. Ithaca and London: Cornell University Press.

Heredia, Rudolf C. 2007. *Changing Gods: Rethinking Conversion in India*. New Delhi: Penguin Books.

Huff, James Andrew. 2009. Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws. *Rutgers Journal of Law and Religion* 10: 3–7.

Jaffrelot, Christophe. 2010. *Religion, Caste and Politics in India*. Delhi: Primus Books.
Jenkins, Laura Dudley. 2008. Legal Limits on Religious Conversion in India. *Law and Contemporary Problems* 71: 109–27.
Josh, Bhagwan. 2009. Conversion, Complicity and the State in Post-Independence India. In *Christianity and the State in India: Complicity and Conflict*. Edited by Julius Bautista and Francis Khek. Abingdon: Routledge, pp. 97–114.
Kim, Sebastian. 2003. *In Search of Identity: Debates on Religious Conversion in India*. New Delhi: Oxford University Press.
Morrison, Karl F. 1992. *Understanding Conversion*. Charlottesville: University Press of Virginia.
Muldoon, James, ed. 1997. *Varieties of Religious Conversion in the Middle Ages*. Gainesville: University Press of Florida.
Mustafa, Faizan, and Jagteshwar Singh Sohi. 2017. Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy. *Brigham Young University Law Review* 2017: 915–55.
Osuri, Goldi. 2013. *Religious Freedom in India: Sovereignty and (Anti) Conversion*. London and New York: Routledge.
Pascoe, C. F. 1901. *Two Hundred Years of the S. P. G.: An Historical Account of the Society for the Propagation of the Gospel in Foreign Parts, 1701–1900*. London: The Society's Office.
Rao, Shiva B. 2015. *The Framing of the India's Constitution: Select Documents. Volume II*. New Delhi: Universal Law Publishing Co. Ltd. First published 1967.
Roberts, Nathaniel. 2016. *To Be Cared For: The Power of Conversion and Foreignness of Belonging in an Indian Slum*. Oakland: University of California Press.
Robinson, Rowena, and Sathianathan Clarke, eds. 2003. *Religious Conversion in India: Modes, Motivations, and Meanings*. New Delhi: Oxford University Press.
Sarkar, Sumit. 2007. Christian Conversions, Hindutva, and Secularism. In *The Crisis of Secularism in India*. Edited by Rajeswari Sunder Rajan and Anuradha Dingwaney Needham. Durham: Duke University Press, pp. 356–68.
Tejani, Shabnum. 2008. *Indian Secularism: A Social and Intellectual History, 1890–1950*. Bloomington: Indiana University Press.
Tellenbach, Gerd. 1991. *Church, State and Christian Society at the Age of the Investiture Contest*. Translated by R. F. Bennett. Toronto: University of Toronto Press. First published 1936.
Viswanathan, Gauri. 1998. *Outside the Fold: Conversion, Modernity, and Belief*. Princeton: Princeton University Press.
Wicks, Jared. 1992. *Luther's Reform: Studies on Conversion and the Church*. Mainz am Rhein: von Zabern.
Young, Richard Fox. 1981. *Resistant Hinduism: Sanskrit Sources on Anti-Christian Apologetics in Early Nineteenth-Century India*. Publications of the De Nobili Research Library. Vienna: Institut für Indologie der Universität Wien, vol. VIII.
Ziegenbalg, Bartholomeus. 1719. *Thirty Four Conferences Between the Danish Missionaries and the Malabarian Bramans (or Heathen Priests) in the East Indies, Concerning the Truth of the Christian Religion*. Translated by Philipps. London: H. Clements.



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Article

The Trend to Discriminate Christians: Shifting from the 'Post-Christian' West to the Global South

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Abstract: To date, various international treaties have been adopted at the universal and regional levels, guaranteeing the protection of every person's freedom of conscience and religion. Moreover, international monitoring mechanisms have been established to protect this human freedom within the framework of the UN, as well as various regional organizations (OSCE, Council of Europe, African Union). (1) In this article, the authors analyze these mechanisms and identify both positive practices and negative discriminatory practices against Christians—citizens of the states of the Global South. (2) The methodological basis of the study involves a combination of general scientific (dialectical, historical, inductive, deductive, analytical, synthetic) and particular scientific methods (formal–legal, comparative–legal, interpretative, statistical, procedural, and dynamic). (3) The use of these allowed the authors to identify a number of key problems in the indicated discourse and to draw conclusions. With regard to abortion, the authors conclude that current trend is that, in multiple and various ways, states are pressed to prioritize a woman's right to life, a woman's freedom of "reproductive choice" over a doctor's right to freedom of conscience. The situation is similar with the prioritization of the so-called "rights" of LGBT persons in relation to the rights of believing Christians. Moreover, the authors pay much attention to the analysis of the situation of the prosecution and persecution of Christians in the countries of the Global South, especially in Africa. (4) In conclusion, it is noted that various instruments, both political and legal, have been established in international law which make it possible to identify facts of the violation of freedom of religion and call to account for such acts of discrimination, but they are not always effective.

Keywords: international law; human rights; discrimination; Christianophobia; freedom of conscience; freedom of religion; abortion; UN; OSCE

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1. Introduction

On 22 August 2019, the United Nations celebrated the first annual International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief. The establishment of such an international day testifies to a serious problem with respect to human rights, primarily the right to freedom of thought, conscience, and religion, in various countries.

> "According to the Organization for Security and Cooperation in Europe (OSCE),
>
> [E]very 5 min a Christian is killed for their faith . . . More than 100 million Christians are being persecuted today . . . These figures should make the international community not only think and talk about the problem of discrimination against Christians, but also take decisive action in their defense".[1]

[1] Combating discrimination against Christians in the world as a contribution to the development of the concept of human rights. Speech by the Chairman of the DECR, Metropolitan Hilarion of Volokolamsk at a meeting of the III UN Committee (New York, 23 October 2012). Available online: https://pravoslavie.ru/56968.html (accessed on 20 December 2020).

For the period 1945 to 2019, an independent branch was formed within the framework of international law—international human rights law. One of the basic principles of international law on which this branch is based is "respect for human rights and fundamental freedoms, including freedom of thought, conscience and religion".[2] This principle is a peremptory norm of *jus cogens*, the violation of which is unacceptable. It is important to pay attention to the fact that it is the freedom of thought, conscience, and religion that is especially highlighted within the framework of this principle and even included in its name.

Moreover, states have committed themselves to respecting the right to freedom of thought, conscience, and religion in the framework of numerous international treaties, which were based on the Universal Declaration of Human Rights of 1948 (Articles 18, 19, 20). The basic universal international treaty that enshrines the right to freedom of thought, conscience, and religion is the International Covenant on Civil and Political Rights of 1966 (Articles 18, 19, 20, 26, 27), as well as the International Covenant on Economic, Social and Cultural Rights of 1966 (para. 3, Article 13).

At the regional level, international treaties have also been adopted that consolidate and detail the right to freedom of thought, conscience, and religion, taking into account local cultural characteristics. In addition, all international human rights treaties contain provisions prohibiting discrimination based on religious attitudes.

Thus, it can be stated that, at the international level, there is a solid legal basis for international obligations of states to guarantee the right to freedom of conscience, thought, and religion. It should also be noted that compliance with these guarantees is ensured at the international universal level by the existence of a developed system of statutory and contractual control mechanisms, within the framework of which states report on the fulfillment of their obligations.

Nevertheless, despite the existence of a well-developed international legal system for protecting the right to freedom of thought, conscience, and religion, the problem of the implementation of this right, including persecution and discrimination based on religion, is acute in many countries of the world.

As stated by Konstantin Dolgov, commissioner of the Ministry of Foreign Affairs of the Russian Federation for Human Rights, Democracy and the Rule of Law,

> In recent years, despite the measures taken by the states, the OSCE area has seen a serious increase in intolerance on religious grounds towards Jews, Muslims and especially Christians. Christianity, its shrines and followers are subjected to prosecution, violence, persecution, discrimination ... Among such manifestations are attacks on clergy, opposition to religious events, destruction and desecration of Christian churches and cemeteries, attempts to remove religious symbols from public places, infringement of the freedom of expression of Christians, discrimination in economic life and other spheres. The number of acts of vandalism, arson, theft of Christian values and cultural heritage is on the rise.[3]

For the past 10 years, the Russian Orthodox Church has constantly drawn the attention of the international community to the problem of the persecution and discrimination of Christians.

It should be noted that the term "Christianophobia" has come into widespread international use since it was first voiced at the 2009 UN World Conference against Racism, where the participating states regretfully noted the global rise in the number of incidents of racial or religious intolerance and violence, including Christianophobia.[4]

[2] Final Act of the Conference on Security and Cooperation in Europe 1975. Available online: https://www.osce.org/helsinki-final-act (accessed on 20 December 2020).

[3] The Foreign Ministry Announced the Surge of Christianophobia in the West. Available online: https://www.interfax.ru/russia/511239 (accessed on 20 December 2020).

[4] Clause 12 of the Outcome Document of the Durban Review Conference (2009), United against Racism, Racial Discrimination, Xenophobia and Related Intolerance New York, 2012, p. 96. Available online: https://www.un.org/ru/letsfightracism/pdfs/united_against_racism.pdf (accessed on 20 December 2020).

This article will touch upon two types of discrimination against Christians, the most common in the Global North, and which are increasingly resonating in the Global South, including as a result of significant pressure in the human rights sphere, as well as the direct prosecution and persecution of Christians for professing their own faith in the Global South. With regard to the discrimination against Christians, the article will study examples of prosecution (disciplinary, administrative, and criminal) for refusing to perform an abortion on grounds of conscience and religion and for refusing to provide services to LGBT people when this conflicts with the Christian conscience of the provider. The prosecution and persecution of Christians for their faith in the countries of the Global South will be considered in the context of the international obligations assumed by states to respect the right to freedom of thought, conscience, and religion.

2. Refusing Abortion Is a Right and Duty of a Christian

This section provides a comparison of the rights of various subjects who find themselves connected through abortion (a woman, an unborn child, and a medical worker). The scope and protection of these rights are exemplified by the International Bill of Human Rights[5] at the universal level and the practice of the ECHR at the regional level as international legal basis for comparison and several cases from the practice of the states of the Global South.

The authors reveal the disproportion of the attention to "abortion rights" in comparison with the right to freedom of religion in the interpretation of human rights treaties. The authors also stress that the disbalancing of human rights is, firstly, in place and leads to the violation of religious rights entitled to protection, even in cases where the balance could easily be found, and, secondly, disbalancing is carried out by gross distortions when the obligations of the states are being presented as obligations of individuals or when the proportionality of measures affecting the religious rights is one-sidedly assessed (only right against right and not, additionally, severity of limiting measures against other measures available). Here, the issue is not even about the uniformity of Christian denominations in abortion questions (although the "pro-choice" position is marginal among the Christian denominations; cf. (Schlesinger 2017) but about the right to be protected by international law on the part of those who, from a religious point of view, consider abortion to be a murder, as literally proven by the Ecclesiastical position of, e.g., Orthodox and Catholics, as cited below.

An abortion in medicine means "termination of pregnancy in the first 28 weeks, when the fetus is not yet viable".[6] In this way, the development of medicine makes it possible to save the life of an infant at an ever earlier stage and with the decreasing weight of the child at birth. In connection with the physiology of a pregnant woman, abortions are of two types: spontaneous and artificial. This article discusses exclusively the latter.

Starting from the second half of the twentieth century, abortion legislation has been steadily liberalized, often while retaining the provisions of relevant national regulations that allow medical practitioners to refuse to perform abortion for the reasons of conscience (Chavkin et al. 2017, p. 55).

The fact of artificial termination of pregnancy raises human rights issues in relation to three subjects (a woman carrying a child, an unborn child, and a medical practitioner who performs an abortion or refuses to perform it). Accordingly, in the International Bill of Human Rights and General Comments issued by the United Nations Human Rights Committee and the United Nations Committee on Economic, Social and Cultural Rights, we can find in the context of abortion the rights of women (right to life, right to the highest attainable standard of health, principle of non-discrimination and others), the rights of the child (but not the unborn), and the rights of the medical practitioner (the right to freedom of thought, conscience, and religion).

[5] The "International Bill of Human Rights" is a collective name for the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), and the International Covenant on Civil and Political Rights (1966) and its two Optional Protocols.

[6] Great medical encyclopedia of Petrovsky B.V. Available online: https://бмэ.орг/ (accessed on 20 December 2020).

The right to life is enshrined in Art. 3 of the 1948 Universal Declaration of Human Rights and Art. 6 of the International Covenant on Civil and Political Rights of 1966. The International Covenant on Civil and Political Rights 1966 in paragraph 1 of Art. 6 contains provisions prohibiting arbitrary deprivation of life. Derogation from the right to life is not permitted in any situation (UN HRC 2018, para. 1).

The voluminous paragraph 8 of the Human Rights Committee's General Comment No. 36 (2018) is devoted entirely to abortion in the context of the right to life (UN HRC 2018). Paragraph 8 contains a range of restrictions on the states party to the covenant in limiting the voluntary termination of pregnancy; it includes a series of "positive obligations" of states to guarantee "safe, legal and effective access to abortion" and advocates against unsafe abortions, where "unsafe" is used as a synonym for "illegal", as if abortion per se is a harmless manipulation.

Paragraph 8 states that

> "restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering that violates article 7 of the Covenant, discriminate against them or arbitrarily interfere with their privacy"[7].

It specifically recommends, inter alia, the removal of barriers that deny effective access by women to safe and legal abortion, "including barriers caused *as a result of the exercise of conscientious objection by individual medical providers*" (emphasis added by the authors).

In 2016, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 22 on the right to sexual and reproductive health (Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights) (UN CESCR 2016). According to the provisions of this document, it is important to consider the availability of qualified medical personnel, medicines, including medicines for abortion and for post-abortion care (para. 13); access to and dissemination of information on sexual and reproductive health issues (para. 18); access, on an equal basis with men, to medical services, medicines, and legal methods of termination of pregnancy, and contraceptives (para. 28); elimination or restriction of state's adoption of such laws, the action and implementation of which causes the restriction of the ability of individuals or groups of individuals to have the last rights to sexual or reproductive health, including the prohibition of abortion or criminal liability for them (para. 34); compliance with medical data (p. 40); cancellation of such a right in the future, restricting the rights of individuals to sexual and reproductive health, interference with such rights by third parties (para. 41), and others.

In 2000, the Human Rights Committee issued its General Comment No. 28 on Article 3 of the International Covenant on Civil and Political Rights of 1966, where the abortions appeared as indicators (para. 5) and consequences (paras. 10, 11) of inequality between men and women and where certain regulatory measures on abortions were named among examples of discriminatory violations of women's rights (para. 20) (UN HRC 2000).

The considered human rights documents pass over in silence the unborn child, the reason for which can be considered the lack of consensus between states regarding the legal basis of the very beginnings of human life. The Universal Declaration of Human Rights implicitly links legal personality to birth, since its Article 1 begins with the following words: "All human beings *are born* free and equal in dignity and rights (emphasis added)". However, the American Convention on Human Rights of 22 November 1969, in Art. 4.1, states the following: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception".

In solidarity with the Christian view of the origin of human life from the moment of conception, see (Ling 2017; Disney and Poston 2010), and taking into account the attention that is paid to arbitrary deprivation of life (UN HRC 2018, para. 6, para. 7, Section II "Prohibition against arbitrary deprivation of life"), the eradication of the death penalty

[7] Mentioning women and girls separately is based on the age gradation of adults (over 18 years old) and children (up to 18 years old, inclusive).

(UN HRC 2018, paras. 32–51) in the context of the right to life, we cannot call the provisions of para. 60 of General Comment No. 36 (2018) anything other than a mockery:

> "When taking special measures of protection, States parties should be guided by the best interests of the child, and by the need to ensure *survival*, development and well-being of *all children* /emphasis added, footnotes omitted/". (UN HRC 2018)

From a human rights perspective, a physician who refuses to perform an abortion for reasons of conscience must be protected by the right to freedom of conscience, religion, or belief.

As of 16 October 2020, the interpretation of Article 18 of the International Covenant on Civil and Political Rights of 1966 was given for the last time as long ago as in 1993 (UN HRC 1993). General Comment No. 22 (48), recognizing the right to freedom of thought, conscience, and religion (including freedom of belief) as "far-reaching and profound" (para. 1), is only four typewritten pages long, has 11 paragraphs[8], and is rather general (UN HRC 1993). Of the actions that may be due to religious beliefs, the document mentions only refusal to perform military service (para. 11). It also states, "no manifestation of religion or belief may amount to . . . advocacy of . . . hatred that constitutes incitement to discrimination, hostility or violence" (para. 7). The latter provision, in light of the aforementioned links of inequality between men and women with the problem of abortion in General Comment No. 28 (2000) (UN HRC 2000), in fact, is directed against the right of a medical practitioner to refuse abortion on grounds of conscience.

General Comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights, dedicated to the obligations of States under the International Covenant on Economic, Social and Cultural Rights in the context of business, also mentions the right of a physician to refuse an abortion on grounds of conscience when analyzing "the increased role and impact of private actors in traditionally public sectors, such as the health or education sector . . . " (para. 21) (UN CESCR 2017). The Committee recommends to the states that "Private providers should be subject to strict regulations that impose on them so-called "public service obligations". For instance, where health practitioners are allowed to invoke conscientious objection to refuse to provide certain sexual and reproductive health services, including abortion, they should refer the women or girls seeking such services to another practitioner within reasonable geographical reach who is willing to provide such services" (para. 21).

Three significant problems are present in the two quotes above. Firstly, again, it is about ensuring the rights of pregnant women and girls, and not the doctors, while the entitlement to protection of the latter should have been mentioned or even stressed, too. Secondly, the obligation is shifted to the doctor and does not remain with the state or, in this case, with the business entity—for example, in the form of the obligation to ensure the availability of abortion, despite the presence of religious health workers and without infringing on the right to freedom of belief of the latter. Thirdly, the document refers to General Comment No. 22 (2016) on the right to sexual and reproductive health, but not to General Comment No. 18 (1993) on the right to freedom of thought, conscience, and religion. This omission could have been easily avoided with the use of a more balanced text.

The European Court of Human Rights (hereinafter referred to as the ECHR or Court) has considered a number of cases related to abortion: cases concerning the abortion procedure and the violation of women's rights to perform it (ECHR 1980; ECHR 2010; ECHR 2004, etc., as well as Council of Europe: European Court of Human Rights 2016; see also Puppinck 2013), as well as concerning the right to religion and non-abortion (ECHR 2007; ECHR 2011; ECHR 1989, etc.). It can be said that the position of the Court is generally pro-abortion. It seems that the reason for this state of affairs is the de-Christianization of Western European society, expressed, among other things, in the development of the concept of so-called somatic human rights.

[8] For comparison: General Comment No. 36 (2018). Article 6: Right to life consists of 25 pages and 70 paragraphs (UN HRC 2018), General Comment No. 28 (2000). Article 3 (equality between men and women) has 7 pages and 32 paragraphs (UN HRC 2000).

Paragraph 3, clause XII.2 of the 2008 Fundamentals of the Social Concept of the Russian Orthodox Church states that "faithfulness to the biblical and patristic teaching on the holiness and invaluableness of human life from its very origins is incompatible with the recognition of a woman's "freedom of choice" to dispose of the fate of the fetus" (Fundamentals of the Social Concept of the Russian Orthodox Church 2008). However, it is precisely this "freedom of choice" that is the human rights consequence of the development of the concept of so-called somatic human rights, which are increasingly asserted at the universal and regional levels of human rights protection by international legal means.

In 2020, the European Court of Human Rights rendered judgments in the cases of two nurses from Sweden (Ellinor Grimmark and Linda Steen) who trained as midwives and were refused employment in Sweden due to their conscientious objection to abortion (ECHR 2020a, 2020b). After the judgments were made against Ellinor Grimmark and Linda Steen by the Swedish courts, the nurses appealed to the European Court of Human Rights, but the latter refused to consider these cases as manifestly unfounded.

The grounds for the appeal to the ECHR are similar for the two applicants. Each of them completed midwifery training funded by a Swedish government program and received a license to practice midwifery in Sweden but were subsequently denied midwifery work when they declared their Christian faith and refusal to participate in abortion. The nurses referred to norms of discrimination and violation of their freedom of conscience.

In both decisions, the Court found that it was a Christian belief that prevented the applicants from participating in abortion and that per se this civil stance is entitled to protection (para. 25 Grimmark case, para. 20 Steen case). Or, in other words, conscientious objection to abortion constitutes the exercise of religion within the meaning of Art. 9 of the Convention, and therefore, in both cases, there was an interference with freedom of religion (para. 25 of the Grimmark judgment, para. 20 of the Steen judgment). However, such interference is subject to the provisions on limiting the exercise of religion, "which 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", as enshrined in Art. 9 (2) of the Convention.

The Court unreasonably noted that the domestic courts carefully balanced the different rights against each other and provided detailed conclusions that were based on sufficient and relevant reasoning. A proper balance was thus allegedly struck between the different, competing interests (para. 27).

It seems that here, just like in the judgment on the Eweida case, which will be discussed in the next section of the article, the Court again confuses whose rights it is intended to balance. Obviously, the balance as sought by the Court here is between the "women's right to abortion", Sweden's "positive obligation" to organize the healthcare system for this "right", the employer's right to demand from all employees the entire scope of work, but not the right to freedom of religion of the health worker. In no way can a conclusion be made from the brief findings of the Court that the religious convictions of believers were recognized as eligible to be taken into account and be adapted to by the state, as is done with the healthcare system where the state adapts to the interest of a woman to get rid of a child she is carrying.

Under Art. 14 of the Convention (on discrimination), the Court also refused to consider the case as manifestly unfounded. The European Court of Human Rights agreed with the conclusion of the Swedish Discrimination Ombudsman, that the religious faith as such was at stake because "another midwife refusing a part of the work other than on religious grounds would not have been treated any differently from the applicant" (para. 10). Here, one can only regret that the applicant did not formulate the comparison groups as "midwives with convictions of conscience that do not allow abortion" and "midwives without convictions of conscience that do not allow abortions".

It is noteworthy that the Court links the proportionality of the restriction of the right to religion only with the protection of another right, but not with the fact that the restriction itself must be proportionate to other means available to the state to achieve a legitimate

goal (to provide certain services, in this case)—for example, availability of personnel who agree to perform abortions; see (Domenici 2020).

Surprisingly, the ECHR "does not see" that its decisions, reducing the entire work of a midwife to abortion, and not, in fact, to obstetric aid, deprive Christian believers of the opportunity to participate in the accompaniment of labor. In other words, in this judgment, the Court did not even try to strike a balance between the woman's right to abortion, enshrined in Swedish law, which is *derived* in the Court's practice from the right to privacy under Art. 8 of the Convention, and the right to freedom of religion *directly* guaranteed by the 1950 European Convention on Human Rights. On the contrary, the Court established a rigid hierarchy of rights that is not envisaged in the Convention. Roughly, the right to freedom of religion is the last human right to be protected; precedence should be given to any other human right. The Court limited the employment opportunities of Christian believers in a certain area of medical activity (obstetrics) in a discriminatory manner on the basis of religion. Notably, the employment in obstetrics generally lies outside the scope of the Convention and, in the considered case, cannot be related to the protection of the right to life of a woman due to the general nature of the prohibition actually imposed by the Court and the classification of abortion in general as the right to respect for private and family life.

As a matter of fact, the Court shifted the responsibility for the state's implementation of its obligations to provide abortion services to the applicants, as if depriving Christian believers of obstetric activity because of their refusal to perform abortions was the only means available to the state to achieve access to abortion throughout the country.

Three cases from the law enforcement practice of the Global South states indicate the spread of similar approaches in this region.

In 2009, in Brazil, the Catholic Church excommunicated the mother of a nine-year-old girl who was raped by her stepfather, who gave her consent to an abortion, and doctors who performed the abortion.[9] This decision was approved by the head of the Vatican Congregation for Bishops, Cardinal Giovanni Battista Re, but was strongly condemned by a part of society, including the President of the country, who spoke out "as a Christian and a Catholic", although the measures taken are ecclesiastical, not secular—the stepfather accused of rape was arrested to investigate the case.

In 2014, press covered the case of Bogdan Chazan, a Polish physician who, on Christian grounds, refused to perform an abortion on a woman whose child was unlikely to survive, according to doctors. The doctor did not inform the woman that after 24 weeks of pregnancy, she would not be able to have an abortion legally (according to Polish law, abortion procedures are allowed before the 25th week of pregnancy, "unless the life of the expectant mother or her child is in danger, as well as cases of incest or rape").[10] During the court proceedings, it was established that the doctor "had the right to refuse the procedure because it contradicted his Catholic faith, but was legally obliged to refer the patient to another doctor for an abortion procedure".[11] The Catholic Church condemned the actions of the authorities regarding the dismissal of Bogdan Chazan from the post of director of the city's Holy Family hospital in Warsaw, but the decision remained in force.

The third case is the one of a doctor from Argentina who refused to abort the fetus of a woman in her 23rd week of pregnancy.[12] In this case, a pregnant woman who was raped by a member of her family came to the Fernandez Oro hospital, where her condition was assessed by doctors. As a result, the woman was referred to the Pedro Mogillaski hospital in Cipoletti to terminate the pregnancy. The facts of the case further indicate that, at the

[9] The Vatican supported the excommunication of a Brazilian woman who allowed her 9-year-old daughter to have an abortion. Available online: https://www.newsru.com/religy/10mar2009/abort.html (accessed on 20 December 2020).

[10] Polish doctor dismissed in "abortion refusal" case, 9 July 2014. Available online: https://www.bbc.com/news/world-europe-28225793 (accessed on 20 December 2020).

[11] Ibid.

[12] Argentinian doctor found guilty for refusing to abort 23-week-old baby. 22 May 2019. Available online: https://www.lifesitenews.com/news/argentinian-doctor-found-guilty-for-refusing-to-abort-23-week-old-baby (accessed on 20 December 2020).

Cipoletti hospital, Dr. Rodriguez did not become fully persuaded that the woman had been given oxaprost (misoprostol) to induce an abortion, as generally this medication is given at yearly stages of pregnancy, but came to the conclusion of a risk of a serious and even life-threatening infection and prescribed relevant treatment. According to the testimony of the accused Dr. Rodriguez, the woman in the hospital was told that the intention of the doctors was to keep her until the possibility of a caesarean section, to which she gave her consent. As a result, a healthy child was born at 7.5 months of pregnancy, who, at the time of the hearing, was two years old.

The case was opened by the state prosecution and was legally related to the violation of the abortion law by inaction by Dr. Leonardo Rodriguez Lastra, whose refusal to perform an abortion late in pregnancy (23 weeks) was qualified by the court as "obstetrical violence", for which a penalty was imposed in the form of a suspended sentence of two years, subject to its replacement with a real imprisonment in the event of a repetition of a similar incident. The doctor was also under threat of being removed from the register of licensed doctors. According to the state prosecution, Dr. Rodriguez could not be convicted of violating the principle of conscience, since he "did everything possible not to perform the abortion procedure". They therefore demanded that he be convicted for "obstruction of the legal abortion procedure", since the woman who Rodriguez refused to perform an abortion on was raped by a family member in Fernandez Oro, and according to the Supreme Court, a woman reporting a rape does not have to prove that her pregnancy is the result of sexual assault, and she does not have to disclose the identity of the aggressor. In this case, Dr. Rodriguez Lastra did not question his patient's sincerity. Dr. Rodriguez Lastra, in his defense, referred to "the laws of his conscience" that prevented him from inflicting death on a child, as well as the dire consequences of late abortions.

The lawsuit has attracted a lot of media attention in Argentina, as abortion is illegal in the country but not punishable in so-called "extreme cases", which include pregnancy as a result of rape.[13] It is noteworthy that the trial itself was initiated by the deputy of the Rio Negro, Marta Milesi, who advocates for abortion and the introduction of relevant provisions into legislation. It was established during the questioning of the victim that she did not support the charges against Dr. Rodriguez.

Despite public support and approval for the actions of the accused Dr. Rodriguez, an indictment was brought against him.

Summing up, it is important to note that the Orthodox Church adheres to the position of the beginning of human life from the moment of conception, as reflected, for example, in the 2008 Fundamentals of the Social Concept of the Russian Orthodox Church:

> "Since ancient times, the Church has considered the intentional termination of pregnancy (abortion) as a grave sin. Canonical rules equate abortion with murder. This assessment is based on the conviction that the birth of a human being is a gift from God, therefore, from the moment of conception, any attempt on the life of a future human person is criminal". (para. 1, clause XII.2)
>
> Regarding the doctor's actions, the Concept says:
>
> "Sin falls on the soul of the abortion doctor. The Church calls on the state to recognize the right of medical workers to refuse abortion for reasons of conscience. *It cannot be recognized as normal when the legal responsibility of a doctor for the death of the mother is incomparably higher than the responsibility for the destruction of the fetus*, which provokes health workers, and through them patients, to perform an abortion /emphasis added/. The physician should exercise maximum responsibility for making a diagnosis that can push a woman to terminate her pregnancy; at the same time, a believing physician must carefully compare medical indications and the dictates of the Christian conscience".

[13] Ibid.

The Catholic Church, in stating a similar position, adds another important emphasis: "It is completely unacceptable . . . to resort to abortion, even if it is done for the purpose of healing" (Humanae Vitae 1968).

Unfortunately, current trends in the interpretation of states' human rights obligations go in exactly the opposite direction: the murder of an unborn child is not simply recognized as murder but is regarded as a welcome element of "a woman's decent life without pain and suffering", while the Church makes no exception in its qualification of abortion as a sin, even for cases of conceiving children as a result of heinous crimes against women or girls.

States are encouraged by a plurality and variety of ways to prioritize a woman's right to life on earth, a woman's freedom of "reproductive choice" and her equality with a man over a doctor's right to freedom of opinion with implications for eternal life.

From the point of balancing different rights, the authors wish to stress that their position is not in proclaiming that it is only the freedom of religion that is entitled to protection. On the contrary, the authors attempted to demonstrate that the right to religion is entitled to protection, too, even in a time when abortion is considered by some to be a norm. The unjustified lack of balance is proven to be at the expense of the freedom of religion only. Point by point, the remedies were offered above, namely, in one case, the balance could be gained by a reference to one more document; in another case by the correct distributing of obligations between the state, the employer, and the employee; in the last case by the correct proportionality test of measures that limit human rights.

The situation is similar with the prioritization of the so-called "rights" of the LGBT persons in relation to the rights of the faithful Christians.

3. Christians' Right to Freedom of Religion vs. LGBT "Rights"

First of all, it is important to note with regard to the "rights" of LGBT persons that LGBT persons do not have special rights that belong only to them. LGBT persons have all the same rights that non-LGBT individuals have, including the right to non-discrimination based on their relationship to any social group.

As the Vice Chairman of the UN Committee on Economic, Social and Cultural Rights, Professor Aslan H. Abashidze, points out, we are talking about an attempt to construct particular cases of individuals associated with their so-called "orientation" to the rank of a global problem and also about giving them a legitimate character in the absence of any international legal framework. The requirement to legislate additional signs of non-discrimination on the basis of "sexual orientation" and "gender identity" and to allow the registration of same-sex marriages, adoption/adoption of children by same-sex couples, etc., is unfounded from an international point of view. Professor Abashidze gives an example of a conversation with the nature of a paradox: "The ambassador of one of the African countries in Geneva witnessed a conversation between a diplomat from the UK and a diplomat from the countries of the former British colony. A diplomat from Great Britain rebuked a diplomat from a country—a former colony for the fact that same-sex marriage is criminalized in his country. In response to this reproach, the diplomat began to justify the position of his country, referring to the common law of Great Britain, according to which same-sex marriage is considered a crime against the human race (against nature of human), in other words, a more serious act than a criminal offense. And then the diplomat concluded: if Great Britain abandoned its own precedent, then his country is not obliged to do this, because it is no longer a British colony" (Abashidze and Klishas 2015, pp. 138–39).

However, at the international level, there is a lobby that is trying to create some special rights for LGBT persons, leading to a conflict with the international obligations of states to provide equal protection to all people, regardless of their sexual orientation, without any discrimination. The creation of special "rights" leads to a violation of the religious rights of Christians, including the right to live in accordance with their beliefs and not to participate in what is contrary to their religious beliefs—for example, in the registration of same-sex unions that are considered to be a grave sin. The Scripture defines sodomy as a mortal sin

(1 Epistle to the Corinthians 6:9; Epistle to the Romans 1:26–27, 32). St. John Chrysostom in the 4th Homily on the Epistle of Apostle Paul to the Romans calls this sin the most serious of all sins (St. John Chrysostom n.d.). This doctrine is professed by the majority of Christian denominations (Orthodox, Catholics, most Protestant churches, including Seventh-Day Adventists, most Baptist, Methodist, and Pentecostal churches), the total number of which is more than 2 billion; see (Melton and Baumann 2010).

From a formal point of view, it is quite difficult to prove direct discrimination when a person is fired from work for Christian beliefs. Indirect discrimination is much more common when, for example, an employer implements a generally applicable policy, scheme, or practice that has a seemingly legitimate business purpose. Examples of indirect discrimination might include an internal requirement that all employees attend horse races with clients or a rule that requires all employees to wear badges or other similar items to support a cause that is contrary to Christian beliefs.[14]

At the same time, it should be recognized that the line between direct and indirect discrimination is not always clearly visible. Especially under the guise of "good goals", states remove cases of direct and indirect discrimination from the category of violations of the right to freedom of conscience. In this sense, the decision of the European Court of Human Rights (ECHR) in the case of Eweida and others v. Great Britain is illustrative (ECHR 2013). This case brings together four cases of discrimination against Christians for professing their faith (Ms Nadia Eweida, Ms Shirley Chaplin, Ms Lillian Ladele, and Mr Gary McFarlane). All cases relate to dismissal from work for professing the Christian faith, but in the context of this section of the article, it is important to consider two of them (Ms Lillian Ladele and Mr Gary McFarlane), which related to the "rights" of LGBT people.

In the case involving Lillian Ladele, the registrar of births, marriages, and deaths, she refused to register same-sex civil partnerships because it was contrary to her Christian beliefs. The ECHR found that the employer's requirement that all registrars be involved in registering same-sex civil partnerships had a harmful effect on L. Ladele, conflicting with her religious beliefs. However, the ECHR did not find a violation of Art. 9 of the ECHR in this case, since it considered that the policy of the local registration authority is aimed at ensuring the rights of others, who are also protected by the ECHR; therefore, the national authorities did not go beyond their discretion.

In this case, the position of the ECHR and the national authorities can hardly be considered adequate. L. Ladele never expressed any disrespectful attitude towards same-sex couples. Of course, these couples did not know that she was informally negotiating with her colleagues to replace her in order not to participate in such registrations. In other similar local registration authorities, workers were allowed not to participate in registering same-sex civil partnerships due to their religious beliefs. Therefore, one can hardly talk about any discrimination against same-sex couples. Two judges of the ECHR, Vucinic and De Gaetano, who participated in this case, took this position (there was not any discrimination against same-sex couples).

In addition, it is important to note that when L. Ladele signed an employment contract when she was hired, there was no obligation to participate in registering same-sex civil partnerships. These requirements were introduced later. As a result, L. Ladele preferred to lose her job than to compromise with her conscience (Semenova and Kiseleva 2017, p. 59–66).

It appears that, in this case, there is no legitimate aim for interference with the law, and such interference cannot be considered "necessary in a democratic society". It should also be added that there is the state religion established in Great Britain—Anglicanism. In light of this fact, the refusal to protect the Christian beliefs of a citizen of the United Kingdom for the sake of sexual perversion that is contrary to the culture-forming religion looks at least strange.

[14] For more information on direct and indirect discrimination, see, for example, An Employer's Guide to Christian Beliefs. Christianity in the Workplace. Vienna, 2018, p. 12. Available online: https://adfinternational.org/resource/christianity-in-the-workplace-an-employers-guide-to-christian-beliefs/ (accessed on 20 December 2020).

In the case of G. McFarlane, the applicant worked as a consultant for a confidential sex therapy and relationship service. He was fired for refusing to counsel homosexual couples because he considered it incompatible with his religious beliefs. The ECHR found that his refusal to provide counseling for homosexual couples amounted to a practice of his religion and belief. However, the Court considered that the "policy of providing services without discrimination" was a legitimate purpose for interference with the law; therefore, the Court did not establish violations of Art. 9 of the ECHR.

These precedents give rise to well-grounded concerns, since the practice is being formed of refusing Christians to live and act in accordance with their religious beliefs, especially, in a culturally Christian country.

On the one hand, the member states of the Council of Europe are trying to provide additional guarantees to religious minorities, saying that this is an important step towards preventing religious persecution in the future. Thus, according to the Preamble of the 1995 Council of Europe Framework Convention for the Protection of National Minorities, the member states of the Council of Europe and other states signatory to this Framework Convention believe that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity".[15] According to the position of the Council of Europe, "cultural diversity should be seen as a matter of enrichment rather than division" (Murdoch 2012, p. 15). "A Europe of much diversity and many faiths calls for special concern for the protection of the exercise of the freedom of thought, conscience and religion" (Murdoch 2012, p. 16).

On the other hand, the ECHR takes the directly opposite position, refusing to practice their religion not to a religious minority but to a religious majority, in order to defend the so-called "rights" of persons with non-traditional sexual orientation and in those cases where there is in fact no discrimination against these persons.

It is quite obvious that "in the same way that a national or ethnic identity cannot be 'switched off' at work, an individual should not be expected to leave their faith at home".[16]

However, it should be noted that there are positive trends in countries such as Poland. For instance, on 26 June 2019, the Polish Constitutional Court confirmed that service providers and business owners have the right to conduct their business in accordance with their religious beliefs, without being subject to criminal prosecution. The decision of the Constitutional Court overturned a previous decision of the Supreme Court of Poland, which upheld a criminal charge against the owner of a printing house in Lod Await, who refused to print documents advertising an event contrary to his conscience and was found guilty on the grounds that his religious beliefs were not a "just cause" for refusing to provide their services. The Constitutional Court noted that the words "without a valid reason" cannot be clearly defined; therefore, "punishment for refusing to provide services without a valid reason" in accordance with Art. 138 of the Polish Criminal Code constitutes a violation of the service provider's freedoms, particularly the freedom of contract, the right to express one's opinion or to act in accordance with one's conscience. The reporting judge added that the fight against discrimination cannot be fought at the expense of these freedoms. As a result, the Constitutional Court declared Article 138 of the Polish Criminal Code unconstitutional.[17]

This positive example is rather an exception to the rule, since, as noted by Robert Clarke, director of the European law firm ADF International, recently, the right to freedom of conscience

[15] Council of Europe Framework Convention for the Protection of National Minorities. Strasbourg, 2013. Available online: https://www.coe.int/en/web/minorities/text-of-the-convention (accessed on 20 December 2020).

[16] An Employer's Guide to Christian Beliefs. Christianity in the Workplace. Vienna, 2018, p. 10. Available online: https://adfinternational.org/resource/christianity-in-the-workplace-an-employers-guide-to-christian-beliefs/ (accessed on 20 December 2020).

[17] For more details, see Le Tribunal constitutionnel polonais se prononce en faveur de la liberté de conscience. Available online: https://adfinternational.org/news/polish-constitutional-tribunal-rules-in-favour-of-freedom-of-conscience-fr/ (accessed on 20 December 2020).

> "has regularly been challenged in various countries in Europe. Across Europe, citizens are facing an impossible choice: either violate their conscience or face punishment by the state. This ranges from medical professionals to bakeries, who are forced to choose between their convictions and their profession. They risk criminal charges, fines, loss of reputation, and social discrimination. Nobody should face this simply for living in accordance with what they believe".[18]

Strange as it may seem, the reason for this state of affairs is the policy of tolerance. How this policy manifests itself can be traced in some quotes from the round table "Religion and Religious Freedoms in International Diplomacy", which was organized on 22 September 2016 by the UN Special Rapporteur on Freedom of Religion or Belief in cooperation with the World Council of Churches. Some examples are as follows: "Tolerance is not about ignoring other religions"; "One religion nourishes another. I am because you are"; "Without the Buddha, I may not be a Christian", etc.[19] It seems that these quotes do not require additional comments due to their obvious absurdity. However, for a correct understanding of the "policy of tolerance", it is important to briefly define the concept of the term "tolerance".

Regarding the concept of tolerance, it should be noted that in some languages, e.g., in Russian, there are two different terms translated into English by the same term "tolerance" (cf. in Russian "терпимость"—*terpimost* and "толерантность"—*tolerantnost*).

The first term "tolerance" ("*terpimost*") has Christian roots and is reduced to the commandment "Judge not, that ye be not judged" (Matthew 7:1). This commandment means that we have no right to condemn specific people for their sins. However, as Christians, we are obliged to condemn the very behavior or deeds as a sin, if the Holy Scripture testifies to it.

The second term, "tolerance" ("*tolerantnost*"), is derived from the medical term "tolerance", which was introduced in 1952 by the English biologist Peter Brian Medawar (who received the Nobel Prize "for discovery of acquired immunological tolerance"), namely the immunological state of the organism, in which he is not able to synthesize antibodies in response to the introduction of a specific antigen while maintaining immune reactivity to other antigens, cf. (Billingham et al. 1953). Complete tolerance is death.

After this term found its way into the humanities, it became interpreted in different ways. In Russian, two different terms easily show the difference, but in English, there is a confusion of concepts.

For the purposes of this study, it is important to point to the second term "tolerance", which means a calm, indifferent, incurious attitude towards any behavior of people, which does not directly affect their own rights and does not violate the current legislation (Semenova 2014, pp. 39–40). In other words, we can say that tolerance means not reacting to evil. Negative reaction to sin has been laid down in every human being since creation. However, with the departure from Christianity and, consequently, from the moral assessment of acts contrary to the Law of God (Semenova 2019, pp. 28–36), the mechanism of reaction to evil gradually atrophies, and a significant part of the Western European community does not see any problem in unnatural vices that are enshrined at the legislative level as a norm of behavior. Nevertheless, Christians who follow the moral law retain a negative reaction to sin, so they try to call on their fellow men to protect and preserve the traditional values of humankind, which have been the basis of European civilization. However, the response to this call is exactly the opposite.

Thus, at the universal level, in March 2016, the UN Committee on Economic, Social and Cultural Rights adopted General Comment No. 22 "On the Right to Sexual and Reproductive Health" (Article 12 of the ICESCR), which was already mentioned in the previous section of this article. Comment 22 not only promotes abortion but also non-traditional relationships at the level of all UN members. The Committee requires states to

[18] Ibid.

[19] Religion and Religious Freedom in International Diplomacy. Workshop Summary Brief. 22 September 2016. Available online: https://www.ohchr.org/Documents/Issues/Religion/WorkshopReligion.pdf (accessed on 20 December 2020).

ensure full respect for the representatives of the so-called "sexual minorities" in relation to their "sexual orientation, gender identity and intersex status" (paragraphs: 23, 30, 59, etc.).

It should be noted that General Comments are not binding but serve as a guideline in the fulfillment by states of their obligations under the covenant, since they usually express the agreed position of states in the understanding and interpretation of a specific enshrined right. With regard to Comment 22, it can be confidently asserted that the indicated position to consolidate the so-called "LGBT rights" cannot be considered universally recognized and agreed. In particular, the position of the Russian Federation and a number of countries of the Global South in solidarity with it expresses a harshly negative attitude towards such an interpretation, considering it absolutely unacceptable.

Unfortunately, the above examples confirm the general trend in the countries of the Global North with Christian roots, which the states of the Global South are gradually beginning to follow. As His Holiness Patriarch Kirill of Moscow and All Russia noted, secularism is the reason for the loss of Christian identity in Europe:

> [S]upporters of the secular idea believe that rejection of religion serves the common good of all people. Along with religiosity, traditional moral values such as marriage, the union of a man and a woman, and the inviolability of human life from the moment of conception to natural death are rejected. Those who find the strength and courage to publicly criticize unnatural and moral permissiveness are accused of intolerance by representatives of the secular idea. We take to heart the situation in Europe, which was once a stronghold of Christianity, and is now rapidly losing its religious identity.[20]

It should be noted that the policy of tolerance and the loss of Christian values in the countries of the Global North is a more terrible persecution against Christians than all the combined prosecution and persecution of Christians in some parts of the Global South. As St. John Chrysostom wrote, the most terrible of persecutions is the absence of persecution. "While people are saying, "Peace and safety," destruction will come on them . . . " (1 Thess. 5, 3). However, prosecution and persecution of Christians in the 21st century for professing their faith is an international crime.

4. Prosecution and Persecution of Christians in the Global South

At the end of December 2017, a meeting dedicated to the safety of Christians in the Middle East and beyond was held in Vienna on the sidelines of the OSCE Council of Foreign Ministers, initiated by Russia and Hungary. The meeting was attended by representatives of OSCE member states, Orthodox and Catholic churches, as well as religious and public figures, diplomats, and journalists. During the meeting, it was noted, in particular that in the Middle East and North Africa, believers and clerics come under attack by terrorist groups and are forced to leave places their communities have lived in for centuries; instances of desecration or destruction of Christian shrines are not uncommon and go unpunished; in Ukraine, desecration and seizure of temples by extremists and violence against clergymen and believers are supplemented by the attempts of official authorities to impose restrictions on the activities of the canonical Ukrainian Orthodox Church.[21]

Today, the African continent unites 55 states with a population of over 1.3 billion people. According to available statistics, 46% of the African population is Christian, i.e., approximately 600 million people.[22]

[20] Patriarch Kirill named the reason for the loss of Christian identity in Europe. Available online: https://ria.ru/20191114/1560925226.html?in=t (accessed on 20 December 2020).

[21] Message for the media. OSCE, "On a joint Russian-Hungarian meeting at the OSCE on the safety of Christians in the Middle East and beyond", Available online: http://www.mid.ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2981209 (accessed on 20 December 2020).

[22] In Africa, the number of Christians has exceeded the number of Muslims, Site of the Church Scientific Center "Orthodox Encyclopedia". Available online: https://www.sedmitza.ru/text/3200526.html (accessed on 20 December 2020).

Christian sacred history and sacred tradition are inseparable from the ancient and early medieval history of the countries of North and North-East Africa. In the Old Testament and the New Testament, we repeatedly find references to Africa. The Coptic Church in Egypt deserves special attention. In the Eastern Desert and Upper Egypt, famous monasteries were built and masterpieces of original Coptic architecture, icon painting, and literature were created. In Alexandria and Cyrenaica, Christian literary works were written in Greek (Vasiliev 2010, p. 882). Yet today, various media give us horrifying examples in Africa of cases of the murder of Christians, violence against Christian women, forced conversion of Christians to Islam, accusations of insulting Islam, often punishable by death, destruction of churches, persecution of Christians from historical lands. The escalation of violence against Christians has recently become systemic. The mass exodus of Christians from Africa could upset the centuries-old religious balance.

One of the obstacles for this issue to be properly addressed at the international level is the lack of a legitimate mechanism for collecting information. One can rely on data from various non-governmental organizations (NGOs).[23] For example, the NGO "Gatestone Institute" calls what is happening in Nigeria "the genocide of Christians"—in June 2018 alone, 238 people were killed.[24]

In 2014, France published the "Black Book on the condition of Christians in the world", with the contributions of 70 French and foreign experts, historians, journalists, priests, and human rights activists. According to the authors' estimates, 150–200 million Christians in 140 countries of the world have become victims of discrimination, and the Christian religion has become the most persecuted in the world.[25]

To be objective, we shall note that there are certain positive aspects of special protection of the rights of Christians. For example, in 2016, the Egyptian Parliament passed a law to facilitate the construction of new Christian churches in the country.[26] According to the provisions of this law, the governors of the provinces of Egypt must respond within four months to inquiries regarding the building of new churches submitted to them by the Christian communities. In the event of a refusal, the governor must provide valid arguments to justify his decision, and the community that was refused is entitled to appeal to the administrative courts. The new law, among other things, states, "the size of the church should correspond to the number of citizens belonging to the Christian community and should take into account population growth".

The new law, despite its imperfection, is a step forward from the so-called "10 rules" added in 1934 to Ottoman legislation by the Egyptian Ministry of the Interior, which prohibited, among other things, the construction of new churches near schools, canals, government buildings, railways, and residential areas. In many cases, the strict application of these rules resulted in refusals to the requests and the prohibition of constructing churches in cities and villages inhabited mainly by Christians, especially in the rural areas of Upper Egypt.

The UK-based "Open Doors" NGO has been trying to help Christians around the world for over 60 years. This organization maintains a database of violations of the rights of Christians and the so-called "black list of states" where Christians are most discriminated

[23] Among such NGOs are "Open Doors", "Aid to the Church in Need", "Christian Solidarity International", "Observatoire de la Christianophobie", "Gatestone Institute", Catholic agency "Agenzia Fides", Protestant fund "Varnava" and "International Christian Concern", portal of the Church Scientific Center "Orthodox Encyclopedia" Sedmitsa.ru, "Blagovest-info" agency.

[24] Extremist Persecution of Christians, Gatestone Institute. Available online: https://www.gatestoneinstitute.org/13312/pure-genocide (accessed on 20 December 2020).

[25] La religion la plus persécutée au monde? Le christianisme (The most persecuted religion in the world?—Chrisitianity). Available online: http://www.slate.fr/story/93959/christianisme%20 (accessed on 20 December 2020); Christianity—the most persecuted religion. Available online: https://inosmi.ru/world/20141103/224051622.html (accessed on 20 December 2020).

[26] Egyptian Parliament passed a law that facilitates the construction of new Christian churches in the country, Pravoslavie.By. Available online: http://www.pravoslavie.by/news/parlament-egipta-prinjal-zakon-oblegchajushij-stroitelstvo-novyh-hristianskih-hramov-v-strane (accessed on 20 December 2020).

against. Thus, four African states are in the top ten: Somalia, Sudan, Eritrea, and Libya.[27] Islamic terrorist groups operate in a number of African countries—for example, Boko Haram (in May 2014, the UN Security Council included it in the list of terrorist organizations).

From this perspective, the adoption on 12 February 2016 in Havana (Cuba) of a Joint Statement following the meeting between His Holiness Patriarch Kirill of Moscow and All Russia and His Holiness Pope Francis is of great importance. Paragraph 8 of the Joint Statement states the following:

> "Our eyes are primarily fixed upon those regions of the world where Christians are being persecuted. In many countries in the Middle East and North Africa, the whole families, villages and cities of our brothers and sisters in Christ are being destroyed. Their temples are subjected to barbaric destruction and plundering, their shrines desecrated and their monuments—destroyed".[28]

Do not forget that the functions of NGOs are limited. It is extremely important to discuss this problem in the international arena within the framework of interstate or expert forums, so that states listen and pay attention to the oppression of Christians. For this, there are special international human rights mechanisms, which include UN human rights treaty bodies, Universal Periodic Review (UPR), special procedures under the UN Human Rights Council.

For instance, in 2015, a joint statement was adopted by 65 States[29] Supporting the Human Rights of Christians and Other Communities, particularly in the Middle East"[30], which was pronounced at the initiative of the Russian Federation, Holy See, and Lebanon in the course of the 28th session of the UN Human Rights Council. Among other things, this Joint Statement called on all states of the world "to reaffirm their commitment to respect the rights of everyone, in particular the right to freedom of religion, which is enshrined in the fundamental international human rights instruments".

For example, in Sudan, Christians have been persecuted for many years. In 2014, a Sudanese court sentenced a pregnant woman who converted to Christianity to death by hanging, which sparked a new wave of controversy over the punishment for apostasy in the country.[31] The international community is trying to combat these terrible phenomena in Sudan. Sudan has ratified the 1966 International Covenant on Civil and Political Rights, and the Human Rights Committee, after considering its periodic report in 2018, noted the following: On the one hand, the President of the Sudan granted amnesty to the Czech Christian activist Petr Jasek, who had been convicted of espionage, but on the other hand, expressed concern about restrictions, in law and practice, imposed upon the right to freedom of conscience and religious belief, including reports of the destruction of churches. For many years now, the international community has been asking Sudan to repeal Article 126 of the Criminal Code on the crime of apostasy. Although Sudan explains in response that in the entire history of law enforcement, there have only been four cases of prosecution

[27] The Open Doors World Watch List is an in-depth record of the 50 countries where it is most difficult to live as a Christian, Open Doors. Available online: https://www.opendoorsuk.org/persecution/countries/ (accessed on 20 December 2020).

[28] Joint statement of Pope Francis and His Holiness Patriarch Kirill, 12 February 2016, Havana, Official website of the Moscow Patriarchate. Available online: http://www.patriarchia.ru/db/text/4372074.html (accessed on 20 December 2020).

[29] Joint statement by the Russian Federation, Holy See, Lebanon, Albania, Andorra, Argentina, Armenia, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, the Czech Republic, Congo, Croatia, Cuba, Cyprus, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Iraq, Ireland, Israel, Italy, Japan, Liechtenstein, Luxemburg, Macedonia, Mali, Malta, Monaco, Netherlands, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, the Republic of Korea, Romania, San Marino, Serbia, Slovakia, Slovenia, Somalia, Spain, Switzerland, Syria, the United Kingdom, the United States of America, Venezuela, Zambia.

[30] Joint statement by 65 States "Supporting the Human Rights of Christians and Other Communities, particularly in the Middle East" pronounced at the initiative of the Russian Federation, Holy See and Lebanon in the course of the 28th UNHRC session, Geneva, 13 March 2015, Official website of the Ministry of Foreign Affairs of the Russian Federation. Available online: http://www.mid.ru/foreign_policy/humanitarian_cooperation/-/asset_publisher/bB3NYd16mBFC/content/id/1092273 (accessed on 20 December 2020); Joint Statement on "Supporting the Human Rights of Christians and Other Communities, particularly in the Middle East" at the 28th Session of the Human Rights Council, Geneva, 13 March 2015, Holy See Press Office website. Available online: https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2015/03/13/0186/00415.html (accessed on 20 December 2020).

[31] Death Sentence in Sudan: apostasy controversy, 16 May 2014. Available online: https://www.bbc.com/russian/society/2014/05/140515_sudan_death_penalty_apostasy (accessed on 20 December 2020).

for apostasy and that only open proselytizing is criminalized; the Committee reiterates that such practices are incompatible with Articles 18–19 of the International Covenant on Human Rights and recommended to repeal article 126 of the Criminal Code and amend legislative provisions that violate freedom of thought, conscience, religion, and expression. Moreover, the UNHRC recommended that Sudan refrain from interfering in worship by persons who do not follow the official religion (Islam is the predominant religion at 90.7% of the population while Christianity forms 5.4% of the population)—for example, by destroying places of worship—if the interference is not based strictly on the requirements of necessity and proportionality.[32]

In this regard, it should be noted that 21 countries provide criminal responsibility for apostasy, and in 12 countries—Afghanistan, Brunei, Islamic Republic of Iran, Yemen, Qatar, Mauritania, Malaysia, Maldives, Nigeria, United Arab Emirates, Saudi Arabia, and Somalia—apostasy is punished, ultimately, with death penalty[33].

However, on 14 December 2014, Reverend Yat Michael Ruot Puk, a pastor from the Southern Sudan Evangelical Church, was arrested by National Security Service officers. On 11 January 2015, Reverend Peter Yein Reith was arrested at his residence. Both clergymen were arrested without any arrest warrant and were held incommunicado until 1 March 2015. On 4 May 2015, they were brought before a court, where they were both charged with undermining the constitutional system, waging war against the state, espionage, unlawful disclosure and receipt of official information or documents, arousing feelings of discontent among regular forces, breach of public peace, and offenses relating to insulting religious beliefs. Following these charges and subsequent hearings on 19 and 31 May 2015, both pastors were allegedly moved to a high security prison in North Khartoum. They were last seen by their families and pastors from their church on 3 June 2015.[34] This fact is in contravention of Articles 18, 19, and 20 of the Universal Declaration of Human Rights.

Such violations are not uncommon and are reported on an ongoing basis by the UN Independent Expert on the Human Rights Situation in the Sudan[35], which keeps the situation under the constant control of the international community.

Moreover, in relation to Sudan, the UN Independent Expert[36] received information about arrests and restrictions on freedom of religion or belief of members of Christian communities.[37] The independent expert noted that he had received numerous complaints in relation to the conviction of Mariam Ibrahim on charges of apostasy. She was subsequently released from custody by the decision of the Court of Appeal. The independent expert urged Sudan to fully respect the right to freedom of religion without discrimination of any kind.[38]

Moreover, the issues of discrimination against Christians in Sudan have been the subject of consideration in the regional African system of human rights protection. In 1999, the African Commission on Human and Peoples' Rights considered a lawsuit filed by the Association of Member Episcopal Conference in Eastern Africa for the oppression of Sudanese Christians and religious leaders; expulsion of all missionaries from Juba;

[32] Human Rights Committee, Concluding observations on the fifth periodic report of the Sudan, UN Dosc. CCPR/C/SDN/CO/5, 19 November 2018, paras. 49–50. Available online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SDN/CO/5&Lang=En (accessed on 20 December 2020).

[33] Humanists International. The Freedom of Thought Report 2019: Key Countries Edition. 2019. Available online: https://fot.humanists.international/download-the-report/ (accessed on 29 December 2020).

[34] Report of the Independent Expert on the situation of human rights in the Sudan. A/HRC/30/60, paras, 30–31, 24 August 2015. Available online: https://undocs.org/ru/A/HRC/30/60 (accessed on 20 December 2020).

[35] Independent Expert on the situation of human rights in the Sudan. Available online: https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/SD/Pages/IESudan.aspx (accessed on 20 December 2020).

[36] Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21—Sudan. 2016, UN Doc. A/HRC/WG.6/25/SDN/2. Available online: https://digitallibrary.un.org/record/823938?ln=ru (accessed on 20 December 2020).

[37] Report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi, 2015, UN Doc. A/HRC/30/60, par. 30. Available online: https://digitallibrary.un.org/record/804337 (accessed on 20 December 2020).

[38] See Report of the Independent Expert on the situation of human rights in the Sudan, Mashood A. Baderin, 2014, UN Doc. A/HRC/27/69, paras. 29, 43. Available online: https://digitallibrary.un.org/record/780607?ln=ru (accessed on 20 December 2020).

arbitrary arrests and detention of priests; the closure and destruction of Church buildings; the constant harassment of religious figures, and prevention of non-Muslims from receiving aid.[39]

Investigations revealed that Christians were persecuted and forced to convert to Islam, prevented from preaching or building their churches, experienced limited freedom of expression in the national press, Christian clergy were subjected to harassment, arbitrary arrest, expulsion, and denial of access to work and food aid, and food distribution in prisons was not equal (Christian prisoners were blackmailed for food). Having considered all the evidence presented, the African Commission concluded that Sudan did not provide any evidence or excuses and, accordingly, violated Art. 8 of the 1981 African Charter on Human and Peoples' Rights that guarantees freedom of conscience and free exercise of religion (para. 76).[40]

Religious discrimination has been increasing over the last 15 years, but in interregional comparison, sub-Saharan Africa has a low level of discrimination. High levels of discrimination are embedded in problematic state–religion relations and existing cleavages become mobilized along religious lines through transnational influences and geography; see (Basedau and Schaefer-Kehnert 2019).

Religious violence is increasingly becoming a concern across sub-Saharan Africa. Failure to stem one can lead to the emergence of the other. While there may be several underlying factors in conflict or violence that do not have religious roots, the resulting divisions could forever alter Christian–Muslim and Muslim–Muslim relations. Currently, an effective response to address religious violence from secular states is lacking. The failure of international leaders of the Global North to understand African politics results in failed policies; see (Lado and Lynch 2014).

There are similar trends in the Middle East and Asia. Several mass killings by ISIS have targeted other religious groups in the Syrian Arab Republic, including Christians. More broadly, minority religious communities have been severely affected by the civil war in the Syrian Arab Republic, with the estimated Christian community declining from 360,000 in 2012 to 25,000 today[41].

Hmong Christians live mainly in the northern provinces of Vietnam, along the border with Laos and China. Their exact number is unknown. According to various estimates, it ranges from 120 thousand to 500 thousand people. In Vietnam, Hmong and Montagnar Christians cannot obtain the necessary registration documents for citizenship.

In accordance with the principles of international humanitarian law, places of worship are under special protection during armed conflicts. Deliberate attacks on such objects are a war crime. For example, Jurgen Strup, who blew up a synagogue in Warsaw during World War II, was sentenced to death by the Warsaw Regional Court several years after the war. It is not always possible to bring to justice those responsible for committing such crimes. After the NATO war against Yugoslavia and the transfer of Kosovo and Metohija under the control of NATO troops, local Albanians began to destroy Serbian religious and cultural sites throughout the province. According to the letter of the Patriarch of the Serbian Orthodox Church Pavel from 2002 to the Special Representative of the UN Secretary General in Kosovo, Michael Steiner, and the Commander-in-Chief of the International Peacekeeping Forces in Kosovo (KFOR), General Marcel Valentin, after the peacekeepers entered Kosovo, the local Albanians destroyed more than 120 Orthodox churches, some of which were of medieval origin and part of the world cultural heritage (Guskova 2001).

According to Art. 8 (2) (e) (iv) of the Rome Statute, on the basis of which the International Criminal Court operates, one of the types of war crimes is "intentionally directing

[39] Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa, Sudan. Available online: https://www.achpr.org/sessions/descions?id=106 (accessed on 20 December 2020).

[40] Ibid.

[41] See Bishop of Truro's Independent Review for the Foreign Secretary of FCO Support for Persecuted Christian. Available online: https://christianpersecutionreview.org.uk/report/ (accessed on 20 December 2020).

attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives".[42]

The UN Secretary General presented the United Nations Plan of Action to Safeguard Religious Sites in September 2019.[43] The plan was developed under the leadership of the High Representative of the Alliance of Civilizations in close collaboration with governments, religious organizations, civil society, and the private sector. The document contains specific recommendations for the protection of religious sites and the promotion of values such as tolerance and compassion.

5. Conclusions

Over the past 75 years, an independent branch has been formed within the framework of international law—international human rights law—which is based on the principle of respect for human rights and fundamental freedoms, including freedom of thought, conscience, and religion; a significant international legal framework has been created that guarantees the observance of the rights to freedom of conscience, thought, and religion; systems of statutory and treaty control mechanisms at the UN level have been developed and are operating, as well as similar regional structures, within the framework of which states report on the fulfillment of their obligations to implement the right to freedom of thought, conscience, and religion and are responsible in case of violations of the rights of specific individuals. However, despite all these important achievements of modern international law, the problem of Christians exercising their right to freedom of thought, conscience, and religion is acute in many countries of the world.

The term "Christianophobia" is widely used in the international arena. All types of discriminatory violations by states of the right of Christians to freedom of conscience, thought, and religion can be basically divided into direct discrimination (persecution, prosecution) and indirect discrimination (when seemingly neutral norms actually exclude Christians from entire spheres of professional activity).

We show that the absence of a fight against discrimination against Christians in the Global North leads to the spread of this phenomenon in the Global South.

As follows from the conducted research, in a number of countries of the Global South, Christians continue to be persecuted and killed just because they are Christians. Sudan is a prime example.

In other countries of the Global South, which largely follow the practice of the countries of the Global North, Christians are not killed for their faith but are deprived of their right to work, just because they want not only to remain Christians by name but also to be guided by their conscience in their actions, including at the workplace and in the performance of professional duties. Moreover, this happens under various kinds of "apologetic" pretexts. Thus, the right to life, the right to private life of a woman, which includes the "right to abortion," is placed unequivocally higher than the right to life of an unborn child. If Christian healthcare providers are not willing to accept this, they commit themselves to abandoning their medical practice in the field of obstetrics. Active propaganda and promotion of the so-called "LGBT rights" result in discrimination against Christians when they are forced to participate in what they consider to be evil and sin. If they refuse, they are subject to sanctions up to a dismissal and a fine. At the same time, human rights bodies are substituting concepts in the analysis of discrimination, absolutizing and looking for remedies for the "right to abortion" and "LGBT rights" instead of analyzing different treatment of people with and without Christian convictions.

This trend can be clearly seen in the practice of the Council of Europe, followed by a number of countries in the Global South. On the one hand, the member states of the

[42] Rome Statute of the International Criminal Court (Rome, 17 July 1998). Available online: https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf (accessed on 20 December 2020).

[43] The United Nations Plan of Action to Safeguard Religious Sites. Available online: https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/12-09-2019-UNAOC-PoA-Religious-Sites.pdf (accessed on 20 December 2020).

Council of Europe try to provide additional guarantees to religious minorities. On the other hand, the ECHR takes the directly opposite position, refusing to practice its religion not to a religious minority but to a religious majority, in order to protect the so-called "rights" of persons with a non-traditional orientation and in those cases where discrimination against these persons is in fact absent.

It is extremely important to discuss problems of discrimination of Christians in the Global South at the international arena within the framework of interstate or expert forums so that states listen and pay attention to the oppression of Christians. For this, there are special international human rights mechanisms, which include UN human rights treaty bodies, Universal Periodic Review (UPR), special procedures under the UN Human Rights Council.

In order to counteract the above phenomena, it seems important to implement a whole range of measures: to abolish laws that undermine the exercise of the human right to freedom of religion or belief, including the withdrawal of reservations to international human rights treaties that are incompatible with freedom of religion or belief; introduce principles of universality, non-discrimination, and equality, participatory decision-making methodology, the obligation to ensure accountability, and the recognition of the interdependence of rights in policymaking; take steps to empower religious minorities so that they can claim the exercise of all their human rights and fundamental freedoms; enact comprehensive anti-discrimination legislation prohibiting direct and indirect discrimination, harassment, and lack of reasonable accommodation based on religion and all other grounds recognized in international law and in all areas of life regulated by law.

It seems that both direct and indirect discrimination on the basis of religion is unacceptable in democratic rule-of-law states of the 21st century. States are obliged to stand up for Christians, reaffirming by deeds the interrelation and indivisibility of all human rights.

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References

Abashidze, Aslan Kh., and Andrei A. Klishas. 2015. "Gender aspects" and "traditional values" through the prism of international human rights law. In *Gender Aspects and Traditional Values in the Light of International Law: Materials of Round Tables on 12 April and 10 October 2014 in within the Framework of the XII Annual International Scientific-Practical Conference "Actual Problems of Modern International Law" Dedicated to the Memory of Professor I. P. Blishchenko*. Edited by A. Kh. Abashidze, N. S. Semenova, E. V. Kiseleva and E. S. Alisievich. Moscow: Pokrov PRO, pp. 131–42.

Basedau, Matthias, and Johanna Schaefer-Kehnert. 2019. Religious discrimination and religious armed conflict in sub-Saharan Africa: An obvious relationship? *Religion, State and Society* 47: 30–47. [CrossRef]

Billingham, Rupert E., Leslie Brent, and Peter B. Medawar. 1953. "Actively acquired tolerance" of foreign cells. *Nature* 172: 603–6. [CrossRef] [PubMed]

Chavkin, Wendy, Laurel Swerdlow, and Jocelyn Fifield. 2017. Regulation of Conscientious Objection to Abortion: An International Comparative Multiple-Case Study. *Health and Human Rights Journal* 19: 55–68.

Council of Europe: European Court of Human Rights. 2016. Guide on Article 8 of the European Convention on Human Rights—Right to Respect for Private and Family Life. December 31. Available online: https://www.refworld.org/docid/5a016ebe4.html (accessed on 20 December 2020).
Disney, Lindsey, and Larry Poston. 2010. The Breath of Life: Christian Perspectives on Conception and Ensoulment. *Bible & Religion Educator Scholarship* 7: 271–95.
Domenici, Irene. 2020. Antigone Betrayed? The European Court of Human Rights' Decisions on Conscientious Objection to Abortion in the Cases of Grimmark v. Sweden and Steen v. Sweden. *European Journal of Health Law* 1: 1–22. [CrossRef]
European Commission of Human Rights. 1980. The Case of *W.P. v. the United Kingdom*. Available online: http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-74270&filename=001-74270.pdf (accessed on 5 February 2021).
European Commission of Human Rights. 1989. The Case of *Rommelfanger v. FRG*. Available online: http://hudoc.echr.coe.int/webservices/content/pdf/001-1010?TID=thkbhnilzk (accessed on 5 February 2021).
European Court of Human Rights. 2004. The Case of *Vo v. France*. Available online: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1047783-1084371&filename=003-1047783-1084371.pdf (accessed on 5 February 2021).
European Court of Human Rights. 2007. The Case of *Tysiac v. Poland*. Available online: https://www.refworld.org/cases,ECHR,470376112.html (accessed on 5 February 2021).
European Court of Human Rights. 2010. The Case of *A.B. and C v. Ireland*. Available online: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-102332&filename=001-102332.pdf (accessed on 5 February 2021).
European Court of Human Rights. 2011. The Case of *R.R. v. Poland*. Available online: https://hudoc.echr.coe.int/fre#\{%22itemid%22:[%22001-104911%22]\} (accessed on 5 February 2021).
European Court of Human Rights. 2013. The Case of *Eweida and Others v. United Kingdom*. Available online: https://hudoc.echr.coe.int/eng#\{%22itemid%22:[%22001-115881%22]\} (accessed on 20 December 2020).
European Court of Human Rights. 2020a. The Case of *Ellinor Grimmark v. Sweden*. Available online: https://hudoc.echr.coe.int/eng#\{%22itemid%22:[%22001-201915%22]\} (accessed on 20 December 2020).
European Court of Human Rights. 2020b. The Case of *Linda Steen v. Sweden*. Available online: https://hudoc.echr.coe.int/eng#\{%22itemid%22:[%22001-201732%22]\} (accessed on 20 December 2020).
Fundamentals of the Social Concept of the Russian Orthodox Church. 2008. June 9. Available online: http://www.patriarchia.ru/db/text/419128.html (accessed on 1 February 2021).
Guskova, Elena. 2001. *History of the Yugoslav Crisis (1990–2000)*. Moscow: Russian law/Russian National Fund. (In Russian)
Humanae Vitae. 1968. Encyclical Letter of the Supreme Pontiff Paul VI. July 25. Available online: http://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html (accessed on 1 February 2021).
Lado, Ludovic, and Tiffany Lynch. 2014. Religious Violence in Sub-Saharan Africa and the Future of the Secular State. Available online: https://www.wilsoncenter.org/event/religious-violence-sub-saharan-africa-and-the-future-the-secular-state-0 (accessed on 20 December 2020).
Ling, John R. 2017. *When Does Human Life Begin? Christian Thinking and Contemporary Opposition*. Newcastle upon Tyne: The Christian Institute, Available online: https://www.christian.org.uk/wp-content/uploads/when-does-human-life-begin.pdf (accessed on 23 January 2021).
Melton, J. Gordon, and Martin Baumann. 2010. Religious Adherents of the World by Continent and Region. In *Religions of the World: A Comprehensive Encyclopedia of Beliefs and Practices*. Santa Barbara, Denver and Oxford: ABC-CLIO.
Murdoch, Jim. 2012. *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights*. Council of Europe Human Rights Handbooks Series; Strasbourg: Council of Europe.
Puppinck, Grégor. 2013. Abortion and the European Convention on Human Rights. *Irish Journal of Legal Studies* 3: 142–93. Available online: https://ssrn.com/abstract=2320539 (accessed on 23 January 2021).
Schlesinger, Kira. 2017. *Pro-Choice and Christian: Reconciling Faith, Politics, and Justice*. Louisville Kentucky: Westminster John Knox Press.
Semenova, Nataliya S. 2014. International legal protection of traditional values: Implementation of the right to education. *Observer* 7: 34–43. (In Russian).
Semenova, Nataliya S. 2019. The Law of God—The moral basis of law. *Praxis* 1: 28–36. (In Russian).
Semenova, Nataliya S., and Ekaterina V. Kiseleva, eds. 2017. *Protection of Traditional Values and International law: Monograph*. Moscow: Pokrov PRO Publ. (In Russian)
St. John Chrysostom. n.d. Homilies on the Epistle to the Romans. Available online: https://www.documentacatholicaomnia.eu/03d/0345-0407,_Iohannes_Chrysostomus,_Homilies_on_The_Epistle_To_The_Romans,_EN.pdf (accessed on 20 January 2021).
United Nations Committee on Economic, Social and Cultural Rights. 2016. General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the 1966 International Covenant on Economic, Social and Cultural Rights). May 2. Available online: https://digitallibrary.un.org/record/832961 (accessed on 20 December 2020).
United Nations Committee on Economic, Social and Cultural Rights. 2017. General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. August 10. Available online: https://www.refworld.org/docid/5beaecba4.html (accessed on 2 February 2021).
United Nations Human Rights Committee. 1993. General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion). July 30. Available online: https://www.refworld.org/docid/453883fb22.html (accessed on 1 February 2021).

United Nations Human Rights Committee. 2000. General Comment No. 28 (2000) on Article 3 (The Equality of Rights Between Men and Women). March 29. Available online: https://www.refworld.org/docid/45139c9b4.html (accessed on 1 February 2021).
United Nations Human Rights Committee. 2018. General Comment No. 36 (2018) on the Right to Life. Available online: https://www.refworld.org/publisher,HRC,GENERAL,,5e5e75e04,0.html (accessed on 20 December 2020).
Vasiliev, Alexei M., ed. 2010. *Africa: Encyclopedia*. In *Two Volumes*. Moscow: Infra-M Publ, vol. 2. (In Russian)

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Article

The "Abhorrent" Practice of Animal Sacrifice and Religious Discrimination in the Global South

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Abstract: In September 2018, the majority Buddhist government of Sri Lanka approved draft legislation banning animal sacrifice at Hindu Temples. The Cabinet referred to these sacrifices as a "primitive" practice that can cause physical and mental harm to society. Similarly, the Federal Supreme Court of Brazil is presently evaluating the constitutionality of a proposed bill banning animal sacrifice in the state of Rio Grande do Sul. Proponents of this bill argue that animal rights supersede the religious freedom of the adherents of Afro-Brazilian faiths who perform these sacrifices. They further contend that the practice of animal sacrifice poses a threat to public health. Through the evaluation of these cases, this article will consider the relationship between animal sacrifice and religious freedom in the Global South. Using Brazil and Sri Lanka as examples, it will explore how laws and litigation protecting animal welfare can often be a guise for racial discrimination and religious intolerance.

Keywords: Brazil; Sri Lanka; religious freedom; animal sacrifice; religious intolerance

Introduction

In September of 2014, the High Court of Himachal Pradesh in India wrote a 110-page decision banning the practice of animal sacrifice in the jurisdiction. The Justices described these ritual slaughters as "abhorrent and dastardly," and argued that new rites "which are based on reasoning and scientific temper" should supplant "superstitions" that have no place "in the modern era of reasoning." (Sharma et al. 2011). Their ruling reflected the sentiments of many animal rights supporters across the world who, in recent years, have increasingly raised legal challenges to religious rituals involving animal sacrifice. Many courts and legislators in the Global South are siding with these activists, arguing that evolving societal norms value the life of an animal over religious freedom. However, a closer investigation into these controversies reveals that racial and religious discrimination are frequently the driving factors behind anti-sacrifice campaigns.

This article utilizes a case study of Brazil and Sri Lanka to explore the links between the proscription of animal sacrifice and the persecution of minority faiths. These countries serve as prime locations for the study of this issue because they are currently in the midst of highly publicized debates about animal sacrifice that have reached the national level—the Federal Supreme Court of Brazil and the federal legislature of Sri Lanka. Despite their proximity in time, these controversies are otherwise quite different—they are occurring in separate regions of the world and involve different ethnic and religious groups with distinct histories of racial and religious conflict. Due to these disparities, a case study underscoring the similarities of the controversies in these two countries can best demonstrate a larger trend or pattern in animal sacrifice cases across the Global South.

This study will be conducted by examining the history of animal sacrifice laws and court cases in Brazil and Sri Lanka, as these controversies have developed over the course of the 21st century. I explore the legislative debates and court pleadings, investigating the rationales provided for the ban

of animal sacrifice. I scrutinize these texts for biased statements against the religions that engage in animal sacrifice or devotees of these faiths as well as inconsistencies in the apprehension expressed about religious abuses of animals compared to analogous concerns about other animal rights issues. Finally, I explore extra-legal statements and events around the time of these court cases to identify larger trends in racial and religious biases that might be fueling these debates. In particular, I focus on international human rights materials which observe the overall state of ethnic and religious affairs in these nations over the last few years.

Based on this study, I will argue that in both nations, local and state governments have imposed facially neutral bans on the religious slaughter of animals. However, the rhetoric used in public statements about the protection of animals and the proscription of animal sacrifice has been infused with prejudices against minority religions. Moreover, these campaigns against animal sacrifice have been contemporaneous with the rise of extremism among majority faiths and overt efforts to eradicate religious minority groups. These (attempted) bans on animal sacrifice have been accompanied by other forms of religious intolerance such as physical assaults on devotees and their places of worship. Therefore, placed in context, campaigns against animal sacrifice are often operating as a method of religious discrimination in the Global South.

Animal Sacrifice and the Law in Global Context

The ritual slaughter of animals is a worldwide phenomenon, practiced by countless faiths for a variety of reasons. In some cases, such as with Islam and Judaism, ritual slaughter is performed because certain guidelines must be followed and certain prayers must be recited in order for meat to be fit for human consumption. In other instances, such as with Hinduism and many African diaspora religions, ritual specialists offer the life-blood of animals in reverence of spirits or deities. These sacrifices frequently take place at annual festivals, where they are merely one component of a host of festivities that can last for days or even weeks. Individual devotees might also offer certain spirits or deities an animal sacrifice as a supplication or gesture of gratitude for fulfillment of a particular prayer or petition, such as assistance with obtaining employment, passing an exam, finding or keeping a spouse or conceiving a child.

In most religious forms of animal sacrifice or ritual slaughter, the animal is typically killed by hand by a priest or another individual well-versed in the appropriate rites and prayers. Most ritual slaughter dictates that the animal must be killed as quickly and painlessly as possible, often with a single cut of the carotid arteries. The majority of faiths also believe that the animal should be well-cared for as it is raised and in the moments leading to its death; poorly fed and abused animals are often regarded as unfit for spiritual offering and/or human consumption.

For reasons that vary across communities and regions of the world, over the last thirty years, animal rights advocates have often strongly condemned the ritual slaughter of animals. Scholars have well-explored these controversies as they have developed in the Global North. For example, numerous researchers have analyzed the U.S.'s most famous animal sacrifice controversy—*The Church of the Lukumi Babalu Aye v. City of Hialeah*—which began with the passage of a local ordinance targeting Santeria practitioners in South Florida's growing Cuban population. Several researchers have explored how this case was born of racial and religious tensions in the county, as well-established white Cuban immigrants sought to differentiate themselves from more racially diverse new arrivals (i.e., Palmié 1993; O'Brien 2004). Similarly, dozens of scholars have researched Europe's expanding body of animal sacrifice statutes and litigation, most of which centers on controversies about stunning an animal before slaughter. Several scholars have explored the impact of these policies on Jewish and Muslim communities as well as positioned these purported animal rights movements as just one of many efforts to restrict the rights of religious minorities in Europe (i.e., Zoethout 2013; Van Der Schyff 2014; Delahunty 2015; Gliszczyńska-Grabias and Sadurski 2015).

While much is known about the broader context of animal sacrifice controversies in the Global North, particularly those involving Abrahamic religions, less information is widely available about

similar disputes in the Global South. Where such controversies have become the subject of scholarly research, a significant number of these works are written by scholars who are also animal rights activists and use their platform to denounce these religious practices (i.e., Behrens 2008). Therefore, in this special issue on Religious Freedom in the Global South, this article provides an alternative perspective on animal sacrifice debates in Latin America and Asia. Through case studies of Brazil and Sri Lanka, it explores how animal rights activism has been a tool of religious intolerance and racial discrimination.

Part I. Brazil

Brazil is a racially diverse society, housing the largest population of people of African heritage outside the African continent. Many of these individuals arrived as part of the Atlantic slave trade, when over 5 million enslaved Africans disembarked in Brazil—more than any other country in the Americas (Izsák 2016). In 1890, just two years after the abolition of slavery and during the same year that Brazil barred Africans and Asians from entering the country without a special approval from congress, the national government implemented a series of provisions in the criminal code attempting to suppress African diaspora faiths, depicting them as a threat to public health (Johnson 2001). Although the latter half of the 20th century brought an easing of these restrictions and a greater enjoyment of religious freedom, Afro-Brazilian religious communities are once again being suppressed in the 21st century, including calculated attempts to prohibit one of their central practices—animal sacrifice.

For more than fifteen years, the State of Rio Grande do Sul in Brazil has been debating the legality of animal sacrifice. Opponents have attempted to implement animal protection laws that criminalize the slaughter of animals in religious rituals. Devotees and their supporters have sought explicit legal protection of their religious freedom. Legislators and courts have engaged in repeated contentious debates over the constitutionality of laws explicitly banning a religious practice, as well as laws explicitly exempting a particular religious group from generally applicable animal protection codes.

This section will describe the history of this controversy, highlighting that while opponents of animal sacrifice contend that they are only concerned with animal welfare, there is overt religious discrimination occurring in Brazil. First, it will discuss the repeated references to the Christian obligation to defend animals by the legislators who support the ban on animal sacrifice. Second, it will highlight the hypocrisy of the supposed concern for animals, as legislators have targeted only religious sacrifices while ignoring other threats to animal welfare such as hunting and rodeos. Third and most significantly, it will place this controversy in the context of a growing wave of religious racism that is sweeping across Brazil, posing an unchecked threat to the safety and security of devotees of Afro-Brazilian faiths as well as their places of worship.

A The Animal Protection Code of Rio Grande do Sul

In 2002, Manoel Maria, a State Assemblyman in Rio Grande Do Sul, introduced a bill regarding the protection of animals, known as the "State Code of Animal Protection." The bill was designed to address a number of potential abuses such as physically assaulting animals, keeping them in unclean areas or spaces devoid of air and light, working animals excessively or in a manner that exceeds their strength and exterminating using poisons or other methods not recommended by the World Health Organization (State Code of Animal Protection 2003). The original version of the bill also prohibited the use of animals in "religious ceremonies" and "sorcery" (Oro 2006, pp. 1–2). However, Afro-Brazilian religious leaders from the state were able to lobby the legislature for the removal of these sections. On 21 May 2003, the State Code of Animal Protection went into effect as Law No. 11.915.

Despite their success with eliminating the direct language about religion, Afro-Brazilian spiritual leaders remained concerned about certain sections of the Code of Animal Protection. For instance, one of the relevant sections of the law prohibited "offend[ing]" or "physically attack[ing]" an animal or subjecting it to suffering, injury or unacceptable living conditions (Law No. 11.915 2003;

Conte 2016, p. 49). Another required animals intended for food consumption to be killed "suddenly and painlessly" (Law No. 11.915 2003; Conte 2016, p. 49). Worried that biased individuals would manipulate this ambiguous law to persecute them, representatives of Afro-Brazilian religious communities met with the legislature and other interested parties to gain support for a new law that would explicitly state that animal sacrifice did not violate this statute (Oro 2006). State Assemblyman Edson Portilho introduced such a bill, which simply stated, "this prohibition shall not include the free exercise of the cults and liturgies of religions of African origin" (Lei No. 12.131 2004; Oro 2006, p. 2) The proposal of this amendment began a debate about animal sacrifice and religious freedom in Brazil that has lasted for the past fifteen years and has resulted in a case that is still pending before the Supreme Federal Court.

During the year following Portilho's proposal, the legislature considered this amendment, but the records reveal only one significant speech about it before it was put to a vote. This speech occurred on 19 November 2003, when Mr. Raul Pont read a letter from Portilho (who was not able to attend the meeting), which was written in celebration of Brazil's National Day of Black Consciousness. After reminding his audience about the historical exploitation and forced trafficking of black people in Brazil, Portilho stressed the importance of the amendment to law 11.915. He explained that the bill was drafted by a special committee that was formed in response to widespread concerns about the ambiguity of the original statute, which had resulted in "a series of denunciations, interdictions, persecutions and convictions," of devotees of Afro-Brazilian religions (Assembleia Legislativa 19 November 2003).[1] Portilho opined that the discrimination and restrictions on religious expression that resulted from this law were an embarrassment to the State of Rio Grande do Sul.

On 29 June 2004, the Legislative Assembly voted on Portilho's amendment. It passed 32 to 2. After passing the Assembly, the amendment went to the governor, Germano Rigotto, who could choose to sign or veto the bill. Representatives of both sides marched outside the governor's house, hoping to sway his opinion (Oro 2006). After assurances that no wild animals would be sacrificed as a result of the amendment, the governor approved the bill. On 22 July 2004, the amendment became law. Upon hearing the news, Manoel Maria, the author of the original State Code of Animal Protection and one of the two legislators who voted against the amendment, reportedly proclaimed "No God of good would be happy with the spilt blood of an animal" (Oro 2006, p. 2).

Approximately two weeks later, Maria made an impassioned speech before the legislature, denouncing the recent approval of Bill 282/2003. In his speech, one can see the clear religious motivations of his supposedly neutral Code of Animal Protection and the bias against Afro-Brazilian religions, as he criticized their central practices as anti-modern. Maria began by proclaiming that he represented "the Christian people" as well as animal protection agencies to preserve the life of animals who "are now at the mercy of the cruelty of religious groups who, to satisfy their gods, need the blood of our animal friends" (Assembleia Legislativa 3 August 2004).[2] He contended that in the time of space exploration, biotechnology, genetics and other advancements, "we cannot accept medieval, primitive practices that impose blood rituals on its adepts through the sacrifice and the torture of beings who came into the world to help man, and not to be victims of their ignorance" (Assembleia Legislativa 3 August 2004).[3]

Another legislator, Mr. Sérgio Peres, echoed Maria's comments, emphasizing that animal sacrifice was anti-Christian and anti-modern. He called the practice "absurd and a retrogression in democracy" (Assembleia Legislativa 3 August 2004).[4] He admitted that every person has the right to freedom of

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1 Quote: "numa série de denúncias, interdições, perseguições, processos e condenações de Ialorixás e Babalorixás do nosso Estado."
2 "Quote: "que agora estão à mercê da crueldade de grupos religiosos que, para satisfazer seus deuses, necessitam de sangue dos nossos amigos animais."
3 Quote: "não podemos admitir práticas medievais, primitivas, que imponham rituais de sangue a seus adeptos através do sacrifício e da tortura de seres que vieram ao mundo para ajudar o homem, e não para ser vítimas de sua ignorância."
4 Quote: "absurdo e um retrocesso na democracia."

religion but averred that that freedom does not include animal sacrifice. The reason, Peres argued, was that "Our Lord Jesus" was the last "sacrificial lamb" and because of the blood he shed, animal sacrifice should not exist any longer (Assembleia Legislativa 3 August 2004).

Toward the end of the meeting, Mr. Edson Portilho spoke in defense of his amendment. He explained that it was important to recognize that Brazil was home to many religions and that faith is expressed in many different ways. Portilho revealed that in the process of publicly supporting this bill, he had received many communications, even death threats, from the opposition. He countered that those who were concerned about Afro-Brazilian religions were not raising the same issues with hunting, the treatment of circus animals, nor the process of killing animals for food. Therefore, Portilho opined, the outcry is "really a prejudice against this ancient religion, which originated from black people" (Assembleia Legislativa 3 August 2004).[5]

A few months later, on 17 November 2004, Portilho again addressed the legislature in honor of National Black Consciousness Day. Portilho denounced the religious intolerance that had occurred since the debates over the amendment began. He reported that members of other faiths had abused noise disturbance laws to virtually prevent Afro-Brazilian temples from holding ceremonies by filing complaints about their drumming and singing. Portilho averred that the religious intolerance of that year resembled what they had seen much earlier in Brazilian history during the highest rates of persecution. He reminded people that on the day that they celebrate black consciousness, they must remember to respect the religions of these communities.

B The Court of Justice of Rio Grande do Sul

In 2004, opponents of Portilho's amendment asked the State Court of Justice to declare the law unconstitutional. On 18 April 2005, the justices issued an extremely split decision upholding the constitutionality of Law No. 12.131 (*Procurador-Geral de Justiça v. Assembléia Legislativa* 2005). The justices' opinions reflect a more collegial discussion than the tense, defensive debates in the legislative assembly, yet they demonstrate a pervasive bias against Afro-Diasporic faiths among some members of the Court.

The Justices in favor of the 2004 amendment began by discussing the relative nature of animal protection and animal cruelty. For example, Vasco Della Giustina explained that there has long been an acceptance of the idea that domesticated animals can be killed to serve human needs. Therefore, the amendment was in line with this longstanding policy, as it allowed devotees of Afro-Brazilian faiths to slaughter animals in furtherance of their religion. Araken de Assis and José Antônio Hirt Preiss also viewed the religious slaughter of animals as a minority practice that fell within the spectrum of reasonable uses for animals. Both justices stressed the lack of uniformity of views of animals among different cultures, noting that there was not even a global agreement which animals should be considered pets, and which should be categorized as food. They both mentioned that some societies, such as the Philippines, consumed dogs as a food delicacy while others would find this unacceptable.

The justices who supported the amendment also argued that even as a religious practice, the slaughter of animals was not very unusual. Antonio Carlos Stangler Pereira and José Antônio Hirt Preiss both mentioned that Muslims and Jews believe in the ritual slaughter of animals in certain circumstances. Pereira added that indigenous populations in Brazil have a celebration involving the sacrifice of a llama in which they give the blood to the land. De Assis also discussed the U.S. Supreme Court's decision in the *City of Hialeah* case (mentioned above), invalidating a local ordinance that prohibited animal sacrifice. De Assis referred to this case as a "respectable precedent to consecrate the freedom of worship" (*Procurador-Geral de Justiça v. Assembléia Legislativa* 2005).[6]

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[5] Quote "realmente trata-se de preconceito em relação a essa religião milenar, originária do povo negro."
[6] Quote: "precedentes respeitáveis no sentido de consagrar a liberdade de culto."

The oppositions' opinions ranged from seemingly neutral constitutional concerns to more direct criticisms of Afro-Brazilian faiths. The most neutral reason for opposing the law was that it violated the principle of isonomy because it only exempted Afro-Brazilian religions from the statute. For example, Maria Berenice Dias supported the principle that religious sacrifices should be protected by law but believed that it was unconstitutional to only exempt Afro-Brazilian religions, as there were other faiths in Brazil that engaged in animal sacrifices. Alfredo Foerster agreed that the exemption for Afro-Brazilian faiths gave an unconstitutional preference or privilege to one religion, violating principles of equality. However, unlike Dias, his other remarks made clear that he did not support granting an exemption to all faiths. What is striking about both opinions is that they fail to consider that the exemption was created for Afro-Brazilian religions because they were facing particular forms of discrimination that did not impede the practice of other faiths, such as kosher and halal slaughters.

Alfredo Guilherme Englert and Vladimir Giacomuzzi argued that the amendment was both unconstitutional and unnecessary. They contended that without the amendment, Afro-Brazilian religions would not be prejudiced by the law. But they believed that with the amendment, legislators were giving devotees the impunity to sacrifice in a cruel manner because it exempted their rituals from the Code of Animal Protection without limitation. Paulo Moacir Aguiar Vieira echoed these concerns, stating that while the vast majority of Afro-Brazilian devotees would conduct their sacrifices without cruelty, there would be that 1–5% who would not. He contended that the law should not protect those individuals who would use their religious practice as a shield for cruelty. These arguments, like those of Dias and Foerster, overlook the likelihood that anything less than a blanket statement that Afro-Brazilian animal sacrifices were not animal cruelty would leave room for biased persons to find cause to charge them with violations of the Code.

In his opposition to the amendment, Osvaldo Stefanello raised a point that would become a central feature of legislative debates when the issue returned to the Rio Grande do Sul Assembly in 2015. He admitted that there was a constitutional provision guaranteeing devotees of Afro-Brazilian religions the freedom of worship. However, he observed, the Constitution also guarantees the right to life. Stefanello argued that animals and humans were both living things with little distinction between them and thus animals in Brazil were guaranteed the right to life under this Constitutional provision. Furthermore, he contended that the right to life was more important than the right to freedom of worship; therefore, he disagreed with a law that would regard freedom of religion as paramount in a conflict between the two. This argument has become particularly contentious over the course of this dispute, as advocates of Afro-Brazilian religious freedom have pointed out that purported animal rights activists care very much about a chicken's right to life but show little concern for the rights of black people in Brazil who, human rights reports have shown, contend with poverty, police brutality, over-incarceration and other forms of discrimination and marginalization at staggeringly disproportionate rates (Izsák 2016).

The most disturbing oppositional remarks came from Alfredo Foerster who, with little apparent context, began his remarks by quoting a description of a fifty-year-old incident in which the then Secretary of Culture (a white male) and a German visitor purportedly attended a Candomblé ceremony during which animals were sacrificed. The sensationalized text (which takes up almost 1/10th of the Court's ruling), is a typical racialized narrative characteristic of the period (the 1950s). The author attempted to conjure images of a wild, exotic and dangerous atmosphere by emphasizing the rhythmic sound of the drums and the scent of animal blood as the sacrifices were carried out. What bearing this text had on Foerster's brief arguments that the amendment violated the principles of equality and conflicted with federal law is unclear. However, it seems that he, while ironically invoking an outdated, racialized account of Afro-Brazilian sacrifices, was emphasizing that animal sacrifice was

primitive and barbaric. He concluded his opinion, arguing that "HUMANITY must evolve towards the preservation of LIFE" (*Procurador-Geral de Justiça v. Assembléia Legislativa* 2005).[7]

These opinions reveal that a small majority of the Court reached their decision in favor of Portilho's amendment because they believed that the concept of animal cruelty is relative across different societies and there was no evidence that Afro-Brazilian rituals involved any practices that were abnormally cruel. The opposition responded by denying any discriminatory interpretation of the State Code of Animal Protection or any possibility of bias in its enforcement. Apparently ignoring the death threats posed to the author of the amendment and the growing religious intolerance in Rio Grande do Sul during the legislative debates, they insisted that if Afro-Brazilian devotees did not engage in cruelty, then they should not feel threatened by the Animal Protection Code.

Some could argue that the dissenting justices genuinely believed that the vocal opposition to animal sacrifice and Afro-Brazilian religions raised during the legislative debates about the amendment were solely grounded in concern for animal rights. It is reasonable to contend that religious freedom is unlikely to be infringed upon when discrimination appears to have been confined to protest, threats and verbal disparagement. However, in subsequent years, opposition to Afro-Brazilian faiths has turned extremely physically violent, including bombings, arson and stoning. Recent events make it more difficult to assume that "animal welfare" activists have no ulterior motives in proposing laws that would restrict Afro-Brazilian religious practices and render it impossible to argue that the current social climate does not require special legal measures protecting Afro-Brazilian faiths.

C Rampant Assaults on Afro-Brazilian Religious Freedom

In 2007, just two years after the Rio Grande do Sul case was heard by the state supreme court, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reported that Evangelicals were carrying out "campaigns of demonization" against adherents of Afro-diasporic faiths in Brazil and other parts of Latin America (Diène 2007, p. 15). By 2011, international human rights experts began expressing concern about rising numbers of acts of religious intolerance against devotees of Afro-Brazilian religions and their places of worship (i.e., U.S. Dept of State 2011: Brazil). For instance, in 2013, the U.S. Department of State's International Religious Freedom Report indicated that drug traffickers in Rio de Janeiro had been terrorizing Candomblé adherents, forcing at least forty priests out of their communities and prohibiting devotees from wearing religious attire (U.S. Dept of State 2013: Brazil). By 2014, the violence had clearly turned physical, as multiple sources reported that practitioners of Afro-Brazilian faiths had been harassed, intimidated and assaulted and that their religious symbols and places of worship had been vandalized, desecrated and burned down (U.S. Dept of State 2014: Brazil; Izsák 2016).

In 2015, when Rio Grande do Sul legislators decided to review another bill to revoke legal protections for animal sacrifice, violence against Afro-Brazilian religions saw a drastic spike. For instance, that year, two adult males carrying bibles assaulted a family of Candomblé adherents as they were walking home from a ceremony in northern Rio de Janeiro. They harassed them, calling them "devils" and telling them that they were going to hell, while throwing stones at them. One of these stones struck 11-year-old Kailane Campos in the head, sending to her to the hospital suffering from fainting and memory loss (Conte 2016). On a single day in September of that year, at least two Afro-Brazilian temples were the victims of arson. One of the owners reported that the only evidence of motive for the attack was an un-scorched bible that he found lying on top of the rubble. (Terreiros de Candomblé são incendiados 2015)

This violence has only grown throughout the last 3–4 years. In December 2016, Candomblé priestess Elaine Dias Pereira reported that someone had placed a bomb on the electric meter of her temple while she and other devotees were inside holding a ceremony (Muggah 2017). During a single

[7] Quote: "A HUMANIDADE tem de evoluir para a preservação da VIDA."

week in July of 2017, terrorists destroyed at least seven Afro-Brazilian temples (Sétimo terreiro é depredado 2017). In August and September 2017, at least thirty Afro-Brazilian places of worship were destroyed in less than three weeks. Two of these incidents were recorded and showed Christian extremists invoking Jesus as they held devotees at gunpoint, threatened their lives, as well as urinated on and smashed their religious shrines (Coelho 2017). It is important to keep these acts of intolerance in mind as they coincide with resumed discussions of animal sacrifice.

D Renewed Legislative Debates

In 2015, Representative Regina Fortunati proposed bill 21/2015 that would repeal Law No. 12.131—the amendment to Law No. 11.195 specifically protecting animal sacrifice (Proposição 21 2015). In defense of resurrecting this issue that had seemingly been nullified by the state's supreme court a decade earlier, Fortunati depicted animal rights as an evolving concept that needed to be revisited. She argued that increasing numbers of people are "recognizing" their duty to defend life and, as a result, fewer people are consuming animals for food or accepting their use in laboratories. She referred to the sacrifice of animals as an embarrassment and disturbance to society and characterized the decomposition of animal offerings as a threat to public health. Furthermore, as Osvaldo Stefanello had a decade before, Fortunati averred that animal sacrifice creates a conflict between religious liberty and an animal's purported right to life. The debates that followed more explicitly questioned whether prejudice against Afro-Brazilian religions underlies the movement to ban animal sacrifice than prior discussions and provided more examples of the hypocrisy of focusing on certain types of purported "cruelty" while ignoring others.

After its introduction, Fortunati's bill went to a committee within the legislative assembly, the Commission of Constitution and Justice ("CCJ"), to evaluate whether or not it violated the Constitution. Throughout the month of March, the CCJ met with Afro-Brazilian religious leaders and community members as it received reports related to the bill. Meanwhile, Fortunati vehemently defended her bill when the Assembly was in open session (Assembléia Legislativa 25 March 2015). She acknowledged that many had called her a racist and accused her of being prejudiced against Afro-Brazilian religions. However, she claimed that the amendment itself was prejudiced because it exempted African-derived religions from complying with animal cruelty laws but made no similar exemptions for devotees of other faiths. She stressed that the equal thing to do was to return the Code of Animal Protection to its original state.

On 12 May 2015, Deputado Jorge Pozzobom wrote a decision finding Fortunati's proposed law unconstitutional, which was joined by 11 of the 12 members of the CCJ (Pozzobom 2015). Pozzobom argued that it is his obligation to respect Afro-Brazilian belief systems because the Federal Constitution guarantees freedom of religion and the protection of places of worship and liturgies. Furthermore, Pozzobom stressed that animal sacrifice was historically a component of the Judeo-Christian belief system. He referenced a passage in the Bible where Abraham sacrificed a lamb as an offering to god. He also said that, as a Christian, he felt that he should follow the example of Pope Francis, who had recently prayed in a mosque in Istanbul, and respect differences in others as well as seek interreligious dialogue. Pozzobom called upon animal rights activists and devotees of Afro-Brazilian faiths to dialogue about this issue and find a way to reach a respectful resolution.

The following day, Fortunati and sixteen others wrote a response to the CCJ's decision, invoking a rule that allows the entire legislative assembly to vote to uphold or disallow a CCJ opinion (Fortunati 2015). In this request for a plenary or open vote, Fortunati argued that the CCJ was mistaken in its decision that her proposed law was unconstitutional. She contended that the rights in the Constitution are not absolute and can be limited in some circumstances. In this case, Fortunati argued that there is a conflict between two constitutional rights—the right to life and the right to religious freedom. To Fortunati, it was clear which right should be upheld in the conflict because, she averred, the free exercise of religion only applies to people who "correctly exercise religious precepts" not those who use the constitution "to commit atrocities with animals" (Fortuanti 2015). Furthermore, she argued

that animal sacrifice violated citizens' right to a healthy environment. In this response, as well as when Fortunati addressed the entire assembly about this vote, she stressed again that there was no racism or religious discrimination in her bill. It was just about protecting animal life.

It is important to note that despite Fortunati's repeated assertions that her proposal was not based on religious discrimination, there is significant evidence to suggest otherwise. Aside from her introduction of this bill at precisely the moment when violence against Afro-Brazilian religions began to increase exponentially, Fortunati also regularly described her position on animal rights as part of her Christian religious beliefs. For example, on 31 March 2015, in a discussion unrelated to the State Code of Animal Protection or its amendment, Fortunati opined that it was the Christian duty to look after animals because they are God's creations. Similarly, on 7 October 2015, speaking in honor of the State Animal Rights Week in Rio Grande do Sul, Fortunati stressed that the majority of Christians (particularly Evangelicals) believe that they have a duty to protect animals. She lamented that the majority of Christians; however, had not joined or formed church organizations to fulfill this obligation. That same day, Fortuanti also revealed that she had made a commitment to fight for animal and environmental rights to the Pope when she was invited to Vatican.

On 2 June 2015, the Legislative Assembly voted 27 to 14 to adopt the CCJ's opinion against Bill No. 21/2015. On this date, Fortunati was traveling and therefore, there were fewer comments in favor of her bill. However, Mr. Sérgio Peres reminded the assembly of one of Fortunati's central arguments about purported conflict between the right to freedom of worship and the right to life. He repeated the protestors' slogan that "Animals should not pay with their lives for our beliefs" (Assembléia Legislativa 2 June 2015).[8] He also contended that there is a constitutional right to the free exercise of religion but no constitutional right to kill living beings.

The other speeches that day came from two members of the CCJ who explained their decision finding the Bill unconstitutional and shared some of the evidence presented to the commission that swayed their opinion. These discussions reveal that concerns about discrimination against Afro-Brazilian religions played an important role in their decision. Mr. Pedro Ruas began by stressing that he has been friends with Fortunati for 30 years; however, he was convinced by the statistics that had been presented to the CCJ about the biases in the focus of these purported animal rights activists. Ruas noted that no one was questioning the 220,000 sheep, 275,000 cattle, 180,000 pigs and 500,000 chickens that are killed in Rio Grande do Sul every month (presumably for food consumption) (Assembléia Legislativa 2 June 2015). He also pointed out that nationally, approximately 5000 medium sized animals (like capybaras) are killed every day in street accidents because no one has constructed a tunnel for them to cross the roadways away from the cars. Because the purported activists were focusing only on Afro-Brazilian religions and not these other threats to animal life, Ruas believed that this debate was not about animal cruelty; it was about religious discrimination.

Another member of the CCJ, Manuela D'Ávila, agreed that the Bill was an unconstitutional attack on Afro-Brazilian religious freedom. She explained, "I know that there is a lot of ignorance about the Afro-Brazilian religions and I know that this ignorance lies mainly in the prejudice with regard to who practices them and the people who came to this country without being asked by anyone, brought in boats and using their religiosity to resist the permanent exclusion that Brazilian society provoked at various moments in its history"(Assembléia Legislativa 2 June 2015). D'Avila read into the record a letter from a law student, Winnie Bueno, who she believed presented a clear argument about this discrimination. Bueno, much like Ruas, stressed that Fortunati was targeting African religious traditions without expressing similar concerns about slaughterhouses, the rodeo, cosmetic animal testing or any other threat to animal welfare. Bueno also challenged the defenders of animal rights to consider protecting the lives of Afro-Brazilian people against institutionalized racism. After quoting

[8] Quote: "Os animais não devem pagar com suas vidas por nossas crenças."

this letter, D'Avila explained that she is opposed to "intolerance and fanaticism" and thus voted that Fortunati's bill is unconstitutional.

E The Federal Supreme Court Proceedings

The controversy over animal sacrifice did not end after two legislative debates and a state Supreme Court ruling. The Public Prosecutor's Office of Rio Grande do Sul ("Ministério Público") appealed the decision of the State Supreme Court, asking the Supreme Federal Tribunal to review the constitutionality of the 2004 amendment to the Animal Protection Code (Extraordinary Remedy RE 494601 2006). In this petition, they claimed that the law violated the federal environmental crimes statute, usurped the federal government's control over criminal law, gave preference to Afro-Brazilian faiths over others and created a conflict between the fundamental right to freedom of religion and the protection of animals. In 2016, the Court agreed to hear the case and has admitted several organizations as parties, including animal rights groups and councils of Afro-Brazilian religions, as well as received amicus briefs from others.

On 9 August 2018, the Court was scheduled to issue its ruling. At that time, two of the justices voted on the amendment before a third, Alexandre de Moraes, requested that the decision be postponed to allow for further investigation of some of the issues in the case (Carneiro and Teixeira 2018). The Court stayed the proceeding with no clear indication of when a ruling could be expected. Although it is difficult to anticipate when the Court will revisit this issue or what the ultimate outline will be, it is worthwhile to discuss the two votes that were released on 9 August, both of which were in favor of upholding the amendment.

Minister Marco Aurélio wrote a rather lengthy opinion, discussing each of the petitioners' claims. However, the main ones that are relevant here are those that focused on whether an amendment exempting Afro-Brazilian religions from the Animal Protection Code violated the principle of isonomy. Aurélio opined that a plural society requires unique consideration of different belief systems. Therefore, it was not a violation of the principle of isonomy to give special consideration or exemptions to minority religions when historical or social issues require it, as they did in this case (Aurélio 2018). Aurélio also noted, as members of the CCJ had three years before, that it was hypocritical to deem religious sacrifice an ill-treatment of animals when the population kills animals for meat. Therefore, Aurélio voted that the amendment should be deemed constitutional, conditioned on the requirement that the religious sacrifices did not involve mistreatment in the slaughter and that the meat was directed to human consumption.

Senhor Ministro Edson Fachin also voted on the law before the issue was tabled. Like Aurélio, Fachin opined that such an amendment was necessary in a pluralist society. He stressed that these practices were not just a central component of religious freedom but are also "intangible cultural heritage"—ways of living and creating diverse communities that the Brazilian State was obligated to protect. Furthermore, Fachin pointed out that a truly secular state requires not only that the government not adopt or espouse any religious affiliation but that it also should not prohibit any religion. Animal sacrifice is a central part of Afro-Brazilian faiths and "because of their stigmatization, the fruit of a structural prejudice" the "protection should be even stronger" for these religions (Fachin 2018, p. 12).[9]

Fachin also cited specific evidence of the process in which animals were sacrificed in Afro-Brazilian faiths to demonstrate that the practices were not cruel. First, he had received information that the devotees only use animals that they have raised for their sacrifices. It would be against the principles of the faith, the devotees explained, for the animals to be treated badly, as they are regarded as sacred offerings to the deities/orixas. Furthermore, Fachin noted that, in contrast to commercial methods of slaughter, all forms of religious slaughter, including that practiced by Afro-Brazilian faiths, are

[9] Quote: "A proteção deve ser ainda mais forte, como exige o texto constitucional, para o caso da cultura afro-brasileira, não porque seja um *primus inter pares*, mas porque sua estigmatização, fruto de um preconceito estrutural."

carried out in the most swift and painless methods possible. After determining that the process was not cruel, and that protection of Afro-Brazilian religions is necessary because of discrimination against them, Fachin ruled that the amendment was not only permissible under the constitution but actually promotes equality.

F Conclusions

Devotees of Afro-Brazilian faiths in Rio Grande do Sul have been entangled in this dispute over animal sacrifice for more than fifteen years, since Manoel Maria proposed a State Animal Protection Code in 2002 that initially contained provisions banning the use of animals in religious rituals. Although practitioners successfully lobbied for the removal of these provisions as well as for an amendment to the Code that explicitly protected their religious freedom, their beliefs have been repeatedly challenged as "primitive" and "cruel," and they have suffered significant harassment both in response to and in spite of their legal victories.

Practitioners remain hopeful that the Federal Supreme Court will render a verdict in favor of their religious freedom when it finally completes its vote on the amendment. However, the situation in Brazil has continued to deteriorate in recent months. There have been continued physical attacks on Afro-Brazilian religious temples. Furthermore, in October 2018, the country elected a new president, Jair Bolsonaro, who is a known conservative Evangelical and who has been accused of making racially discriminatory remarks about Afro-Brazilians. It seems impossible to regard the outcome of this animal sacrifice case as if it is divorced from larger societal problems with discrimination and violence against Afro-Brazilians and their faiths.

Part II. Sri Lanka

Since at least 2009, Sri Lanka has been riddled with controversies about the legality of the ritual sacrifice of animals. These disputes commenced with a series of high profile court cases in Chilaw and Jaffna, two prominent sites for Hindu temples, and seem posed to end with a proposed national law that would completely ban animal sacrifice in Hindu temples. A review of these cases and controversies reveals that there is much more than animal rights underlying this decade of opposition to animal sacrifice. First, similar to the controversy over animal sacrifice in Brazil, there have been regular allegations of racial discrimination in this movement. The primary group in Sri Lanka who has engaged in animal sacrifice are Tamil Hindus, both ethnic and religious minorities who have long been in conflict with the Sinhalese Buddhist majority (Report of the Special Rapporteur 2017).[10] Second, religious cleavages have been at the center of this controversy. Other Hindus who have disavowed animal sacrifice have been at the center of opposition to its continued practice among certain Tamil Hindus.

This section will begin with an overview of the main cases and controversies over animal sacrifice in the 2010s. Then it will proceed to discuss evidence of the racialized and religious nature of these disputes.

A The Chilaw/Munneswaran Controversy, 2011–2014

Perhaps the most controversial case in Sri Lanka began at the Munneswaram temple complex near the town of Chilaw in the North-Western Province. It contains five temples, including a Buddhist temple. According to the complex's official website, it is an important historical site that was a royal patronage in the 15th and 16th centuries (Veluppillai n.d.). This Munneswaram temple complex is one

[10] As of the 2012 census, Sinhalese persons were nearly 75% of the population of Sri Lanka, most of whom were Buddhist. The Tamils, who primarily live in the North and East of Sri Lanka, are the largest minority group, comprising approximately 3 million of the 20 million inhabitants. Most Tamils are Hindu.

of only a handful in the country that conduct animal sacrifices and the site of the largest number of sacrifices (ACHC President Condemns Animal Sacrifice 2010).

After several years of heated controversy, in 2011, animal rights groups and Buddhists filed a writ petition with Sri Lanka's Court of Appeal, seeking to end animal sacrifice at an annual festival at the Sri Bhadra Kali Amman Kovil in Munneswaram. They claimed that the sacrifices violated the Prevention of Cruelty to Animals Ordinance and that the persons performing the slaughter did not have the permits required under the Butcher's Ordinance (Sri Bodhiraja Foundation et al. v. Inspector General of Police et al. 2013). The petitioners characterized the writ petition as a public interest action on behalf of people who desired to prevent cruelty to animals. On 29 August, 2013, the Court of Appeal issued its decision in favor of the writ application.

With regard to the Butcher's Ordinance, the petitioners argued that the Kovil was operating in violation of the law because they slaughtered animals and gave or sold the meat to others without obtaining a butcher's license or following all the rules that regulate butchers and slaughterhouses. The court agreed, reasoning that to exempt lay persons from the butcher's regulations would be to give them preferential treatment to that of commercial butchers. The court stressed that this was not an example of an isolated act of slaughter (which might be exempt from the Butcher's ordinance). Because the festival happened annually at the same facility and numerous animals were slaughtered there, the court ruled that the person or priest presiding over the Kovil had to obtain a Butcher's license before any future sacrifices could proceed.

With regard to their claims of animal cruelty, the petitioners based their arguments on an affidavit of Augestine Fernando, correspondent for the *Lankadeepa Newspaper* who was covering the festival in August 2009. Fernando claimed that the Kovil was cruel to goats because the carcasses of the previously slaughtered animals could be seen by the goats before they were killed. The Court agreed that this violated the Cruelty to Animals Act because the goat "feels that same misery will befall on it" (Sri Bodhiraja Foundation et al. v. Inspector General of Police et al. 2013, p. 11). Fernando also claimed that the Kovil was cruel to birds, averring that he witnessed numerous people swinging fowls above their heads and then bashing them against the ground to kill them. The Kovil admitted to killing the birds but denied that they did so in the way that Fernando described. However, they did not describe how the fowls were killed in their pleadings. Therefore, the Court accepted Fernando's allegations and also found the Kovil guilty of unnecessary cruelty in their slaughter of the birds. On both counts of animal cruelty, the Court determined that because the Kovil had violated the Cruelty to Animals Act in the past (during the festival that Fernando witnessed) and there was no way to guarantee that they would not violate it at the next festival, the police would be authorized to prevent the sacrifices altogether if the Kovil failed to obtain the Butcher's license or if there was evidence that they were violating the Cruelty to Animals Act.

The leaders of the Munneswaram Kovil appealed the Court of Appeal's decision to the Supreme Court (Kanagaratnam et al. 2014). They emphasized that their Kovil had been around for more than 350 years and that their festival was held annually. They contended that the sacrifices were an integral component of the longstanding festival and that the rituals were not conducted as the petitioners had described. They argued that the Court of Appeal's ruling would interfere with their fundamental rights to freedom of religion. However, the Supreme Court affirmed the ruling of the Court of Appeals on all counts as well as stressed that the Butcher's Ordinance and Cruelty to Animals Ordinance are both neutral laws that do not provide any exemptions for religious practices.

B Jaffna High Court Decision: 2016–2017

The next major controversy over animal sacrifice in Sri Lanka occurred in Jaffna, the capital city of the Northern Province where the majority of the population is Tamil Hindu and where most of the country's civil war was fought. In 2016, All Ceylon Hindu Congress, a federation of Hindu religious associations, filed an application with the High Court of Jaffna to end animal sacrifices in Hindu temples in the court's jurisdiction (Jaffna High Court 2016). The petitioners argued that

when the sacrifices were carried out, the carcasses, with their severed heads, were left in the open courtyard in front of young people, children and pregnant women (Sacrificing Animals in Hindu Temples 2014).[11] They averred that there was no basis for this "gory" and "revulsive" ritual in Hindu scriptures, "no canons in any Hindu books substantiating the rituals of animal sacrifices in Hindu temples" (Sacrificing Animals in Hindu Temples 2014). The counsel for the state agreed that these ceremonies were "primitive, barbaric rituals" (Jaffna HC Bans 2017).

In April of that year, High Court Judge Manikkavasagaar Ilancheliyan (also spelled "Elancheliyan") issued an interim injunction on these sacrifices (Jaffna High Court 2016). This injunction also prohibited local health services officials from issuing permits for animal sacrifice, under penalty of contempt of court. Five months later, on or around 24 October 2017, Judge Ilancheliyan issued his final decision (Jaffna HC Bans 2017). He banned all sacrifice at Hindu kovils in the jurisdiction, abolishing the 300-year-old practice. The Judge ordered the police to bring any violators before the court.

C National Law Banning Animal Sacrifice: 2018–2019

Since at least 2010, there has also been frequent discussion of a national law prohibiting animal sacrifice in Hindu temples. That year, in the early stages of the Chilaw controversy, the Prime Minister D.M. Jayaratne promised/warned that there would be a national ban on animal sacrifice in Sri Lanka, as he was meeting with Hindu leaders in Gampaha. Jayaratne referred to animal sacrifice as "disgusting sight at religious events" (Plan to ban animal sacrifices at religious festivals 2010).

Two years later, as the Chilaw case was pending before the appellate court, Nishantha Sri Wamasinghe, a spokesperson for Jathika Hela Urumaya ("JHU") (a predominantly Sinhalese-Buddhist nationalist political party in Sri Lanka) once again called for a nationwide ban on animal sacrifice. *Bikya News* summarized Wamasinghe's remarks, stating that he contended that "as a Sinhala Buddhist country Sri Lanka has the right to protect animals which is in accordance with Buddhist teachings" (Sri Lanka's Buddhist 2012). They quoted another unnamed JHU official as arguing that animal sacrifice needs to be abolished because in "today's modern world these practices are not needed to perform religious service" (Sri Lanka's Buddhist 2012). Around the same time, a third JHU official, Omalpe Sobitha Thera, called for Kovil priests to televise the ritual so the country could see the animal sacrifices. Thera lamented that priests were proceeding with the ceremonies even though the "All Ceylon Hindu Congress has admitted that this animal sacrifice is not a ritual of the Hindu religion but a myth existing amongst the people" (JHU wants the animal sacrifice telecast 2012).

Around this same time period, in September 2011, the Public Relations and Public Affairs Minister Mervyn Silva (a Buddhist) organized a 200-person march in protest of the sacrifices at Munneswaram (Sri Lanka minister stops animal temple slaughter 2011). The following year, Silva also spoke out favor of a nationwide ban, promising to do everything in his power, including presenting new laws to Parliament, to "stop sacrilege in this noble land through this cruel slaughter of animals" (I will do everything to stop animal sacrifice 2012). Like Thera, Silva stressed that "pious Hindus" and "99.9% of the population of this country" opposed animal sacrifice (I will do everything to stop animal sacrifice 2012).

In 2016, approximately one month before the Jaffna case was presented to the High Court, discussion resurfaced about a national ban, led by the Minister of Rehabilitation, Resettlement, Prison Reforms and Hindu Religious Affairs, D. M. Swaminathan. The *Daily News* quoted the Minister as saying that his "personal opinion" was that "animal sacrifices in religious temples should be banned" and that he believed the majority of people supported such a ban (A ritual or business? 2018). In late February 2016, Minister Swaminathan announced that he planned to introduce the Prevention of

[11] An unidentified author published an article in the Asian Tribune, claiming to be one of the individuals who lodged the complaint against the sacrifices in Jaffna. This is the language that he used in that article.

Animal Sacrifice in Hindu Shrines Bill which, as the title suggests, would criminalize animal sacrifice in all Hindu temples (Ban on Animal Sacrifice in the Offing 2016).

Despite these public vows, it took two and a half years before Swaminathan fulfilled his promise. In September 2018, the Minister presented such a bill to the Cabinet (Cabinet Proposal to Ban Animal Sacrifices 2018). Reportedly, this came after "more than 300 Buddhist monks presented a petition to the government with 750,000 signatures opposing the practice [of animal sacrifice]" (Colombage and Joseph 2018).

D Understanding the Opposition to Animal Sacrifice in Sri Lanka

With the exception of the rhetoric used in discussions of the need for a national ban on animal sacrifice in Hindu temples, there is often little in the text of these cases and laws to indicate the underlying reasons why these controversies arose and what they meant. However, this section will explore scholarly literature, a series of asylum cases from Australia and a body of international human rights reports that clearly indicate the racial and religious discrimination behind these cases as well as reveal the religious cleavages that pit Hindu against Hindu in Sri Lanka.

a Scholarly Research

In 2017, Mohammad Agus Yusoff and Athambawa Sarjoon published an article on anti-halal and animal slaughtering campaigns in Sri Lanka. Although focusing on Abrahamic religions, Yusoff and Sarjoon contend that a central basis for opposition to animal sacrifice has been led by Sinhala-Buddhist nationalists who emerged in 2009, at the end of the country's 30 year civil war. They argue that the Sinhala-Buddhist nationalists have carried out ethno-nationalist violence against Muslims, who they regard as a threat to their efforts to preserve and protect the Sinhalese race and the practice of Buddhism in Sri Lanka.

One of the manifestations of this Sinhala-Buddhist "ethno-religious nationalism" emerged in 2012, a year after Buddhists and animal rights activists filed the petition with the court to end Hindu sacrifices at Munneswaram. That year, government officials denied requests for permits to slaughter the animals during the Haj festival, a time when some Muslims slaughter cattle and distribute the meat to family members and the poor. The Kandy Municipal Council also implemented a law barring animal sacrifice inside the city limits (Yusoff and Sarjoon 2017, p. 6). Yusoff and Sarjoon have pointed out that these efforts are not motivated by pure concern for animal welfare; rather, they were driven by racism, "chauvinism," as well as "hatred toward minorities" (Yusoff and Sarjoon 2017, p. 9). They also stress that recent opposition to halal certification was based on the idea that Sinhala-Buddhist culture is synonymous with the country of Sri Lanka and that other religions and nationalities pose a threat to these identities. Therefore, although focusing on controversies over Abrahamic animal slaughter, Yusoff and Sarjoon have argued that Sinhala-Buddhists have used animal welfare arguments to harass and suppress religious minorities.

b Australia Asylum Cases, 2012–2018

While the Munneswaram case was pending before the Appeals Court, at least three Tamil Hindu males fled the Chilaw area for Australia, seeking a protection visa to stay in the country. All three claimed that they would be subjected to ethnic and religious discrimination if they returned to Sri Lanka and specifically cited animal sacrifice controversies as evidence of this discrimination. The allegations made by these three men and their characterizations of the bias behind them suggest that Tamil Hindus from the area understood the controversies over "animal welfare" as a shield to hide discriminatory motives.

The first case involved a young Tamil male from Sri Lanka, identified only as SZWDH in court documents, who arrived by boat as an "irregular maritime arrival" on 1 August 2012 (SZWDH v. Minister for Immigration 2015). Shortly thereafter, he applied for a protection visa to stay in Australia, claiming that he would be persecuted if he returned to Sri Lanka. The applicant made a number of

allegations about acts of religious intolerance in his home town to support these claims. He contended that in 2010, "Sinhalese Buddhist extremists" had entered the Munneswaram temple, accompanied by members of the army and police, and attempted to prevent devotees from praying, as well as confiscated some ritual prayer items. In 2011, he claimed that Sinhalese Buddhist extremists held a protest when Tamils tried to build a monument and they beat and robbed Tamils who entered the city. He reported getting into a physical altercation with a Buddhist monk and "two thugs" who were trying to convince his mother to sign a petition "to stop prayers in the Hindu temple" (SZWDH v. Minister for Immigration 2015). After this altercation, the petitioner alleged that he was attacked on two occasions, because the "two thugs" were employed by a powerful politician. He claimed that these incidents resulted from discrimination because he was a Tamil and a Hindu and that there were ongoing conflicts between Hindus and Buddhists in Chilaw.

Around the same period, another Tamil male, identified in court records as BRV15, also cited the animal sacrifice controversies in Sri Lanka as partial grounds for a protection visa (BRV15 v. Minister for Immigration 2017). This applicant had left Sri Lanka in the same year as the first, arriving in Australia on 24 June 2012. The applicant alleged that he had been harassed and beaten by Sinhalese people who entered his shop as part of a concerted effort to push out Tamil shop owners (BRV15 v. Minister for Immigration March 2018). He also informed the Tribunal "that he had sacrificed goats in the [Munneswaram] temple, but a Minister named Mervyn Silva had brought the police and created a lot of problems with the festival and had told people that he would not allow animal sacrifices" (BRV15 v. Minister for Immigration 2017).

Yet a third individual, identified in court records as CP15, applied for a protection visa in Australia, citing similar grounds (BRV15 v. Minister for Immigration July 2018). He was a fisherman in a village in Udappu, north of Chilaw. To support his application, he cited claims of discriminatory policies against Tamil fishermen as well as harassment and physical assault by the Sri Lankan Navy. Furthermore, the applicant reported that he experienced discrimination and physical assault because of his religion. Specifically, he explained that there was a festival known as Velvi, where a Tamil fisherman would sacrifice an animal to the Goddess Shakhati and make a vow. In 2011, when he took a goat and went to make his vow, he was chased by a mob and prevented from making the offering. He reported that this did not just happen to him but to many people who were making the vow.

Although, for a variety of reasons, none of these three cases led to a protection visa for the applicant, they provide a devotee's perspective about the controversy about animal sacrifice at Munneswaram specifically and in Sri Lanka generally. While one must acknowledge that individuals seeking protection or asylum in a foreign country might be encouraged to exaggerate any possible evidence of discrimination to support their claim, it remains significant that three separate Tamil Hindus from the Munneswaram temple fled the country and made allegations of religious discrimination during the period of that animal rights activists and Buddhists sought the injunction on animal sacrifices. They reported physical assaults, harassment and protests as they tried to carry out their rituals. All three characterized the animal sacrifice controversies as inter-related ethnic and religious discrimination from Sinhalese Buddhist extremists and government officials. As the following section explains, international human rights reports suggest similar findings.

c Human Rights Reports

While not typically commenting directly on animal sacrifice controversies, human rights experts have made three critical points about religious freedom in Sri Lanka that inform our understanding of the cases and the proposed national ban. First and foremost, experts have noted broad racial and religious biases in the nation. While the Constitution guarantees the right to freedom of religion, including worship and observance, it also states that "the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana" (Report of the Special Rapporteur 2017, p. 9). When the Special Rapporteur on minority issues visited Sri Lanka in 2016, she noted that minorities in the country generally reported being excluded

from decision making processes and that despite legal guarantees that both Tamil and Sinhala were national languages, decision making bodies in fact often operated only in Sinhala. Indeed, some activists have invoked reference the supremacy of Buddhism in Sri Lanka as a justification to suppress other faiths. For example, Ven Prof Kumburugamuwe Wajira Thera called animal sacrifice "a black mark to the country's moral image" and said that it was contrary to "the teachings of the Buddha" (Munneswaram animal sacrifice halted 2012). Thera contended that a "religious awakening" in Sri Lanka would quash the practice of harming animals (Munneswaram animal sacrifice halted 2012).

Second, human rights experts have documented other efforts (aside from animal sacrifice bans) to suppress Hinduism in Sri Lanka. Specifically, since at least 2011, the United States Department of State's International Religious Freedom Report for Sri Lanka has noted that government troops were building Buddhist shrines in the northern area of the country such as Jaffna and Kilinochchi, where the primary population was Hindu (U.S. Dept. of State 2011, p. 5; U.S. Dept. of State 2012, p. 4; U.S. Dept. of State 2013, p. 6; U.S. Dept. of State 2014, p. 8). On 29 October 2013, the Urban Development Authority in Dambulla bulldozed a Hindu Kovil to create space for a water feature in a Buddhist "sacred zone" (U.S. Dept of State 2013, p. 3). Furthermore, at least forty Tamil Hindu families who rented properties from Sinhalese property owners around the Kovil were evicted (U.S. Dept of State 2013, p. 3). Minorities in the North and the East of the country reported there was an intentional process of "Sinhalization" where Sinhalese persons moved to Tamil-dominated areas "to change the demographics of the region, to the political disadvantage of the minorities" (Report of the Special Rapporteur 2017, p. 39). This included the State confiscating land from Tamil land-owners and the military helping to build Buddhist temples and statues in regions where there were no Buddhists to worship at these spaces (Report of the Special Rapporteur 2017, p. 39).

Third and most significantly, human rights experts have repeatedly expressed concern about Buddhist nationalist or extremist groups harassing and attacking religious minorities, often with the apparent consent or support of the national government. From at least 2015 to 2017, the U.S. State Department's International Religious Freedom Report noted that the Bodu Bala Sena (the "Buddhist Power Force"), promoted ethno-nationalist views in favor of Sinhalese Buddhists and encouraged violence against religious minorities. (U.S. Dept of State 2015, 2017). Similarly, the Special Rapporteur on minority issues explained that during her 2016 visit, "many expressed grave concern about Sinhala-Buddhist nationalism and extremism" who, in some cases had "incited violence and hatred against religious and other minorities while proclaiming the racial superiority of Sinhala Buddhists and carried out attacks on places of worship as well as businesses and properties of religious minorities" (Report of the Special Rapporteur 2017, p. 30). In its 2014 response to Sri Lanka's report on its compliance with the International Covenant on Civil and Political Rights, the Human Rights Committee expressed analogous concern about ethnic and religious discrimination against minorities, including harassment, barring them from schools and damaging places of worship (Human Rights Committee 2014, pp. 7–8). In 2016, the Committee on the Elimination of Racial Discrimination echoed these concerns, stating that they were "alarmed" by the country's restrictions on the religious freedom of minorities, including Hindus, such as "reported cases of desecration of places of worship, disruptions of religious services, denials of building permits to construct religious buildings and denials of burials in public cemeteries of members of ethnic or ethno-religious groups" (Committee on the Elimination of Racial Discrimination 2016, p. 5).

These acts of extremism were not solely the responsibility of non-governmental actors. In 2012, the International Religious Freedom Report noted that the government had failed to investigate physical violence against places of worship (U.S. Dept. of State 2012, p. 3). The 2014 Report explained that this hesitance to prosecute created a "culture of impunity" for Buddhists who carried out these attacks (U.S. Dept. of State 2014, p. 4). The following year, the International Religious Freedom Report indicated that the national government was showing increasing commitment to identify the perpetrators of violence against religious minorities; however, they noted that in some cases, the local authorities remained loyal to Sinhalese Buddhist extremists and therefore refused to

investigate the crimes or charge the guilty parties (U.S. Dept. of State 2015, p. 1). In 2016, the Special Rapporteur on Minority Issues continued to receive complaints from religious minorities about the lack of accountability in cases of religious intolerance—claiming that police and courts refused to treat them as such and politicians would even impede the prosecution process.

d Intra-Religious Hindu Controversy

An interesting element of the Sri Lanka controversy that differs from that in Brazil is that it is not merely a product of religious and racial discrimination; it is also the result of the government taking sides in an intra-religious strife. Over the years, the All Ceylon Hindu Congress has been at the center of controversies over animal sacrifice. One will recall that they filed the petition in Jaffna that led to the ban on sacrifices in that region.

The ACHC has explained that they regard the ritual slaughter of animals as a sin in their faith because it is "cruelty" to a living being (ACHC says no to animal sacrifice 2012). However, the ACHC urged non-Hindu groups and politicians to avoid getting involved in the controversy. While they called upon the "offending" Kovils to stop the practice, the ACHC explained that it was an internal issue for "Hindus to handle" (ACHC says no to animal sacrifice 2012).

This has not stopped government officials from relying on their statements in opposition of animal sacrifice. For example, in September 2012, some reports circulated indicating that the government of Sri Lanka was in support of the continuation of animal sacrifices in Chilaw. However, the Secretary to the President released a statement indicating that the government actually opposed these sacrifices and considered them to be animal cruelty. They also noted in this statement that the All Ceylon Hindu Congress had denounced animal sacrifice as a "sinful act" and that the majority of Hindus in Sri Lanka regarded the practice as unacceptable (No Agreement on Animal Sacrifice 2012). The statement averred that the majority of religions in Sri Lanka agreed with this position and that "all faiths in our country are against cruelty to animals" (No Agreement on Animal Sacrifice 2012).

E Conclusions about Sri Lanka

The controversy over animal sacrifice in Sri Lanka is a combination of a variety of societal issues, including religious cleavages in Hindu communities. However, analogous to Brazil, religious and racial discrimination is at the center of the movement against animal sacrifice. Since the end of the civil war, numerous human rights reports have expressed concern about Sinhalese Buddhist extremism and its impact on the rights of devotees of other faiths. Restrictions on animal sacrifice are just one among many recent developments limiting the rights of Tamil Hindus to engage in their religious practices. Government officials have encroached on traditionally Tamil regions of the country, building Buddhist temples and demolishing kovils in predominating Hindu areas. Extremist Sinhalese Buddhists have been targeting religious minorities with physical assaults on their persons and places of worship. Discrimination and abuses of Tamil Hindus have been so extreme that, particularly following the Chilaw case, some have claimed religious persecution to seek protection visas in Australia.

Conclusions

In the cases of both Brazil and Sri Lanka, it is apparent that bans on animal sacrifice are not merely driven by concerns for animal welfare. In Brazil, debates over a bill designed to guarantee that a new Animal Protection Code could not be utilized to suppress African-derived faiths sparked a wave of intolerance against devotees of those religions as well as threats of violence against the drafters of the bill. Even after the legislature, the governor and the State Supreme Court affirmed the necessity and validity of this statute, opponents have continued to seek its repeal for fifteen years.

While legislators and activists who are pushing for the end of animal sacrifice have argued that they are not racists or discriminating against Afro-Brazilian faiths, they have emphasized that protecting animals is their Christian duty and that any religion that involves animal sacrifice is primitive or anti-modern. They have claimed that an exemption from the Animal Protection Code

provides devotees of Afro-Brazilian faiths the right to engage in unchecked cruelty and denied that a culture of religious intolerance necessitates special protections of these faiths, while violence against devotees of Afro-Brazilian religions has become a rampant problem as Evangelical terrorists have bombed and burned Afro-Brazilian temples and physically assaulted devotees. Furthermore, they ignore analogous threats to animal cruelty such as food-production slaughterhouses, the rodeo, the circus and even roadways, which lack safe passageways for animal crossing.

In Sri Lanka, a thirty-year civil war between the predominantly Buddhist Sinhalese and predominantly Hindu Tamils ended less than one year before purported animal rights activists began seeking to ban animal sacrifice at the historic Munneswaram temple complex. After successive Court of Appeal and Supreme Court rulings finding the priests and leaders guilty of animal cruelty, activists turned their sights on Jaffna, a predominantly Tamil and Hindu region of Sri Lanka.

As in Brazil, activists have claimed that their central concern is animal rights; however, human rights reports about rampant racism and religious discrimination undermine these claims. While the Sri Lankan constitution guarantees religious freedom, it also gives preference to Buddhism and tasks the nation with supporting its fundamental religious principles. Furthermore, since the end of the civil war, human rights experts have expressed concern about the rise of Buddhist extremists and their physical assaults on religious minorities and their spaces of worship. Experts have suggested that the government is often complicit in these attacks—refusing to investigate or punish the perpetrators. Moreover, the state itself is intent on a form of religious colonization, building Buddhist temples and razing Hindu ones in predominantly Tamil Hindu areas. Worshippers from Munneswaram have reaffirmed the relationship between the restrictions on animal sacrifice and these waves of ethno-nationalism, as they sought refuge in Australia and claimed that harassment and physical abuse accompanied the legal disputes over sacrifices.

These case studies reveal that in the Global South, the rhetoric of animal welfare often operates as a thinly veiled mechanism to suppress the rights of racial and religious minorities. It is used to attack already marginalized people who disparately experience poverty, displacement, over-incarceration and other forms of institutionalized discrimination. In the case of Brazil and Sri Lanka, this strong advocacy against animal cruelty is particularly ironic because it is led by the very same religious groups who carry out acts of human cruelty against devotees of minority faiths.

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Primary References

Rio Grande do Sul, Brazil: Lei no. 11.915.

Rio Grande do Sul, Brazil: Lei no. 12.131.

Assembleia Legislativa, Rio Grande do Sul, Brazil: Proposição, PL 21 2015.

Assembléia Legislativa. Estado do Rio Grande do Sul, Plenary Sessions: 19 November 2003.

Assembléia Legislativa. Estado do Rio Grande do Sul, Plenary Sessions; 29 June 2004, 3 August 2004; 17 November 2004.

Assembléia Legislativa. Estado do Rio Grande do Sul, Plenary Sessions: March 31, 2015.

Pozzobom, Jorge. PARECER DA COMISSÃO Nº 20/2015. *Comissão de Constituição e Justiça*, May 12.

Fortunati, Regina Becker. Requerimentos Diversos nº 82/2015. *Assembléia Legislativa, Estado do Rio Grande do Sul*, May 13.

BRV15 v. Minister for Immigration & ANOR [2017] FCCA 131. 2017. Melbourne: Federal Circuit Court of Australia, January 20.

BRV15 v. Minister for Immigration & ANOR [2017] FCCA 131. 2018. Melbourne: Federal Circuit Court of Australia, March 9.

BCP15 v. Minister for Immigration & ANOR [2019] FCCA 1852. 2018. Melbourne: Federal Circuit Court of Australia, July 10.

Exmo. Sr. Dr. Procurador-Geral de Justiça v. Assembléia Legislativa do Estado do Rio Grande Do Sul and Exmo. Sr. Governador Do Estado do Rio Grande do Sul. 2005. Case No. 70010129690, Court of Justice in the State of Rio Grande Do Sul, April 18.

Extraordinary Remedy RE 494601. 2006. Protocol Number 2006/68373, Tribunal de Justiça Estadual, Rio Grande Do Sul, May 26. Available online: http://www.stf.jus.br/portal/processo/verProcessoDetalhe.asp?incidente=2419108 (accessed on 13 January 2019).

Min. Marco Aurélio. 2018. "Voto," RECURSO EXTRAORDINÁRIO 494.601 RIO GRANDE DO SUL, August 9.

Min. Edson Fachin. 2018. "Voto," RECURSO EXTRAORDINÁRIO 494.601 RIO GRANDE DO SUL, August 9.

Kanagaratnam, M., Sri Bhadra Kali Amman Kovil, v Sri Bodhiraja Foundation and et al. 2014. *S.C. Spl. L.A. No. 258/2013*. Supreme Court of the Democratic Socialist Republic of Sri Lanka, September 3.

Sharma, Ramesh, Mehar Singh, Sonali Purewal, State of Himachal Pradesh and et al. *CWP No 9257 of 2011, CWP No. 4499 of 2012 and CWP No. 5076 of 2012*. Shimla: High Court of Himachal Pradesh, September 26, p. 95.

Sri Bodhiraja Foundation et al. v. Inspector General of Police et al. 2013. *CA Writ Application No. 510/2011*. Colombo: The Court of Appeal of the Democratic Socialist Republic of Sri Lanka, August 29.

SZWDH v. Minister for Immigration & Border Protection & Administrative Appeals Tribunal. 2015a. *[2015] FCA 1382*. Melbourne: Federal Circuit Court of Australia, August 12.

Committee on the Elimination of Racial Discrimination. 2016. *Concluding Observations on the Combined Tenth to Seventeenth Periodic Reports of Sri Lanka*. UN Doc. CERD/C/LKA/CO/10-17. October 6.

Diène, Doudou. 2007. *Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on the Manifestations of Defamation of Religions and in Particular on the Serious Implications of Islamophobia on the Enjoyment of all Rights*. U.N. Doc. A/HRC/6/6. August 21.

Human Rights Committee. 2014. *Concluding Observations on the Fifth Periodic Report of Sri Lanka*. UN Doc. CCPR/C/LKA/CO/5. November 21.

Report of the Special Rapporteur on Minority Issues on Her Mission to Sri Lanka). 2017. U.N. Doc. A/HRC/34/53/Add.3. January 31.

Izsák, Rita. 2016. *Report of the Special Rapporteur on Minority Issues on Her Mission to Brazil*. U.N. Doc. A/HRC/31/56/Add.1. February 9.

United States Department of State. *International Religious Freedom Report: Sri Lanka*.

United States Department of State. *International Religious Freedom Report: Brazil*.

ACHC President Condemns Animal Sacrifice. 2010. *Sunday Observer (Sri Lanka)*, August 29.

ACHC says no to animal sacrifice *Daily Mirror (Sri Lanka)*, August 30.

A ritual or business? 2018. *Daily News (Sri Lanka)*, June 15.

Ban on Animal Sacrifice in the Offing. 2016. *Sunday Observer (Sri Lanka)*, February 21.

Cabinet Proposal to Ban Animal Sacrifices. 2018. *Daily Mirror (Sri Lanka)*, September 11.

Carneiro, Luiz Orlando and Matheus Teixeira. 2018. STF tem dois votos para permitir sacrifício de animais em rituais religiosos. *JOTA*, 9 August. Available online: https://www.jota.info/stf/do-supremo/stf-permitir-sacrificio-animais-religiosos-09082018 (accessed on 10 August 2018).

Coelho, Andre. 2017. Criminals Force an Iyalorixa to Destroy Her Own Terreiro in Nova Iguassu, Rio de Janeiro. Translated by Melissa Oliver. *Candomble in the USA*, September 16.

Colombage, Quintus and Christopher Joseph. 2018. Sri Lanka to ban animal sacrifice. *La Croix International*, January 12.

I will do everything to stop animal sacrifice—Mervyn. 2012. *Daily Mirror (Sri Lanka)*, August 30.

Jaffna HC bans all forms of animal sacrifices at Kovils. 2017. *Daily News (Sri Lanka)*, October 25.

Jaffna High Court issued an interim injunction offering animal sacrifices in Jaffna. 2016. *The Tamil Diplomat*, April 2.

JHU wants the animal sacrifice telecast. 2012. *Daily Mirror (Sri Lanka)*, August 30.

Muggah, Robert. 2017. In Brazil Religious Gang Leaders Say They're Waging a Holy War. 2017. *The Conversation*, November 2.

Munneswaram animal sacrifice halted. 2012. *Daily News (Sri Lanka)*, August 31.

No Agreement on Animal Sacrifice at Munneswaram—Secretary to President. 2012. *Targeted News Service*, September 13.

Plan to ban animal sacrifices at religious festivals. 2010. *Daily News (Sri Lanka)*, November 3.

Sacrificing Animals in Hindu Temples: A Case Pointer—Kownawatte Narishimma Vairavar Temple. 2014. *Asian Tribune*, June 9.

Sétimo terreiro é depredado em Nova Iguaçu nos últimos meses. 2017. *O Dia (Rio de Janeiro)*, July 9. Available online: http://odia.ig.com.br/rio-de-janeiro/2017-09-07/setimo-terreiro-e-depredado-em-nova-iguacu-nos-ultimos-meses.html?fref=gc&dti=177840008944483 (accessed on 13 January 2019).

Sri Lanka's Buddhist [sic] want end to animal sacrifice. 2012. *Bikya News*, September 6.

Sri Lanka minister stops animal temple slaughter. 2011. *Agence France Presse*, September 13.

Terreiros de Candomblé são incendiados em Goiás: 'Encontrei uma Bíblia', diz dono de um dos locais. 2015. *Extra*, December 9. Available online: https://extra.globo.com/noticias/brasil/terreiros-de-candomble-sao-incendiados-em-goias-encontrei-uma-biblia-diz-dono-de-um-dos-locais-17476382.html (accessed on 13 January 2019).

Secondary References

Behrens, Kevin. 2008. Tony Yengeni's Ritual Slaughter: Animal Anti-Cruelty vs. Culture. Master's thesis, University of the Witwatersrand, Johannesburg, South Africa.

Conte, Andreza. 2016. Umbanda: Apontamentos Sobre A Interferëncia Da Religião No Estado E O Estudo Da Lei. Bachelor's thesis, University of Santa Cruz do Sul, Santa Cruz do Sul, Brazil.

Delahunty, R. J. 2015. Does Animal Welfare Trump Religious Liberty? The Danish Ban on Kosher and Halal Butchering. *San Diego International Law Journal* 16: 341–79. [CrossRef]

Gliszczyńska-Grabias, Aleksandra, and Wojciech Sadurski. 2015. Freedom of Religion versus Humane Treatment of Animals: Polish Constitutional Tribunal's Judgment on Permissibility of Religious Slaughter. *European Constitutional Law Review* 11: 596–608. [CrossRef]

Johnson, Paul Christopher. 2001. Law, Religion and 'Public Health' in the Republic of Brazil. *Law and Social Inquiry* 26: 9–31. [CrossRef]

O'Brien, David. 2004. *Animal Sacrifice & Religious Freedom: Church of the Lukumi Babalu Aye v. City of Hialeah*. Lawrence: University of Kansas Press.

Oro, Ari Pedro. 2006. The Sacrifice of Animals in Afro-Brazilian Religions: Analysis of a Recent Controversy in the Brazilian State of Rio Grande Do Sul. *Religião e Sociedad* 1: 995–1014.

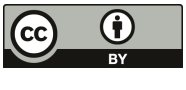
Palmié, Stephan. 1993. Which Centre, Whose Margin?: Notes towards an archaeology of US Supreme Court Case 91-948, 1993. In *Inside and Outside the Law*. Edited by O. Harris. London: Routledge.

Van Der Schyff, Gerhard. 2014. Ritual Slaughter and Religious Freedom in a Multilevel Europe: The Wider Importance of the Dutch Case. *Oxford Journal of Law and Religion* 3: 76–102. [CrossRef]

Veluppillai, A. n.d. Munnicuvaram (Munnesvaram) Kovil: Its History and Ceremonies. Available online: https://www.munneswaram.com/temple/ (accessed on 24 January 2019).

Yusoff, Mohammad Agus, and Athambawa Sarjoon. 2017. Anti-Halal and Anti-Animal Slaughtering Campaigns and Their Impact in Post-War Sri Lanka. *Religions* 8: 46. [CrossRef]

Zoethout, Carla. 2013. Ritual Slaughter and the Freedom of Religion: Some Reflections on a Stunning Matter. *Human Rights Quarterly* 35: 651–72. [CrossRef]



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Article

Citizenship and Religious Freedoms in Post-Revolutionary Egypt †

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Abstract: The majority of the social and political forces that spearheaded and actively participated in the 2011 and 2013 waves of uprisings catapulted the demands to reestablish 'citizenship' as one of the main foundations of a new social contract aiming at redefining state–society relations in a new Egypt. Meanwhile, the concept of citizenship has been increasingly featured in the discourse and practice of a wide variety of state actors and institutions. In fact, Egypt's experiences with the modern nation-state project concerning the conceptualization of citizenship, and the subsequent implications on religious freedoms and the role of religion in the polity at large, has gone through various ebbs and flows since the beginning of the 20th century. The concept of citizenship as such has faced a plethora of challenges and has been affected by the socioeconomic and political trajectories of state–society relations during the Nasser, Sadat, Mubarak, and, most recently, Sissi regimes. Dilemmas of geographical disparities and uneven access to resources and services, in addition to issues of discrimination against ethnic and religious minorities such as Coptic Christians, Shiites, Nubians, Bedouins, or on the basis of gender, are among the main accompanying features of the neoliberal order that was introduced and then consolidated first by Sadat's Open Door and then Mubarak's state-withdrawal policies, respectively. To what extent did the conception and practice of citizenship rights and religious freedoms—as defined by state and non-state actors—change after the demise of the Mubarak regime? In addition, what is the role of the Egyptian civil society vis-a-vis the state in this process of conceptualizing and/or practicing citizenship rights and religious freedoms in the new Egypt? Focusing on the aforementioned questions, this paper aims at shedding some light on the changing role of religion in the Egyptian polity post 2011, while also highlighting the impact of the sociopolitical and economic ramifications witnessed within the society on the scope of religious liberties and citizenship rights as a whole.

Keywords: January 25 revolution; Islamist; Copts; Shiite; Baha'i; Muslim Brotherhood; state; Azhar; 2014 constitution; citizenship

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1. Introduction

Social and political activists and intellectuals from the Arab region have often used the concept of 'citizenship' to denote a set of features pertaining to the foundational identity of the inhabitants of modern nation-states in Arab countries. Nonetheless, there seems to be a research gap when it comes to the scholarly contributions on the subject in the Arab context, especially with regard to fieldwork research that tackles the topic from an ethnographic standpoint. Among the available resources in the contemporary period, one notes that in the 1990s, a few studies were published on the question of citizenship in the Arab World (Butenschon et al. 2000; Joseph 2000), and later a book titled *States Without Citizens* (Jandora 2008) was also issued. Several contributors (Moghadam 2003; Abou-Habib 2011) also produced commendable studies on the status of citizenship in

the Arab world. The bulk of these writings focused on specific (micro) features, such as issues of gender inequality and civil society activism. In the post-2011 phase, there were also significant contributions (Meijer and Butenschon 2017; Pizzo 2015) that attempted to analyze the ramifications of the Arab uprisings on the status of citizenship rights, with a focus on the major social and political forces active in Arab countries. However, there is still a need to revisit the concept of 'citizenship' from a holistic angle that incorporates primary resources and reflects the fieldwork realities experienced by the activists and practitioners on the ground. This endeavor is pivotal if we are to contextualize this subject in relation to the socioeconomic and the political underpinnings of the transformations witnessed in state–society relations in the Arab region.

2. Conceptual Framework

Generally speaking, the conceptualization of citizenship in the modern context has been closely tied to the development of the western model of the nation-state project. In this sense, citizenship emerged as a normative as well as an empirical (positive) notion. The normative dimension of the concept has usually been employed to describe the proactivity of the 'citizens' with regard to the public/political affairs of their communities, as opposed to the passivity of consumerism or to individualized societies and other typologies of social organizations, such as the networks that may work against the common good of the society. Elements of this approach could be traced in Jean-Jacques Rousseau's conception of the "Volonté Générale" and in Marxist and Hegelian ideas on the relationship between the individual and the modern state (Sater 2013). As such, citizenship is viewed as a process of attaining the 'common good' of the society, whereby the individual is mandated with the responsibility to proactively participate in the public sphere for the purpose of achieving that aim which should also yield the rights of all individuals (Jones and John 2002).

Another perspective on citizenship comes from the liberal/capitalist school, which views citizenship as based on a certain amalgam of rights. These rights include, but are not limited to, civil rights, such as the right to private property, the right to choose one's religion, and the right to privacy. These rights need to be protected by the state as it officiates its social contract with society. Henceforth, they could be considered as the basic foundations of the modern nation-state project, with its claims to the monopoly over the use of coercion and its responsibility to develop and exercise the rule of law. In the late 19th/early 20th Century, the notion of citizenship also widened to encompass the right to political participation, as well as the right to be protected from the potentially oppressive and coercive state apparatus. This included the rights to create political associations, vote, and strike. "The inclusion of socialist ideas in the late 19th century meant that the state would need to guarantee that these rights could be used in meaningful ways, thereby guaranteeing minimum welfare as part of the development of social rights . . . [There are] three types of citizenship rights that have evolved since the 1800s: civil, political, and social rights" (Marshall [1959] 1973).

Within the Western context, a host of contributors have critiqued the notion of universal citizenship rights in modern political theory. Young (1989) notes that the conception of citizenship in modern political thought, and specifically in western liberal democracies, should be challenged on the basis that citizenship rights do not necessarily guarantee an equitable social contract between the modern nation-state and the various social and cultural subgroupings within the society. In a critique of the assumption that granting equal rights to 'citizens' is likely to erode various forms of biases and disadvantageous conditions under which such groups may duel, Young argues that acknowledging group difference is essential in order to minimize discrimination and oppression.

Applying the modern model of 'citizenship' with its variations on the Middle East with the assumption that there exist 'classical' citizenship rights as per the modern conception of the term would likely yield a wide variety of limitations. In the words of Nazih Ayubi, "In societies where theoretical individualism is weak and where classes are embryonic, neither the conventional liberal nor the conventional Marxist paradigms seem to be able to capture

the realities of the situation" (Ayubi 1995). Thus, given the limitations pertaining to the aforementioned conceptions of citizenship, a 'back-to-basics' empirical approach may be more relevant when scrutinizing Middle Eastern polities (Sater 2013). Such an approach could help in shedding light on the dynamics of state–society relations in Arab states and the relevant trajectories of citizenship rights in the Arab polity, which arguably witnessed the formation of 'states without citizens', whereby the basic civil and political rights of even seemingly privileged groups were exposed to sizable infringements.

In this regard, the concept of the ethnocratic state in which the state's role is mainly to preserve the domination of one ethnic group, not that of the wider society, has also been employed by some analysts when scrutinizing state–society relations vis-à-vis citizenship rights in the Arab world (Butenschon et al. 2000). While this could be considered as an overgeneralization, given the sizable variations in state-formation experiences in various Arab countries, some features of that model have been evident in several cases, yet with different manifestations of groups-based domination over state structures. In several cases throughout the Middle East, religious majorities (Sunnis, Shiites, etc.), cliques of beneficiaries (businessmen, interest groups, etc.), and/or particular class typologies (military elite, state employees, etc.) exercised power leverages over state–society dynamics and imposed sorts of hegemony over state structures.

The study of citizenship in light of the wave of the Arab uprisings of 2011 could be quite beneficial when it comes to the production of knowledge pertaining to state–society dynamics in the Arab region and may also shed some light on the theoretical assumptions regarding the conceptualization of citizenship at large. One of the hypotheses that are often put forward is that citizenship rights are likely to gain momentum at times of sociopolitical mobilization. Again, the development of the Western polities in the 18th and 19th centuries seems to suggest that trajectory (Turner 2000). While it may still be early to reach conclusive findings in this regard when looking at the Arab uprisings, such an attempt may offer some insight concerning the prospects of sociopolitical transformation in the Arab region.

2.1. On Egypt

Egyptian intellectuals such as Qelada (1999) and Al Bishri (2004), among others, have argued that geographical as well as historical factors played a sizable role in creating a melting pot that formulated the basis of Egyptian identity over the two millennia that followed the birth of Christianity. As such, the interaction of both Islam and Christianity has resulted in a homogenous, albeit not always harmonious, relationship between the two religions, whereby a symbiotic process of co-existence and mutual acknowledgment was a vital component in the Egyptian polity since the Arab conquest. The Arabization of the Coptic Church and the protection of Copts under Muslim rule were among the most important facets of this relationship (Takawi 2012). In the post-1923 era, the principle of equality before the law and in the 'constitutional rights' given to both Muslims and Christians were also crucial features of this equation.[1]

Shami (2009) provides an important insight on the development of the concept of 'citizen' in Egypt in the early 20th Century, whereby the term 'minority' was rejected by several social and political forces, including the Coptic Church, for being inapplicable to the Copts, and instead, the notion of the 'citizen' and the attributes of Egyptian citizenship were the main foci of the public debate on nation-state building. An in-depth analysis of the historical progression of the notion of citizenship in Egypt can be attained by scrutinizing the censuses that took place in Egypt from 1882 until 1986. In doing so, one is able to observe the changes pertaining to the concept of being 'Egyptian' along the years and the different roles that race, religion and national origin played in defining Egyptian citizenship in various historical phases.

There has been also a dichotomy between the liberal and Islamist definitions of citizenship rights in the Egyptian context. Whereas some Islamic thinkers perceive that 'dhimmi'[2] rights should be given to followers of Abrahamic religions as the only non-Muslim subjects acknowledged under the umbrella of the Islamic Umma, liberals, on

the other hand, promote the concept of citizenship from the viewpoint of plurality and equality between the different religious, ethnic, and linguistic subgroups within the society, regardless of the dominant religion and under no particular umbrella apart from that of equal 'citizenship' rights for all subjects of the state.

Other schools of thought, such as pan-Arabism, also emphasized the centrality of the concept of citizenship and its essential role in fostering the nation-state model in Arab countries. In fact, most of the leading intellectuals that propagated the notion of pan-Arabism in the Levant, Fertile Crescent, and Egypt in the early-mid 20th Century, such as Constantin Zureiq, Ba'athism proponent Michel Aflaq, and Jurji Zaydan were Arab Christians who believed in the paramount role of Arab culture as a driver for unity both within and among Arab states. However, the autocratic applications of the Arab nationalist project exemplified in the two renditions of Ba'athism in Syria and Iraq and the Nasserist model in Egypt and elsewhere didn't really reflect or catapult the essence of citizenship (Farah 2019). Despite the rhetoric that these regimes employed regarding citizenship rights, most of them witnessed different degrees of discrimination against religious and ethnic minorities and failed to deliver on their pledges of equal rights to all citizens, irrespective of their religious denominations or their ethnic, linguistic or cultural backgrounds.

2.1.1. Disparities

From a regional dimension, the executive authority of the modern state in Upper Egypt has been arguably weaker than it is in North Egypt. The main reasons for that are the sizable geographical distance and the relative strength of family and tribal connections in Upper Egypt, in particular vis-à-vis official institutions of state governance. Throughout the 1990s and 2000s, the government had to deal with a continuous state of turmoil in Upper Egypt that was characterized by a combination of an overall deteriorating socioeconomic status and a security threat posed by the increasingly powerful Islamic militants (Ghanem 2014). In the aftermath of the January 25 Revolution, these limitations pertaining to state presence were further exacerbated throughout the country at large and in Upper Egypt in specific.

Yet, on the public level, there is more reason to believe that, for the most part, the Egyptian state has been only paying lip service to the issue of citizenship rights. Some observers would cite the fact that this discourse of acknowledgment of Upper Egypt and the frontier governorates is nothing new, and that it has in fact been existent since the inception of the 1952 regime, albeit with no practical willingness or ability to alter this status quo on the part of the state. It could be argued that the Egyptian state has followed a "seasonal" strategy in dealing with these disfavored areas, issuing statements and decrees of special services and projects announced only during times of turmoil and tension, such as cases of terrorism, elections, or natural disasters (Soliman 2011). An example of that could be given with the most recent mention of North Sinai in the discourse of state officials post 2011, which only took place in the aftermath of the militant attacks in Sinai in the early–mid 2000s and the subsequent clashes that occurred between the police and military apparatuses, on the one hand, and the locals, on the other (Karkabi 2013).

On another note, the problem of these disfavored areas could be viewed as a structural one. It is rather insufficient for the state to pump in investments and expect a harvest, provided that the necessary means of production are lacking, including the proper infrastructure, the trained manpower, and so on. Hence, a strategy that is rather comprehensive is absent, which limits the capacity of the state to address the core of the issue in a way that surpasses the budgetary allocations which usually end up being ineffective in tackling the dilemma of geographical disparities.

When looking at the majority of development program interventions that have dealt with citizenship rights, one notes that several parallel transformations led to the increasing emphasis of development studies on citizenship rights projects since the late 1990s. On the one hand, the focus of participatory development programs, reflected in community projects, shifted gradually towards political participation and other areas of empowerment for disenfranchised classes/groups in order to increase influence over administrative

decision-making institutions. On the other, there was also the rise of the 'good governance' agenda, which emphasized issues of decentralized and efficient systems of responsive governance. This also coupled with the emerging overlap between the fields of human rights and development represented in the ascendance of the 'rights-based approach' in the late 1990s. This approach was actually adopted by a number of organizations such as the UK Department for International Development (DFID) and UNDP.

In the case of Egypt, most of the civic education and awareness projects constituted the bulk of the developmental initiatives/activities taking place under the aforementioned agenda, which targeted comparatively limited societal segments and lacked a sound impact. In fact, most of the existing ways in which donors dialogue with the Egyptian state and the CSOs working on citizenship rights seem to be quite inefficient, as they lack a formalized sustainable structure than can nurture such interaction. Several analysts and practitioners have suggested that there is a research gap regarding the scope and magnitude of the impact of citizenship rights' initiatives in the Egyptian context. Some of the existing literature on such initiatives has criticized them for being largely politicized activities designed to maintain the political status quo whilst providing a facade of pluralism, attracting more donor funding along the way (El-Mahdi 2011).

2.1.2. After The Spring

In the aftermath of the Arab uprisings, a multitude of contributors also revisited the concept of 'citizenship' in the Arab world in an attempt to scrutinize the emerging changes relating to the notion. In 'Arab Cities after the Spring', the authors dissect the urban fabric of a plethora of Arab cities and observe the transformations in the citizens' perceptions of their own local communities in light of the uprisings. In that regard, a variety of writings note that significant shifts in power hierarchies as well as rationales and priorities of policymaking have been recurring features in a plethora of Arab polities post 2011, which means that the conceptualization of citizens' rights and responsibilities is in the process of redefinition in most of these locales (Stadnicki et al. 2014).

In these post-Spring contributions and others, there appears to be an underlying theme of redefining citizenship in terms of shared experiences, activities, and aspirations of certain social groups, rather than top-down features and characteristics determined or dictated by elite, mostly state, institutions. The common slogans, dress styles, and even tactics and strategies of political dissent observed among youthful segments throughout the region, and elsewhere, seem to suggest that a process of identity building is also in the making among this 'youth bulge' in Egypt and several other Arab countries. It could be argued that a social non-movement (Bayat 2007, 2013) also plays a paramount role in shaping how these youth groups formulate their perceptions regarding themselves and their social and cultural environments.

In Egypt, since the demise of the Mubarak regime, there have been several alterations in the dominant power relations within the polity. These changes have impacted the evolution of citizenship rights in Egypt and, subsequently, the rights discourses of political actors were not consistent at all times. The exercise of some rights has been enhanced at certain times during the transition, but they have been also exposed to attacks and constraints at other junctures. "In particular, those rights which require a new interpretation of religious and cultural traditions to support their expansion, such as religious freedom and gender equality, have often been obstructed" (Assad and Fegeiri 2014).

3. Methodology and Fieldwork

In order to tackle the research questions outlined earlier in this paper, the methodology aims at attaining a deeper analysis and a considerable degree of historical depth with regard to the conception of 'citizenship' and the practice of 'citizenship rights' in Egypt. In addition to the overview of historical developments relating to the evolution, or, at times, devolution of the notion of citizenship and the rights associated with it, which could be portrayed via desktop research and analysis of a variety of writings dealing with the topic, the research

will also delve into questioning the application and awareness of 'citizenship rights' within the relevant social and political groups, including those that were involved in the January 25 and June 30 movements.

The research that the paper utilizes is based on qualitative fieldwork. It mainly employs a set of ethnographic tools to portray the experiences of the respondents via participant/observant mechanisms and snowball sampling techniques. What I aim to deliver here is a hands-on account of the experiences of some of the individuals and groups involved in fostering citizenship rights in Egypt pre and post 2011 and 2013. This exercise is needed, especially in light of the dearth of material on this subject matter from an ethnographic standpoint.

During the period from 2015 to 2017, the author held several meetings with interviewees from various backgrounds, including intellectuals, civil society practitioners, and activists and party politicians. The interviews targeted prominent as well as low-key grassroots activists and intellectuals involved in different capacities with the social and political movements which aimed at the promotion of citizenship rights over the past two decades. These informative meetings tackled a series of themes related to citizenship rights, including the issue of religious freedoms. Moving from the specific to the more general, the paper follows an inductive approach as it attempts to paint a holistic picture concerning the views and activities of this set of social and political forces towards issues of citizenship rights.

In these aforementioned meetings, some of the subtopics that materialized during and after the 2011 Revolution, such as citizenship from a legal perspective, the religious cases of Baha'is, and other religious minorities and Women's rights, to name a few, were further discussed and explored. Some of the figures interviewed in order to document and analyze these experiences include intellectuals and activists who have all been associated with a plethora of voluntary and professional initiatives closely linked to the theme of citizenship in the 2000s and 2010s. Their experiences were of paramount importance to the fieldwork.[3]

This sample of interviewees offered a multitude of angles from which 'citizenship' was viewed and dealt with. It is worth noting that the age-group and ideological background of the respondents played a major role in the way each of them perceived and defined citizenship.[4] This variation can be attributed to the nature/context of the professional activities and the respective sociopolitical experiences that each of these actors have gone through. Throughout the research, the observation was that, more often than not, the relatively youthful activists who were directly and closely involved in the events of the January 25 revolution tended to focus more on civil and political aspects of citizenship vis-à-vis the more seasoned figures whose priorities rested within the realm of social and economic rights. Of course, this was not a general rule, and there were still multiple cases of youth actors, especially within the ranks of the leftist parties and groups, such as the Popular Alliance and the Bread and Freedom party, who were deeply engaged in episodes of socioeconomic activism. This diversity in of itself is one of the main aspects that this study will build upon as it attempts to decipher some of the features of citizenship in the Egyptian polity in the contemporary period.

Geographical Context, Location, and Timeframe

The research focuses on several geographical locales within two governorates—the first is Cairo and the second is Alexandria, the second biggest urban conglomerate in the country—with the aim of exploring how citizenship is defined and practiced in different communities in Egypt. Focus group discussions and open-ended interviews were conducted with the relevant stakeholders in three sectors: political party members, sociopolitical activists, and civil society practitioners.

Indeed, the question of citizenship rights is closely linked to unequal development between the center and the periphery on many levels. First off, the level of attention given by the state to the various areas/provinces and the capacity (or lack thereof) of the different social, regional, and cultural subgroupings within the society to influence state-

level policymaking with their agendas is a reflective indicator of the degree of leverage such groups may have vis-à-vis the state. Second, the views and actions of the social and political forces operating on the central as well as the provincial levels provide a valuable insight into the nature and impact of the discourse and practice of 'citizenship' as perceived and dealt with in Cairo as opposed to Alexandria and other places in Egypt.

The writing also aims at analyzing the ideological discourse concerning citizenship within the political parties and social movements active in these areas via critically reviewing their platforms and stances towards citizenship rights. To do so, it is rather crucial to analyse the concept of 'citizenship' in relation to the popular uprising and new governmental actors, political forces, and processes at the local and national level. Factually, the active participation of a very diverse group of citizens from various socioeconomic backgrounds and classes was a reality happening during the 18-day Tahrir sit-in that led up to the demise of the Mubarak regime. It is still questionable whether the uprising has yielded any significant changes regarding the power relations shaping the discourse and practice of citizenship rights and if the civil society was able to play a role in such a process in the first place. In addition to the turbulent transitional phase that the country has gone through, which affected CSOs in general, two main factors also contributed to the hardships faced by CSOs working in the post-Mubarak phase in general: first, the wave of attacks orchestrated by the state against CSOs under the pretext of their being agents of foreign infiltration, and second, the rise of the Islamist forces from 2011 until the military takeover in 2013.

In the aftermath of the January 25 uprising, it has become more difficult for most NGOs working in the field of human rights to get the government to approve funding than to get to the funding itself following the infamous security crackdown that took place in late 2011. As a result, a multitude of NGOs have incurred frozen funds or funds awaiting the government's approval for quite a long time. In the long run, some NGOs—especially the smaller ones (community development associations, etc)—have witnesses a variety of existential risks, including closure and termination of activities.

4. Background: The 2011–2013 Transition

> *"The Arab Republic of Egypt is a sovereign state, united and indivisible, where nothing is dispensable, and its system is democratic republic based on citizenship and the rule of law . . . Citizenship is a right to anyone born to an Egyptian father or an Egyptian mother. Being legally recognized and obtaining official papers proving his personal data is a right guaranteed and organized by law".*[5]

Egypt's transition from a quasi-liberal single-party-led autocracy under Mubarak to a military-backed authoritarian system post 2013 has been a considerably tumultuous process. The main socioeconomic and political features of the post-revolutionary state were set in the aftermath of the 30 June 2013 movement, which put an end to two and a half years of attempted political transition into a democratic system and reconsolidated the political power of the newly reformed state with the backing of the military institution. Having said that, the actions and demands of some of the social and political forces that participated in the January 2011 Uprising concerning the spectrum of 'citizenship rights' were still present in the post-2013 phase. These entities and forces shared different conceptions relating to the notion of 'citizenship' as a set of rights that should be acquired by members of the society on the basis of them belonging to the Egyptian nation. Despite the fact that the call for consolidating such rights gained a sizable momentum among the sociopolitical forces that participated in the 18-day sit-in that ultimately led to Mubarak's removal in 2011, the period that ensued afterwards until July 2013 wasn't specifically as shiny as far as citizenship rights and religious freedoms are concerned.

The post-January-2011 period witnessed a general rise in the prowess of the Islamist forces on the social and cultural echelons, where factions such as the Muslim Brotherhood (MB) and the Salafists were, arguably, the most powerful and influential non-state political groupings on the official level. Ultimately, the Islamists amassed around two-thirds of the

parliamentary seats in 2011, and then the MB's candidate, Mohamed Morsi, was elected as president in 2012. The 2011–2013 period was thus an opportunity for Islamists to readjust the foundational aspects of the state relating to the 'identity' and 'cultural domination' of Islamic ideology as per their view (Menza 2012a, 2012b). The Salafists, for example, attempted to enforce constitutional amendments to limit some of the rights stipulated in the 1971 constitution and succeeded to a considerable extent in doing so in the scrapped 2012 constitution, which ended up being dropped and replaced with the 2014 constitution that was drafted and voted upon in the movement after 30 June 2013 (Brown 2013).

This meant that the predominant discourse and practice of the driving forces within several state institutions dominated by these Islamist forces weren't particularly favorable towards issues of religious freedoms and minority rights. Coptic Christians largely felt threatened due to a bundle of perceived and clear and present risks to their wellbeing and livelihood, and religious minorities, such as Shiites and Baha'is were also frequently targeted by state policies as well as popular and social practices by groups that were either affiliated with or influenced by the MB and the Salafist factions. Examples include many incidents of internal displacement of Coptic communities, blocked access to places of worship of Christians in several locales, as well as cases of attacks and physical assaults on Shiite figures and communities, among other instances.

Meanwhile, the military-backed regime that emerged post 2013 employed the discourse of pro-religious freedoms and citizenship rights for minorities due to a variety of factors, among which is the fact that it based its legitimacy, in no small part, on its opposition to the Islamists that reigned supreme post January 2011. The widespread popular opposition to the MB's rule which was manifested in the massive 30 June 2013 demonstrations was culminated with the military takeover of political power in July 2013 and the following declaration of a transitional roadmap that effectively consolidated political power into the hands of the newly elected Minister-of-Defense-turned-President, Abdelfattah Al-Sissi. Throughout this period of consolidation, the security apparatuses within the state were determined to crush any form of Islamist opposition. Such a tendency was actualized in several episodes of brutal confrontations with the Islamists and epitomized by the violent dispersals of the Rabaa and Nahda sit-ins that led to the death of more than 1000 Islamist supporters at the time.

The newly reshaped state post 2013 was mainly backed by the military and the security apparatuses on the basis of the need to mitigate the threat emanating from the Islamist forces which were portrayed as extreme, violent, and importantly, antagonistic to religious minorities such as Coptic Christians. Of course, albeit somewhat exaggerated and quite generalized, these labels weren't all fallacies, and a lot of the Islamists did very little to foster a different image before and after 2013. Such claims were also reemphasized with the wave of attacks that was led by MB and Salafist supporters on Christian places of worship throughout the country, especially in Upper Egypt, as a retaliation for the Coptic Church's support for the July 3 military takeover.

The impact of this minority-protection approach might be questionable, as it clearly represents a case of top-down rather than bottom-up strategy. Although there is a lack of empirical data to substantiate that most of the Copts are satisfied by the support they received from the state in the aftermath of 30 June 2013, observational evidence and qualitative studies have shown that the post-2013 regime does enjoy a relatively high rate of approval among the majority of Coptic Christians due to a number of factors. First, the regime seems to be embarking on a process of drifting away from the policies and figures associated with the Islamists in different walks of life, so this, along with the perception shared by many Copts that it actually spared a lot of Christians the burdensome threat of an Egypt dominated by Islamists, means that President Sissi is quite popular among vast sections of the Christian community. Second, the post-2013 state has also been active in working on reforming some of the existing laws and structures that were previously utilized to discriminate against Copts for a long period, such as the law concerning the right to build places of worship, which was modified only recently by the state in order to

allow for Coptic Christians to build—at least—one new church in every new town or city to be founded. In addition, the regime led the process of changing the electoral law, allowing for a specific quota of three Coptic Christian names on every list of candidates running for the Parliament. As a result, the 2020 parliamentary elections witnessed the introduction of 31 Christian MPs to the Parliament, a figure that could increase if the President decides on nominating more Copts for the presidential parliamentary appointees. Presidential appointments of several cabinet ministers from the Christian faith have also increased considerably compared to the Mubarak regime.

Such state-led policies are indeed worthy of mention and cannot be overlooked when assessing the changes pertaining to citizenship rights of the Coptic Christians post 2011. In spite of these interventions, the fact remains that in the peripheral and rural areas, cases of discrimination and abuse against Christians still take place, with the state's judiciary and executive branches incapable (or at times unwilling) to enforce legal measures to limit such violations. In addition, the predominant decline in the overall status of human rights throughout the country and the growing limitations on all forms of freedom of expression, assembly, and association showcase the unsustainability of this equation of state-led citizenship advocacy. Some of the policies and practices implemented by state institutions towards religious and other minorities appear to be, in many ways, conflicting and ambiguous with regard to their freedoms and liberties. This trend is a continuation of the approach of the post-1952 state, which has attempted to 'nationalize' the discourse pertaining to Islamic piety and values and also monopolize it, so that it is only allowed to emanate from state or state-friendly entities. In that regard, such entities have often employed Islamic rhetoric, at times, to showcase the state's piety and compete with the other non-state Islamists, and at other times, to clampdown on oppositional figures and appease segments of the increasingly spreading wave of conservative Islamism which swept the society in the 1970s under Sadat. In doing so, the state has actually utilized a variety of legal instruments to oppress opposition and appease religious conservatism at times when it was deemed needed. One of these legal instruments is the *Hisba* law, which basically allowed for any citizen to file a case against another on the basis of religious infidelity. It was then left for the judge, after consultation with religious 'state' authorities, to decide the legitimacy of the accusation and the appropriate penalty, if any. The most notorious case which was based on this law and shook local, regional, and international spheres was that of Nasr Hamed Abu-Zaid, the prominent philosopher and university professor who, in 1995, was forced by court order to divorce his wife on the basis of his writings being 'blasphemist' according to the court.[6]

However, in the midst of this myriad of macro and micro sociopolitical alterations and struggles that emerged after 2011, there was a plethora of social and political forces that attempted to push for an agenda of citizenship rights and religious freedoms, both within the 2011–2013 period and also post July 2013. The viable actors and forces within this arena shall constitute the prime focus of this paper.

5. The Case of Baha'is

In the wake of the 2011 revolution, Baha'is constituted a relatively small community with an estimated 5000–7000 adherents throughout Egypt. The history of the followers of the Bahai's faith in Egypt dates back to the late 1800s, a period in which Egypt was dominated by the British occupation. At the time, the country was home to a wide array of ethnic and religious minorities and communities, and in the milieu of this diversity, the state provided Baha'is with a sort of recognition that they constitute a distinctive religious group that is separate and distinguishable from Islam. Their presence was generally tolerated by state institutions, and in the 1920s, a governmental religious tribunal reaffirmed their status as a unique religious minority while also highlighting that their teachings are considered as a deviation form Islam. Overall, the Baha'is witnessed a period of relative peace and prosperity during Egypt's famed liberal age (1922–52) (Maghraoui 2006; Effendi 1974).[7] After the demise of the monarchy and the military takeover of 1952,

the state's recognition of the Baha'i faith was withdrawn, thanks to the 1960 decree issued by Nasser. As such, their legal status as a recognized religious group was terminated under the Nasser government (Effendi 1974).

The Baha'is ambiguous status under Egyptian law continued to prevail in the post-Nasser phase. Both the 1971 Constitution and the most recent 2014 Constitution nominally guarantee equal rights and religious freedoms to all Egyptians in one article, while also limiting these liberties to followers of the Abrahamic (Jewish, Christian, and Islamic) religions in another. Practically, they retained a second-degree legal status due to the persistent discrimination they faced with most state institutions. The fact that personal status law in Egypt is guided by religious rather than civil law meant that Baha'is are excluded from this recognition. Consequently, all issues pertaining to their personal and family relations such as inheritance, marriage, and divorce are largely not officiated by the state.[8]

Perhaps the most enduring and probably infamous legal case relating to the situation of Baha'is in Egypt is the one relating to their ID cards. In the late 1990s, the state initiated a policy of computerizing personal records, and accordingly, all citizens were required to be issued new mechanized ID cards. As opposed to the old handwritten ID cards, in which Baha'is were often allowed to leave the religion slot blank or denote their religion as 'Bahai', the new cards had a slot for the religion of each respective citizen which had to be filled automatically with a recognized religion. This left the Baha'is in an existential conundrum owing to the state's refusal to acknowledge their faith as a distinctive religion. (Rieffer-Flanagan 2016). The dilemma was exacerbated further with a specific order issued by the Minister of Interior in 2004 for all relevant authorities to refrain from issuing cards with blank religion slots.[9] The immediate impact of this official indiscernibility on the lives of Baha'is was profound as they couldn't literally deal with any state authority whatsoever, be it for the purpose of receiving basic services such as health, education, and so on, or even for livelihood matters such as employment, contractual dealings, and tax payments. In short, they were forced into existential oblivion by the state.[10]

In 2006 some activists and rights-based groups filed a lawsuit against the newly enforced policy which yielded the Egyptian Administrative Court ruling that Baha'is have the right to be legally registered by the state. After an elongated legal case that witnessed several revocations and appeals from both sides, in 2009 the Supreme Administrative Court eventually ruled in favor of the Baha'is right to an ID, entailing a return to the prior status quo of a blank slot for religion in the identification card. Despite this positive development, the Baha'i faith remained unrecognized in Egypt, which means that all matters concerning their personal status are not yet officially acknowledged by the state.[11]

5.1. Post-Revolutionary Realities . . . Protraction of Status Quo?

In the post-2013 era, the situation of Egyptian Baha'is remains dubious, to say the least. Notwithstanding the 2011 revolution, the 1960 decree still stands, which entails that the 2009 verdict is insufficient in terms of granting Baha'is the state's recognition as an official religion. In addition to the state-based discrimination they were exposed to, Baha'is were also subjected to a multitude of social and popular hostilities towards the end of Mubarak's reign. In line with the attacks witnessed by several religious and other minorities and communities in the wake of the increasing rise in the conservative discourse of numerous Salafists, MB, and other Islamist forces in the society after the revolution, the 2011–2013 period also saw instances of unprovoked violence against Baha'i individuals and homes. For example, in February 2011, some Baha'i homes in a locale in the Delta region were immolated by unidentified perpetrators. Several reports alleged that a few state security officers were involved in the attack. "Baha'is are still prohibited from many basic freedoms, such as practicing their religious laws and constructing places of worship. Though Baha'i representatives lobbied during the constitutional drafting processes of 2014 to expand religious freedoms to their community, this did not occur"[12].

In fact, a significant part of the challenges that the Bahai community is exposed to stem from the constitutional vagueness regarding their status. When compared to the constitutions that were drafted after 2011 (in 2012 during the short-lived reign of the MB and then in 2014 at the time of the military-backed government), the 1971 constitution, which was the highest legal document in the country until Mubarak's removal in 2011, is considerably more progressive with regard to religious freedoms and minority rights. For instance, the clauses stating the right of the person to practice religion freely in the 1971 constitution were later omitted in the 2012 and 2014 versions (Baha'i of Egypt' n.d.).

By and large, the 1971 constitution was fairly imbalanced as it saw, on the one hand, very limited clauses on political rights and liberties and the division of powers within the state, and on the other, there were also other articles on personal and civil rights and liberties that were relatively progressive. This can be attributed to Sadat's tendency to portray an image of a country enjoying a decent level of social liberties and freedoms while also maintaining a firm grip over political power. The 1971 constitution also clearly stated that the incorporation of international covenants in the Egyptian legal system is vital. The end result was a relatively incoherent document which left both legislators and judges confused.[13] Yet several lawyers and human rights activists used the International Covenants on Civil and Political and Economic and Social rights as the basis for their appeals to free some workers accused of demonstrating against state authority and lobbying for strikes, based on the 1971 constitution. A few other cases which witnessed litigations against the state on basis of social and economic rights (the right to have a home, for example) were considerably successful, while others, such as Shiites, were met with massive challenges due to social and political factors.[14]

5.2. Egyptian Initiative for Personal Rights (EIPR)

One of the relevant entities that played a key role in promoting the cause of Baha'is and several other ethnic and religious communities and individuals is the Egyptian Initiative for Personal Rights (EIPR), which was founded in 2002 by human rights activist Hossam Bahgat as an Egyptian organization with the aim of protecting and further consolidating human rights. A vast number of the activists, scholars, and practitioners involved in different capacities with EIPR played vital roles in the 2011 revolution, and as such, it's safe to say that the organization was a key platform in the arena of social and political activism, both before and after 2011. In many ways, it emerged to fill the gaps that the traditional rights movement could not occupy. Egypt's human rights movement, which was crystallized in the 1980s and 90s amidst a competition with the Islamist movement over the discourse of social activism during this phase, tended to focus on a certain spectrum of human rights violations that, often, included socioeconomic issues such labor rights, basic needs (or lack thereof) of impoverished classes and communities, and women's rights. It also targeted violations to the personal wellbeing of citizens, which were usually manifested in cases of police brutality and other forms of state violence targeted towards civilians. EIPR, on the other hand, was more willing to engage with the controversial and sensitive issues that were likely to lead to frictions and confrontations with the state. The main activities of the organization consist of research and documentation, litigation, campaigns and lobbying, and fieldwork via its offices, which divide its work into the same three components mentioned above while focusing on their respective regions. The branch offices are operational in Alexandria, the Canal region (Suez, Ismailia, and Port Said), and Luxor, which covers Upper Egypt.[15]

A sizable stifling factor obstructing the work of EIPR in the post-2013 phase was the massive scrutiny, pressure, and most recently, police arrests directed at its key members. In this regard, the organization is not the only civil society entity exposed to such attacks, which come as a part of the methodical and consistent apprehension and targeting that the state security apparatuses practice against several civil society organizations, particularly the ones that work on issues that could potentially be critical of the state, as is the case with EIPR. "In July 2014, when the new civil society law was still being drafted, we

got to know about it through the leaks published in Al-Ahram. There was no process of community dialogue or transparency on the part of the government whatsoever".[16] Therefore, the resultant draft was quite problematic as it mainly sanctioned the security-driven state policies when it comes to the funding of NGO's and other CS actors and reflected the sizable level of control and limitations that the state was intent on applying on all civil society organizations. One of the tools that the law employed to ensure a scope of surveillance over the source of funding of NGOs was a committee called *'Lagnet Al-Fohous'* or the Inspection Committee, which was composed of civilian and security state employees and mandated with overseeing the financial inflows coming into any NGO operational in the country.[17]

According to the EIPR members who worked on the Baha'i file, the Baha'i dilemma is a case in point as far as the Egyptian state's conception of citizenship is concerned. The differential treatment that the Egyptian Baha'is have received over the past tend to display that the state's policies and practices towards certain religious minorities is by no means unbiased or equitable.

> The religious freedoms portfolio is one of the most important files tackled by EIPR. When someone reports a case, it is assessed based on its placement within the strategic priorities of the organization. The victim/case has to be representative of a bigger issue relating to community-based human rights violations and not just a personal grievance or disagreement on an individual level . . . EIPR's work wasn't only focused on Egypt, but also expanded to the MENA region at large. When we received information regarding a certain group or minority being exposed to human rights violations, we would try to approach them.[18]

Due to the relatively limited human and financial resources of an entity such as EIPR, it was pivotal for them to set certain criteria for the selection of the cases they would work on. These included the frequency of recurrence, the geographical/regional scope, and the scale of the violation(s) on hand. Multifaceted aspects of the cases handled had to be managed carefully as well, including, for example, the media exposure or lack thereof that a certain case receives. In the case of the Baha'is, the increasing publicity seemed to correlate with a higher degree of public scrutiny and targeting. In fact, most of the cases of setting Baha'is' homes on fire were reported during the period of media hype revolving around their conundrum, which, in return, forced groups like EIPR to curb their media activities relating to the Baha'i case.

EIPR was engaged with two court cases concerning Baha'is. The first one aimed at granting them the right to denote their religion in the ID cards as Baha'is, and it was lost. The second case is the one mentioned earlier, which ended in the Administrative Court ruling in favor of the Baha'is issuing their own ID cards with a blank slot for religion. Interestingly, despite the fact that the memorandum that the legal team drafted to argue for the cruciality of allowing Baha'is to leave the slot for religion blank was actually based on a pro-rights rationale advocating for religious freedoms, the speech that the team delivered at the court hearing itself wasn't necessarily so.

> "We thought the judge was going to be conservative so the final approach we adopted was based on the hypothetical argument that he wouldn't want a Bahai to marry his daughter without knowing his actual belief, hence it is important to differentiate them in the ID. It was framed as a way to protect Muslim houses from Baha'i infiltration and also, from a security standpoint, ensure that the state is able to oversee the actions of a group of the inhabitants who dwell within it. Somehow, it worked."[19]

Here, it is important to note the role played by law and its dialectical relationship with the society. In the Baha'i case, the law was utilized as an access point rather than a protective or an equitable mechanism that enables individuals to gain their rights. Laws are not created in a vacuum; they are the contextual outcome of the socioeconomic, cultural, and political circumstances prevailing at the time of their creation. Therefore, the pragmatic

approach adopted by the lawyers in this court hearing is a case in point when it comes to the tactics deployed by human rights defenders in different societies, especially where the legal framework is not necessarily conceived as supportive or favorable for certain groups or minorities.

6. Bread and Freedom: A Party of the Revolution?

During the Mubarak period, most opposition political parties were by and large considered as cosmetic instruments willing to be utilized by Mubarak's regime as pawns while offering a façade of pluralism and political participation. They had actually earned the label of 'cartoon' parties, which was widely used in the polity to describe their ineptitude and ineffectiveness in the face of the regime. However, after Mubarak's ousting, most of the limitations which were previously imposed by the regime on the creation and activation of political parties were lifted, and as a result, a lot of the individuals and groups who participated in the 2011 Uprising embarked on the establishment of new parties. The realm of political parties is thus worthy of close scrutiny if one is to navigate through the impact of the 2011 transformations on the discourse and policies relating to citizenship rights and religious freedoms. In doing so, the Bread and Freedom Party (BFP) is one of the prime candidates for such analysis, given the sound correlation between the creation and further development of the party and the events of the 2011 revolution and the fact that they stand out as the one of the few secular political groupings that actively engaged with a host of citizenship-rights-related issues.[20]

In 2012, the project of creating the Bread and Freedom party as an offshoot of the Popular Alliance party, which was an umbrella party established right after the demise of Mubarak's regime in 2011 in order to amalgamate the forces and currents of the political left at the time, was initiated.[21] Unlike the relatively more seasoned leaders and members of the Popular Alliance who were perceived to be less progressive, or more willing to accommodate some of the policies of the state regarding a variety of social, economic, and political issues, the BFP was mainly composed of a bundle of revolutionary youth who were, according to the leader of the party's politburo, keen on taking a more emphatic stance towards most of these issues, especially with regard to citizenship rights and religious freedoms.

> "Citizenship rights should be granted to anyone who inhabits this country . . . People should have equal rights and hence it is vital for this struggle to be materialized and fought on everyday basis because it is not merely a legal case or two to be won. We still believe that the current state structure can be reformed from within . . . We think that citizenship rights should be earned and that state institutions, such as the judiciary, are actually regressive. Anyone calling for citizenship or equal religious rights is likely to be persecuted, especially if it is against the will of the dominant powers within the state and the society, be it the Islamists from 2011–2013 or the security and military apparatuses afterwards. As such, the state has bestialized and therefore it's only via social and political struggle that we can change that."[22]

A similar take on the wholistic nature of the struggle for citizenship and the fact that it surpasses a mere set of legal battles was also echoed by the focal point of the citizenship rights portfolio of the BFP. "Litigation is an important component of the battle for more equitable citizenship rights but it's by no means the only one. The democratic movement and the CSOs need to keep on looking for entry points to infiltrate and influence state structures vis-à-vis their approach towards citizenship issues".[23] Indeed, several elements of the sectarianism and patriarchy in the state have been embedded within its institutions since their foundation, so it's a multifaceted and long-term battle that is likely to last for decades.

One of the main challenges facing the BFP is to attain a sort of a balancing act between the focus on issues of social and economic rights, on the one hand, and civil and political ones, on the other. Being a leftist party with a communist tradition, and given the plethora

of atrocities and violations witnessed in the socioeconomic arena in a country like Egypt, especially with the labor sector which represents the main constituency of a leftist party like BFP, achieving such a balance is not a straightforward feat, given also its relatively small size and the limited resources it has. "For example, some of our supporters in conservative pockets in Upper Egypt think that we are too liberal because we tend to focus on women and citizenship issues more than workers and farmers. This, of course, isn't quite accurate because we exert our utmost effort to tackle both sets of issues which, more often than not, intertwine at many instances"[24]. This duality is shown in many of the activities that the BFP has undertaken with the syndicates, farmers unions, and female workers in several factories, where it was clear that the struggle for both sets of rights is closely interlinked. The following section offers a brief overview of the condition of citizenship rights of two of Egypt's most sizable religious groupings, while also highlighting the interventions that were utilized by the BFP in the midst of its efforts to gain a foothold in the struggle for religious freedoms post 2011.

7. Coptic Christians

The rise of the Islamists, the oppression of Mubarak's politics, and the general decline in the political forces and groups adopting a leftist agenda meant that a sizable segment of the potential target audience of the leftist camp became increasingly alienated with the leftist current as a whole in the 1980s and 90s. With the increase in terrorist attacks against Coptic Christians during Mubarak's rule in the 1990s and 2000s, and their subsequent targeting in the aftermath of the Islamists' empowerment from 2011–2013, it became clear that the existing representations of the voice and concerns of Coptic Christians in the public sphere was lacking, to say the least (Hamzawy 2014). Throughout Mubarak's reign, the Coptic Church attempted to monopolize the representation of Copts vis-à-vis the state and, more or less, it managed to do so with relative ease.

The massive popularity of Pope Shenouda III, who led the Orthodox Church throughout Mubarak's rule and who was also on good terms with the Mubarak regime thanks to his accommodationist and diplomatic approach towards the state, and the fact that Mubarak's regime also coopted and catapulted the Coptic Church to be considered as the sole representative of all Coptic Christians, again reemphasized the sectarian nature of this relationship. Despite the high hopes that were associated with the 2011 revolution regarding the potential of restructuring this state–church dichotomy, the military-backed government that took over in 2013 ensured that a return to the status quo of this state–church relationship under Mubarak was a reality happening post 2013. Instead of expanding the civic code to be the prime legal framework to which all Egyptians (Muslims and Christians alike) are held accountable, it seemed that post 2013, the state was also keen on maintaining the status quo which was prevalent during Mubarak concerning its relationship with the Coptic Church.

In the meantime, various political parties, including BFP, were also quite eager to play an active role in restructuring this dichotomy in a way that allowed for Coptic Christians to be agents of change in the polity and further their own interests with a sense of ownership instead of solely relying on the Church to do so on their behalf.

> "The violence and targeting that a lot of Coptic Christians were exposed to in the aftermath of the January 25 revolution led to the resurfacing of a lot of the debates surrounding citizenship rights and religious freedoms in the country. These issues, along with the question of Women's rights (or lack thereof) constitute the pillars of any policy or discourse pertaining to citizenship rights in Egypt today. Hence, the left which has not been very active in these issues because they were supposedly already on the surface of the public debate, had to reengage itself with them again in the post-revolutionary phase. The idea of the Supreme Council of the Armed Forces (SCAF) adopting the extremist Islamists' rhetoric and allegedly mass-murdering Christians in the events of Maspero[25] in order to silence them was really horrifying on top of it being incomprehensible as well."[26]

In many ways, the BFP attempted to take a more emphatic stance against these episodes of violence that targeted the Christian community in the country. In fact, an integral part of the raison d'etre of BFP (as opposed to other old-school or mainstream 'opposition' parties) is based on this notion of adopting an unequivocal position on issues of sectarianism with little room for compromise. "When [the core group that eventually founded BFP] was still involved with the Popular Alliance, we were keen on being in the field battling against issues of sectarian discrimination. Our members visited Upper Egypt when several locales there were being targeted by extremists in order to show solidarity with the people there and also document the scale of the violations they were exposed to".[27]

However, there is yet a long way to go regarding any genuine mobilization of viable segments of the Coptic Christian community in the direction of tangible social or political movements calling for more citizenship rights, let alone the direction of leftist parties per se. This can be attributed to a bundle of factors, including the traumatic impact of the 2011–13 period on the majority of the Coptic Christian community and the resultant allegiance that most of it has pledged—via the Coptic Church—to the state institutions, particularly the military and security apparatuses. This adherence to the state, coupled with the historical mistrust towards the left, which was largely in the making since the time of Sadat and more clearly during Mubarak, entailed that the appeal of leftist ideologies and leaders is quite limited within the Coptic Christian community. BFP members recognize this challenge and are aware that a lot more needs to be done in order to showcase that the revolutionary discourse does not actually contradict the interests of the Christian community, but on the contrary, is actually wholly sympathetic and supportive to the demands of the Christian community as far as equitable citizenship rights and religious freedoms are concerned.

8. The Shiite Question

Exact figures of the Shiite population in Egypt vary greatly, and there is no official number, given that the state does not include sectarian data in the periodical census. Some estimates state that in the year 2017 their population was around 1,000,000.[28] (Shi'a of Egypt n.d.) Despite the fact that Egypt is usually considered as a predominantly Sunni society, various aspects of the Shiite doctrine and practices remain deeply imbedded in the Egyptian community. In fact, both the country's capital, which was built around 970 A.D., along with its most prominent religious institution, Al Azhar, came into being at the hands of the Fatimids, who were the first Pan-Islamic Shiite Caliphate rooted in North Africa. The Fatimids ruled Egypt for about 200 years and arguably had the biggest impact on the social habits, belief-systems, and cultural practices of the Egyptians vis-à-vis the other non-native Muslim rulers that reigned over the country. A lot of the cultural facets prevalent contemporarily in Egypt can be traced back to the Fatimids, including the immense reverence of the House (descendants) of Prophet Muhammad, the presence of patron saints who are also venerated in pretty much each major city or town throughout the country, and the abundance of the festivities that are still being celebrated in Egypt today in commemoration of Shiite events such as Ashura and the birthdays of Prophet Muhammad and his family members, such as his grandson, Al Hussein, whose shrine is considered as one of the most visited religious sites in the heart of Cairo.

In spite of these historical and cultural features, the Shiite population remained marginalized for most of Egypt's medieval and modern history. Successive ruling authorities tended to play the Shiite minority as a political card at times of turmoil and instability and the most recent set of episodes relating to the discrimination against Shiites came in the aftermath of the Iranian Revolution in 1979 when Egypt's President Sadat decided to host the ousted Shah of Iran, which juxtaposed the country directly against the newly established Islamic Republic at the time. This, coupled with the fact that the state has become increasingly reliant on Gulf Cooperation Council (GCC) countries for economic and political support ever since the Open-Door policies in 1974, meant that a harsh tone and a firm stance on any manifestations of Shiite rituals or festivities were logical in order

to appease the ultra-Sunni doctrines dominant within the GCC countries. These policies also aimed at easing some of the fears emanating from the GCC concerning the increasing wave of Shiite spread, which was already on display within other Arab countries with sizable and influential Shiite communities such as Iraq, Lebanon, and most recently, Yemen.

In the post-revolutionary phase, and just like most other minorities, the Shiite voices that were calling for recognition and rights were becoming increasingly audible. Yet the constant rise in the Islamist forces within the state and society from 2011 to 2013 meant that incidents of targeting and persecuting the Shiite community were also on the rise. Most of these forces were predominantly Salafist or pro-Salafist and MB, entailing that they adopted a strictly orthodox interpretation of Sunni Islam and perceived non-Orthodox Muslims such as the different Shiite sects and Alawites, among others, as deviators from the core of Islam. This wave of state–society intolerance of the Shiites also affected institutions such as Al Azhar, which, despite its historical affiliation with the Shiite doctrine and the fact it acknowledges the Shiite school of thought in some of its curricula, also joined in this wave of antagonism against Shiites by declaring in 2013 that the Shiite practices actually stand against the tenets of proper Islam.

> "The Grand Imam of Al-Azhar, Ahmed Al-Tayyeb, has used television appearances to implore his audience to beware of Shi'a proselytizers. Moreover, the Ministry of Religious Endowments runs mosques in Egypt in accordance with Sunni doctrine and does not recognize Shi'a mosques or rituals. In May 2015 a Shi'a dentist from Daqahlia governorate received a six-month prison sentence for contempt of religion after authorities found in his home books and other items supposedly used to perform Shi'a religious rituals. A week later, Shi'a cleric Taher al-Hashimy was arrested following a raid on his apartment where books and other items were confiscated by security forces."[29]

As an institution, Al-Azhar was attempting to assert its own power as the 'official' representative of Sunni Islam in Egypt vis-à-vis Salafists, MB, and other conservative forces, while also consolidating its credentials as the protector and keeper of Sunni Islam, especially in the battle of legitimacy of Egyptian state institutions post 2011 and the geopolitical context in the region in light of the rivalry between KSA and Iran.

This overwhelming state of hostility against Shiites eventually led to a spike in the incidents of aggression and violence against their communities and households. One of the most publicized attacks took place in June 2013, a few days before the mass protests on June 30, 2013, when a mob led by ultra-Salafists launched an attack on a group of Shiites celebrating a religious ceremony at a private house in a village in Giza. "Though four men were killed, including a prominent Shi'a figure, Sheikh Hassan Shehata, and other Shi'a houses were also set on fire, the police allegedly failed to take action to halt the attacks".[30] The incident actually came after a period of antagonistic sermons by local Salafi preachers in the communal mosques of the village where the attack happened.

The BFP was probably one of the few parties that managed to engage with the debate relating to the Shiite community in Egypt. Despite the religious sensitivity of the matter and the fact that there were sizable social and political prices to be paid by the party as a result, its core members were still adamant on tackling that file due to its priority as a clear breach of the citizenship rights of Shiite Egyptians. The party managed to attract some Shiite youth into its ranks, most of whom had converted to (or embraced) Shiism due to what they perceived to be the appalling nature of the rhetoric and policies of the ultra-conservative groups such as the Salafists and the MB. The fact that the ideas and allegiances of Shiites in a country like Egypt pose a sense of minority resistance to the overwhelming majority makes them also somehow appealing to a lot of the leftists who usually tend to support the struggle of smaller social and political groups against the hegemonic state. For the most part, and because of the considerably high stakes involved, embracing Shiism in Egyptian society has become a political and a social commitment in addition to being a religious and a theological one.

9. Alexandria

Historically, Alexandria was one of the most multicultural and open communities in modern Egypt. As the country's main port, and with a long and ancient tradition of coexistence with and close proximity to southern Mediterranean communities of Greeks, Italians, and Turks, among others, the city was, in many ways, a cornerstone of regional and international economic and cross-cultural exchange up until the mid-20th Century. This picture changed gradually after 1952, and by the 1970s, a significant part of this internationalisation was non-existent due to a multitude of socioeconomic and political factors.

Contemporarily, Alexandria is characterized by a bundle of socioeconomic, cultural, and topographical features that distinguish it from Cairo, and subsequently affected the dynamics relating to Egypt's second largest city's experiences with the January 25 Uprising and the mobilizational events that ensued afterwards. As opposed to Cairo's Tahrir Square, which served as a mega-hub and a gathering point for the various social and political groupings participating in the mobilization, the Alexandrian protesters, on the other hand, had to come up with alternatives, as there was no such parallel structure in their city. "We used to roam around the streets and cross paths with people from different walks of life, age-groups and, of course, political affiliations. This allowed for a constant space for dialogue and, often, conflict with different segments of the Alexandrian society . . . The experience here was thus relatively different. It gave us the opportunity to be exposed to and the expertise to engage with different viewpoints unlike Tahrir where the majority was those who wanted to be there".[31] The rather intimate setting of Alexandria's mobilizations also entailed that most of the social and political groups who were interested in a particular cause related to the revolution would eventually get to know each other through common activities and experiences. This facilitated coordination between the various forces irrespective of their ideological platforms, as manifested in the Alexandrian secular and democratic forces' ability to create various unified fronts that combined social and political forces from different platforms and managed to jointly organize common activities and participate in some electoral events as a collective.

A facet that also distinguishes Alexandria from Cairo is the fact that it is relatively smaller in terms of geographical area. Neighborhoods and communities are within close proximity to each other and can be differentiated from one another on the basis of socioeconomic class, educational levels, predominant cultural and political affiliations, and so on. This makes the targeting process of certain groups and communities much more focused, as it enables the political actors to clearly zero-in on their target audiences, and accordingly, devise their communication messaging tactics and strategy in line with the typology of the prospective stakeholders. This has also led to the city being comparatively condensed with specific constituencies that are often at odds with each other. "In Alexandria, entry points are clearer vis-à-vis Cairo . . . We are more concentrated here. You will find high percentages of religious extremism as well as strong support for the secular ideology and parties. This was shown in the electoral events that preceded 2013 in which the Salafist current was allowed to run freely and amassed a sizable chunk of the votes"[32]. In the meantime, the Alexandria Governorate also harbored one of the most active anti-Islamist oppositions before 2013, which was reflected in the considerable percentage of opposition votes that the draft constitution of 2012 received when it was put to vote.[33] When compared to other regions throughout the country, Alexandria actually saw one of the highest turnouts against this constitutional referendum of 2012.

Just like in Cairo and the other governorates, the capacity of some of the activists involved in the left to multifunction on several fronts of sociopolitical and economic struggle against the predominant authorities is yet limited:

> "Some people do not conceive the importance of working simultaneously on different angles and themes. Workers, for instance, only conceive citizenship through equal economic rights, not equal access to opportunities regardless of religion, sect or gender. Those who are burdened by citizenship concepts other

> than inequality of economic benefits are usually upper and middle bourgeoisie. For instance, although a female Christian worker could be experiencing multiple tiers of discrimination, she would still focus on the economic aspects due to her conviction that if she would engage with issues that relate to religious freedoms, for example, then she would be backing out on her major battle."[34]

Due to the entrenched centrality of Cairo in most of the social and political structures in the country, including political parties and other groupings, the 'brains' have been predominantly coming from Cairo. This means that the agendas, platforms, and sometimes even priorities of action of most of the mobilization taking place used to be directed based on Cairo. Several revolutionary parties attempted to adopt a different model based on decentralization, but it is an experience that is yet to be assessed. Due to such factors of close proximity and relatively small area, it was also more difficult for the human rights and democratic movements to tackle certain issues, especially the ones that received general social attention and caused controversial debates and heat within society, such as homosexuality or the rights of the Baha'i community, as opposed to other causes perceived to be less controversial, like the discrimination against Coptic Christians in some workplaces, for instance.

10. Conclusions

The concept of citizenship has been used by a multitude of social and political forces in the aftermath of the Egyptian uprising, sometimes in conflicting ways. On the one hand, the state has—at various junctures—attempted to monopolize the process of interpreting and operationalizing the concept, mostly on its own terms, in order to highlight notions that relate to 'nationalism' rather than citizenship, such as the responsibilities of the 'citizens' and their perceived loyalty to their homeland. On the other hand, a plethora of the social and political forces and movements that actively participated in the Egyptian uprising seemed to be pushing for an agenda of 'citizenship rights' that advocates equality between the subjects of the state regardless of religion, ethnicity, creed, color, and so on, and calls on the state to uphold its role as a guarantor of equal rights to all citizens. As shown in this paper, there is also a growing body of CSOs that have been engaged in an array of projects revolving around the theme of citizenship rights, a lot of which have gained bigger momenta post January 25.

This state–society dichotomy has shaped the features of the discourse on citizenship and the rights associated with it throughout Egypt's modern history. Since Mubarak's ousting, there have been several shifts in the dominant power relations within the polity, which influenced the evolution of citizenship rights in Egypt. Subsequently, the rights discourses of political actors, be it state institutions such as the military and the relevant ministries or the informal political movements and formal political parties, were inconsistent at times. At certain points during the transition, the exercise of some citizenship rights has been actualized, but they have also been subjected to attacks and restrictions at other times. More often than not, citizenship rights that require revisiting certain religious and cultural norms to support their application, such as religious freedoms, have been limited due to the tendency of the dominant political forces to use populist rhetoric and attract larger numbers of supporters among more powerful societal groups.

The ethnographic approach adopted in this writing offers a deeper look into the trials and tribulations of some of the social and political movements associated with various issues of citizenship rights, against the backdrop of the January 25 Revolution. In pursuing a civil/political agenda, the experiences of many of these social and political actors represent an example of practicing active citizenship via working on the rights associated with it. However, as highlighted by some of them, these experiences are not without limitations. The groups involved in such activities remain to be from a certain socioeconomic class that is predominantly within the upper middle and well-educated segments of the society. For the most part, they can't be considered as part of a grassroots movement claiming their rights. Henceforth, a sizable portion of the debates and deliberations on issues of

citizenship rights remain to be limited within elite circles of activists, academics and some of the intelligentsia involved or concerned with these issues.

A plethora of the social and political activists engaged with citizenship rights have embarked on multiple struggles aiming at raising more awareness among the popular echelons of the society regarding some of these rights, while also working on creating, amending, or abolishing laws related to the social status of several groups of religious minorities. Some of them do believe that even if the strategic objective is to overthrow the entire legal system, or radically change it, the micro-level struggle is still also pivotal. This means that the short-term tactical approaches—as well as the strategic ones—are both vital for this kind of confrontation between the sociopolitical forces, on the one hand, and the relevant state authorities, on the other. Thus, the importance of the litigations advocated by democratic and human rights movements, and their ramifications regarding furthering the cause of religious freedoms, for example, cannot be understated. The findings of the fieldwork conducted for the purpose of this study contribute to our understanding of citizenship and religion by showcasing the challenges that face some of these social and political activists and practitioners as they attempt to actualize their role on the ground. In doing so, the study highlights that the battle for citizenship rights in Egypt is likely to be a long-term and multifaceted one, involving structural changes within the power dynamics of state–society relations.

The increasing suppression that a few of the human rights and political movements discussed in this paper, such as EIPR and BFP, were exposed to post 30 June 2013 shows that the state is intent on limiting the potential of sociopolitical pressure emanating from the society with regard to citizenship rights and religious freedoms. This is coupled with a clear tendency to pursue the policies of the pre-2011 era concerning the confiscation and monopolization of the discourse and policies relating to the role of religion in the society. In doing so, the state reinvigorates the top-down approach adopted since 1952 concerning the actualization of the relevant spectrum of citizenship rights.

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Interviews:

Refaat Abdelkarim, CARE International, Cairo, February 2017
Amr Abdelrahman, EIPR and and Center for Law & Society, Cairo, April 2016
Jano Charbel, Human Rights Activist, Cairo, June 2011
Elham Eidarous, BFP, Cairo, January 2017
Mona Ezzat, BFP and New Woman Foundation, Cairo, October 2016
Bahaa Ezz El-Arab, EIPR, Cairo, January 2016
Akram Ismail, BFP, Cairo, June 2016
Nabil Morqos, Independent Development Consultant, Cairo, 2016
Susan Nada, BFP, Alexandria, September 2016
Khaled Tawhid, Permanent Workers Conference, Alexandria, September 2016

Notes

[1] This principle is evidently present in all of the country's constitutions from 1923 onwards, however, the application of certain laws, such as the one for building place of worship, sometimes reflected discrepancy and, at times, discrimination againts Coptic Christians.

[2] The term 'dhimmi' refers to the Islamic Jurisprudent description of non-Muslims living within the boundaries of Islamic societies. The legal status of the majority of non-Muslims communities living under the various Islamic caliphates was defined by this term, which implied that they were granted state protection in return for paying '*Jizya*' or special tax. With the advent of the predominantly secular nation-state projects in most of the Muslim societies in the early 20th Century, the term 'dhimmi'

became rather controversial as it was perceived by the seculars and liberals as a discriminatory concept that doesn't grant equal rights to all citizens. As such, its usage began to be limited and mostly associated with the Islamic schools of thought.

3 Figures like Nabil Morqos, Akram Ismail, Bahaa Ezzelarab, Mona Ezzat and Amr Abdelrahman were all engaged in a wide variety of schemes concerning citizenship rights at various junctures before and after the 2011 Revolution. Morqos is an Egyptian intellectual and a development expert, who's been engaged in the field of civil society for over five decades, Ezz-El Arab is a legal expert and was in charge of the litigation arm of the Egyptian Initiative of Personal Rights (EIPR) at the time of writing this paper. He also participated actively in the January 25 Uprising. Eidarous is the focal point of the civil and political rights portfolio in the Bread and Freedom Party.

4 For example, whereas Nabil Morqos' focus was mostly on the socioeconomic rights of the citizens and the essentiality of highlighting this theme in any study/scrutiny of citizenship rights in a country like Egypt, other activists and practitioners, such as Bahaa Ezz-El Arab and Elham Eidarous, emphasized the cases of civil and political rights abuses as the most striking forms of infringement on citizenship rights.

5 Articles #1 and 6 of the Egyptian Constitution of 2014.

6 The law was based on the 1971 constitution's assertion that Shariaa is a source of legislation. It was then modified to allow only for the public prosecutor to decide validity of claims instead of granting individuals the right to raise cases in court directly. Another case in point here is Law # 98 (concerning religious blasphemy); a largely ambiguous law that's mostly used against non-Muslims for 'insulting' Islam, which is an extremely vague notion as it's not clearly stipulated in the law itself and mainly left for the interpretation of Judges. The number of writers and intellectuals who were put on trial as a result of this law expounded after 2011 and continued to increase even after 2013.

7 See: Shoghi Effendi (1974). *Baha'i Administration, Selected Messages 1922–1932*. Wilmette, IL: Bahá'í Publishing Trust.

8 See: 'Baha'i of Egypt'. World Directory of Minorities and Indigenous Peoples. Minority Rights Group International. https://minorityrights.org/minorities/bahai-of-egypt/#:~:text=The%20group%20has%20a%20well,annulled%20under%20the%20Nasser%20government. (accessed on 15 January 2021).

9 Ibid.

10 Ibid.

11 Interview with Bahaa Ezz El-Arab, Cairo, January 2016.

12 Baha'i of Egypt'. World Directory of Minorities and Indigenous Peoples. Minority Rights Group International. https://minorityrights.org/minorities/bahai-of-egypt/#:~:text=The%20group%20has%20a%20well,annulled%20under%20the%20Nasser%20government. (accessed on 15 January 2021).

13 Sadat's bid to portray himself and his regime as the protectors of Islamic piety and values was also reflected in the novel inclusion of the term 'Shariaa' into the preamble of the 1971 constitution. Article # 2 which previously read: "Islam is state's religion and Arabic is its official language" was modified to "Islam is the state's religion; Arabic is its official language and the principles of Islamic Shariaa are a main source of legislation".

14 Interview with Amr Abdelrahman, Head of Civil & Political Rights Program, EIPR, Cairo, April 2016.

15 Ibid.

16 Ibid.

17 After episodes of local and international opposition to the new draft law it was eventually scrapped and reintroduced in a modified and reformed format in 2019. The new draft affords more flexibility for CSO's in terms of funding, and in doing so, it also removed the security apparatuses personnel representation from the Committee.

18 Interview with Bahaa Ezz El-Arab, Cairo, January 2016.

19 Ibid.

20 In the aftermath of the Jan 25 revolution, several other secular political parties were also created with the aim of fostering the socioeconomic and political objectives of the January 25 movement, representing a variety of ideological platforms. These include parties such as the centrist Egyptian Social Democratic Party (ESDP), the Baradei-led Dostour (Constitution) Party and the social-liberal Egypt's Freedom Party.

21 Up until the time of this writing, and in spite of its structural presence and ongoing activities, the BFP wasn't yet recognized as an official party by the state due to its inability to collect a required threshold of 5000 signatures from 10 different Egyptian governorates. This caused the party to be exposed to numerous cases of harassment by state security apparatuses, especially in the aftermath of the June 2013 movement, whereby some of its members where subject to pretrial detention.

22 Interview with Akram Ismail, BFP Politburo, Cairo, June 2016.

23 Interview with Elham Eidarous, focal point of the citizenship rights portfolio, BFP, Cairo, Jan 2017.

24 Interview with Akram Ismail, BFP Politburo, Cairo, June 2016.

25 In 2012, more than 20 Coptic Christian demonstrators were killed in confrontations with military troops in the neighborhood of Maspero on the Nile Corniche. The Military later denied any responsibility for the deaths of demonstrators and blamed it on 'third party' elements who had an interest in agitating sectarian conflict by antagonizing the situation between Coptic Christians and the SCAF.

[26] Interview with Akram Ismail, BFP Politburo, Cairo, June 2016.
[27] Ibid.
[28] 'Shi'a of Egypt'. World Directory of Minorities and Indigenous Peoples. Minority Rights Group International. https://minorityrights.org/minorities/shia-of-egypt/ (accessed on 15 January 2021).
[29] Ibid.
[30] Ibid.
[31] Interview with Susan Nada, BFP Alexandria Office Coordinator, Alexandria, September 2016.
[32] Ibid.
[33] Ibid.
[34] Interview with Susan Nada, BFP Alexandria Office Coordinator, Alexandria, September 2016.

References

Abou-Habib, Lina. 2011. The 'right to have rights': Active citizenship and gendered social entitlements in Egypt, Lebanon and Palestine. *Gender & Development* 19: 441–54.

Al Bishri, Tarek. 2004. *Al-Muslimūn wa-al-Aqbāt fī iṭār al-jamā'ah al-Waṭanīyah*. Cairo: Dar Al Shorouk.

Assad, Ragab, and Motaz Al Fegeiri. 2014. *Citizenship in Post-Awakening Egypt: Power Shifts and Conflicting Perceptions: Challenges for EU and US Foreign Policy*; EUSpring, January. Available online: https://cihrs.org/citizenship-in-post-awakening-egypt-power-shifts-and-conflicting-perceptions/?lang=en (accessed on 10 February 2021).

Ayubi, Nazih. 1995. *Overstating the Arab State*. London: I. B. Tauris.

Baha'i of Egypt'. n.d. World Directory of Minorities and Indigenous Peoples. Minority Rights Group International. Available online: https://minorityrights.org/minorities/bahai-of-egypt/#:~{}:text=The%20group%20has%20a%20well,annulled%20under%20the%20Nasser%20government (accessed on 15 January 2021).

Bayat, Asef. 2007. *Making Islam Democratic: Social Movements and the Post-Islamist Turn*. Stanford: Stanford University Press.

Bayat, Asef. 2013. *Life as Politics: How Ordinary People Change the Middle East*. Stanford: Stanford University Press.

Brown, Nathan. 2013. Egypt's Failed Transition. *Journal of Democracy* 24: 4. [CrossRef]

Butenschon, Nils, Uri Davis, and Manuel Hassassian. 2000. *Citizenship and the State in the Middle East: Approaches and Applications*. Syracuse: Syracuse University Press.

Effendi, Shoghi. 1974. *Baha'i Administration, Selected Messages 1922–1932*. Wilmette: Bahá'í Publishing Trust.

El-Mahdi, Rabab. 2011. *Empowered Participation or Political Manipulation? State, Civil Society and Social Funds in Egypt and Bolivia*. Leiden and Boston: Brill.

Farah, Tawfic E. 2019. *Pan-Arabism and Arab Nationalism: The Continuing Debate*. Milton Park: Routledge.

Ghanem, Hafez. 2014. *Improving Regional And Rural Development For Inclusive Growth In Egypt*. Washington, DC: The Brookings Institution.

Hamzawy, Amr. 2014. On religion, politics and democratic legitimacy in Egypt, January 2011–June 2013. *Philosophy & Social Criticism* 40: 401–6.

Jandora, John W. 2008. *States without Citizens. Understanding the Islamic Crisis*. New York: Praeger.

Jones, Emma, and Gaventa John. 2002. *Concepts of Citizenship: A Review*. Sussex and Brighton: Institute of Development Studies.

Joseph, Suad. 2000. *Gender and Citizenship in the Middle East*. Syracuse: Syracuse University Press.

Karkabi, Nadeem. 2013. *Lifestyle Migration in South Sinai, Egypt: Nationalisation, Privileged Citizenship and Indigenous Rights*; International Review of Social Research. Available online: https://irsrjournal.unibuc.ro/wp-content/uploads/2020/11/Lifestyle-Migration-in-South-Sinai-Egypt_-Nationalisation-Privileged-Citizenship-and-Indigenous-Rights.pdf (accessed on 10 February 2021).

Maghraoui, Abdesalam. 2006. *Liberalism without Democracy: Nationhood and Citizenship in Egypt 1922–1936*. Durham: Duke University Press.

Marshall, Thomas. Humphrey. 1973. *Class, Citizenship and Social Development*. Westport: Greenwood, First publihsed 1959.

Meijer, Roel, and Nils Butenschon. 2017. *The Crisis of Citizenship in the Arab World*. Leiden: Brill.

Menza, Mohamed F. 2012a. Neoliberal Reform and Socio-Structural Reconfiguration in Cairo's Popular Quarters: The Rise of the Lesser Notables in Misr Al Qadima. *Mediterranean Politics* 17: 322–39. [CrossRef]

Menza, Mohamed F. 2012b. *Patronage Politics in Egypt: The National Democratic Party and Muslim Brotherhood in Cairo*. Milton Park: Routledge.

Moghadam, Valentine M. 2003. Engendering citizenship, feminizing civil society: The case of the Middle East and North Africa. *Women & Politics* 25: 63–87.

Pizzo, Paola. 2015. The 'Coptic question' in post-revolutionary Egypt: Citizenship, Democracy, Religion. *Ethnic and Racial Studies* 38: 14. [CrossRef]

Qelada, William. 1999. *The Principle of Citizenship: Studies and Articles*. Cairo: Maktabat al-Usrah. (In Arabic)

Rieffer-Flanagan, Barbara Ann. 2016. Statism, Tolerance and Religious Freedom in Egypt. *Muslim World Journal of Human Rights* 13: 1. [CrossRef]

Sater, James. 2013. Citizenship and Migration in in Arab Gulf Monarchies. In *Migration, Security and Citizenship in the Middle East*. Edited by Peter Seeberg and Zaid Eyadat. Basingstoke: Palgrave Macmillan.

Shami, Seteney. 2009. Aqalliya/Minority in Modern Egyptian Discourse. In *Words in Motion: Towards a Global Lexicon*. Edited by Carol Gluck and Anna Tsing. Durham: Duke University Press.

Shi'a of Egypt. n.d. *World Directory of Minorities and Indigenous Peoples. Minority Rights Group International.* Available online: https://minorityrights.org/minorities/shia-of-egypt/ (accessed on 15 January 2021).

Soliman, Samer. 2011. *The Autumn of Dictatorship: Fiscal Crisis and Political Change in Egypt under Mubarak*. Palo Alto: Stanford University Press.

Stadnicki, Roman, Vignal Leila, and Barthel Pierre-Arnaud, eds. 2014. *Arab Cities after the 'Spring'. Built Environment*. Marcham: Alexandrine Press, vol. 40.

Takawi, Mourad. 2012. Modernizing the Coptic Community [Manuscript]: The Laity-Clergy Struggle for Communal Representation and the Road to the 1911 Asyūṭ Congres. Master's Thesis, American University in Cairo, New Cairo, Egypt.

Butenschon, Nils, Uri Davis, and Manuel Hassassian. 2000. Islam, Civil Society and Citizenship. Reflections on the Sociology of Citizenship in Islamic Societies. In *Citizenship and the State in the Middle East. Approaches and Applications*. Butenschon, Nils, Uri Davis, and Manuel Hassassian. Syracuse: Syracuse University Press, pp. 28–48.

Young, Iris. 1989. Polity and Group Difference: A Critique of the Ideal of Universal Citizenship. *Ethics* 99: 2. [CrossRef]

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Article

Religious Freedom, National Identity, and the Polish Catholic Church: Converging Visions of Nation and God

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Abstract: In the most common representations of the Polish people, the Catholic Church is not simply considered as a part of the Polish nation; it is the Polish nation. This is reflected in the constitutional relationship of the Church and the State, in the form of a concordat. Yet, despite a formally constitutionally warranted separation, the Church retains heavy weight in the legal and political debates to the point that currently, in a time of resurgence of populism across the globe, a number of right-wing parties adopt positions based on those of the Church, establishing a dangerous nexus between religion and nationalism. The aim of the present contribution is to map this unique process within Eastern Europe in order to show how, in the case of Poland, religious identity and the exercise of religious freedoms, despite its fragmented nature at the individual level of believers, has acquired the features of an autonomous field of intervention, with clear consequences on morality and the exercise of politics, as well as religious rights and freedoms of citizens. Using the example of religious education in public schools, the article will demonstrate the complex paths of the process of secularization in the light of the historical dynamics of state, nation, and Church in Poland. In fact, it will argue that we are gradually moving away from the triumph of secularism as a "teleological theory of religious development" but firmly entering the perilous territory of religious belief as a "traditional carrier of national identity." Tasked with the mission by Pope John Paul II to "restore Europe for Christianity," upon joining the EU in 2004 and based on the premise that "majorities have rights too," this shift implies new forms of religious nationalism for Poland that significantly affect religious freedom by creating dichotomies between "Us" and "Others." It also offers, similarly to other Eastern European countries, a nuanced interpretation of religious equality that assumes the role of law as limited to protecting religions recognized by reference to established traditions, ignoring the realities of pluralized religious markets.

Keywords: religious freedom; Poland; Catholic Church; public education; nation; religious minorities

> "(…) fear breeds repression; (…) repression breeds hate; (…) hate menaces stable government"; Justice Brandeis[1]

1. Introduction

The end of communism in Central and Eastern Europe produced an ideological vacuum. The severe economic conditions accompanying the "return to Europe" called for a new set of "beliefs": the alignment of nationality with the historically dominant religions soon acquired nation- (re)-building proportions, and together with that, the opportunity for religious actors to mobilize their capacities in new ways.

[1] *Whitney v. People of the State of California*, 47 S.Ct 641, 648, 274 US 357, 376 (1926) Justice Brandeis Concurring.

The protection of religious freedom in human rights law is connected to a thread of autonomy, requiring states to guarantee to all people liberties and resources corresponding to their vision of a good life (including the possibility to revise traditional religious practices), tolerance, and affording protection to groups, even non-liberal ones (provided a right to exit is in existence). Instances of conflicts between individual and collective religious rights are far from unknown: they occur as dilemmas between the exercise of one's individual religious rights as opposed to the religious rights of the majority. More than that, when the dominant (majority) faith is "national," religious minorities' claims are framed as dissent from the "official" national faith in the form of disloyalty to the nationalist cause.

At the outset, there was some concern at the time of the transition back to democracy in Poland over the potential threat that the Catholic Church would become too involved in politics.[2] The risk that too strong of an identification of the new state with one faith would pose to the protection of religious freedom and religious pluralism was spelled out by a part of Polish society. Polish intellectuals contested the growing hegemony of the Church that changed its strategy of "open Catholicism," understood as encouraging open channels into more democracy, emancipation, and freedom, to one of monopolistic authoritarianism.[3] Instead, religious institutions gradually insisted on life for their adherents in accordance with specific sets of values and practices that suggested a fusion of religion with culture, affecting both social and personal identity. In these conditions, religious *revivalism*, not just as a force shaping morality but also as a channel to political power, can be conceived in retrospect as a crucial factor challenging pluralism in secular societies in complex terms.

Within this fragile balancing act between the protection of religious freedoms and nation-building, religious groups—in our case the Polish Catholic Church—have evolved in their role but also in their perception and discourse in society: struggling to reconcile their transnational dimension with their national role and presence, the question today is how these actors currently position themselves vis-à-vis ethnicity and nationalism and the implications of their choices on religious freedom.[4] Religious identity, as will be argued further in the case of Poland, serves currently to motivate and even legitimate nationalist campaigns, guaranteeing in exchange enhanced access to power for the dominant religious faith organizations.

At the same time, in a continent where historic religious groups are territorially concentrated and settled on territories (that in many cases have seen the borders "move" across states) notions of equality, non-discrimination, and justice seem to have a different meaning: in many cases, it is interesting to note how it is majority religious groups that invoke historic injustice(s) in an effort to curtail ordinary claims of freedom and equality.[5]

The aim of the present contribution is therefore to explore the process and implications of the growing alliance between Polish nationalism and conservative Catholicism from the perspective of the normative content given to religious freedom. The article will argue that despite the fragmented nature of religious beliefs at the individual level of believers, religious freedom has acquired the features of an autonomous field of intervention in Poland, with clear consequences on morality and the exercise of politics, as well as religious rights and freedoms of citizens. Methodologically, the discussion will be based on a legal and human rights platform, with emphasis on a socio-legal reading of the key concept of religious freedom rights, borrowing from the sociology of law and political science. The interdisciplinary outlook is necessary in order to demonstrate from a more empirical point of view the autonomous character of religious identity as a field of study, calling for a variety of disciplinary tools to fully account for the "law on the ground."

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2 Mach (2007, pp. 123–25, 133).

3 Prominent figures among this group of intellectuals were Adam Michnik, Leszek Kołakowski and Czeslaw Miłosz. Stala (2012, p. 180 et seq).

4 Danchin (2002, p. 23).

5 For example, Orthodox Bulgarians against Muslim Turks for their treatment in the 19th century, or Orthodox Serbs about oppression under Ottomans or Catholic Slovaks under the Austro-Hungarian empire. Danchin (2002, p. 8).

To do so, and with the intention to advance discussion on issues with pan-European resonance, such as the rights of majorities, religion as a nation-building strategy, populism, and trends toward religious inequality and the broader instrumentalization of faith, the first section will introduce the evolving features of religiosity and belief in today's Poland in order to highlight how the Polish Catholic Church through its historical presence has been contributing towards the legitimation of one specific type of faith to the potential exclusion of others. The landscape of religious diversity in the country will then be examined in its legal, sociological, and political dimension to demonstrate how religious identity can be constructed as a mono-dimensional "fiction."

Using the example of religious education in public schools, the article will illustrate in more concrete terms the tension between Polish nationalism and conservative Catholicism through (and in some cases, in spite of) the legal framework covering religious diversity in education. In fact, and on a broader level, the short case study will show how we are gradually moving away from the triumph of secularism as a "teleological theory of religious development" and firmly entering the perilous territory of religious belief as a "traditional carrier of national identity" with the implications and dilemmas that it may carry for the Catholic Church in Poland but also for the protection of religious freedom in the country.

2. Evolving Trends in Religiosity in Poland

Against the highly fragmented and ambiguous features of religiosity in Europe, Poland stands apart due to the specific dynamics of state, church, and nation. The Polish case disrupts the assumptions of the secularization theory only in terms of the prevailing political discourse that often relies on religion and to the extent that religious institutions and religious consciousness have not lost their social significance or influence.[6] It also shows how, through the historical experience of communism, the majority Church in Poland was attributed exceptional societal privileges and influence.

The "cultural shock" that most Central and Eastern European societies experienced, approached in terms of growing insecurity and a loss of orientation that followed in the 1990s,[7] in Poland led to the firm anchorage of religion in the public space. The terms of this evolution were developed on the following main axes: the relation between the State and religious organizations, the interaction between religion and politics, the institutional influence of the "national" churches, and the interreligious dialogue and relations.[8]

By 1994, there were already 80 officially registered churches and religious organizations in Poland but the 1993 Concordat between the government and the Holy See left little scope to doubt the privileged status of the Catholic Church. The religious revival, hence, has not been happening exclusively in the sense of "trivialization of the sacred" but also as an instrumentalized symbol toward legitimation.

By looking closer at the features of religiosity in a country like Poland, it emerges that the evolution of the patterns of religious beliefs is multi-layered and complex: instead of the dominant elsewhere in Europe "believing without belonging,"[9] recent Polish data suggests "belonging with less and less believing," where one finds still impressively high levels of confessional affiliation but with decreasing levels of belief and/or participation. Compared therefore to other European countries, the Catholic Christian shares of the Polish population have been relatively stable.[10]

As a result, religious beliefs developments in the country can often be represented in political discourses as being dependent on the "imagined" dimension of the national church as a self-sufficient

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6 Need and Evans (2001, p. 231).
7 Merdjanova (2001, p. 265).
8 Merdjanova (2001, p. 265).
9 See the widely cited work of Davie (1990), for a discussion of the concept.
10 According to the Pew Research Center findings (2018) on the significance of religion in Central and Eastern Europe, 96% of Poles were raised as Christian and 92% still identify as such. [http://www.pewforum.org/2018/10/29/eastern-and-western-europeans-differ-on-importance-of-religion-views-of-minorities-and-key-social-issues/].

community, which overlaps with that of the nation-state.[11] However, according to recent Pew Research Center data, 70% of Poles consider that religion should be kept separate from government politics, with 25% supporting the view that government should be involved in supporting religious values and beliefs.[12] Only 28% of respondents within the same survey have stated that the government should provide financial support to the country's preferred Catholic Church, although 64% of Poles find Catholicism to be a key component of their national identity. Further than that, developments of religious belief have been politically interpreted as the mission of "restoring Europe for Christianity" rooted in *messianism*, also nowadays with the help of political populist discourses.

At the same time, Polish society appears in transition with respect to religiosity. Fragmented Catholicism currently dictates some disagreement with the Church's rules in relation, for instance, with sexual behavior, with 41% in a Pew survey between 2015–2017 refusing to follow the Church's rules on abortion.[13] Yet 29% of Poles still consider religion very important in their lives, 61% attend religious services at least monthly and 27% pray daily.[14] The distinctiveness of the Polish case, when compared to other post-communist countries, therefore stands.[15] To the extent that participation in religious practices can be interpreted as a sign of trust toward the Church, however, along with its identitarian dimension, it is worth questioning whether Polish society still identifies with the values conveyed by the Catholic Church. The erosion of high religiosity, or put differently, the fragmented nature of being Catholic in Poland today, still happens under quasi-monopolistic conditions in religious market terms. Regardless of that, the Polish Catholic Church still maintains and assumes its mediating role for social and political issues.[16]

Therefore, despite the increasingly complex relation of Poles to the Catholic Church, the ability of the Church to influence the public debate on divisive issues persists. Politicians choose to express commitment to the Catholic dogma in an attempt to get (and keep) public support through the occasional use of religious arguments.[17] The 2015 presidential election, in terms of its perception by the public, illustrates the point well: although the Catholic Church did not institutionally involve itself in the 2015 electoral campaign, by supporting one candidate over others, the projection of the Catholic media, perceived as the "expression" of the Polish Episcopal Conference, was viewed as politically involved with the PiS candidate (and ultimately winner) Andrzej Duda.[18] This thesis was confirmed by an Ariadna poll finding that respondents felt that the involvement of the Catholic Church in politics was too high.[19]

In similar terms, the example of Reverend Tadeusz Rydzyk, member of the Congregation of the Most Holy Redeemer, is widely cited:[20] as founder of Radio Maryja and the newspaper Nasz Dziennik, the television channel Trwam, as well as a private college, he has engaged in the promotion of specific politicians, in consonance with the interests of his business and the Catholic faith.

While the Church in Poland is by no means a uniform body, there is a noticeable trend by a number of clerics, including at the local level, that are lending their religious authority for political purposes.[21] The leverage applied by the Church on the content of schools curricula, discussed later in this article, provides another instance of the way in which the Church has obtained its "privileged

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11 See for a similar point Casanova (2009, p. 220).
12 Pew Research Center (2018).
13 Pew Research Center (2018).
14 Pew Research Center (2018).
15 In 2008, 93 per cent of Poles declared themselves to be Catholics and believers while 64 per cent declared that the Church is essential in defining their own values (Heinen and Portet 2009, p. 10).
16 Bilska-Wodecka (2009, p. 4).
17 Heinen and Portet (2009, p. 3).
18 Lesniczak (2016, pp. 272–73, 277).
19 The poll in question was conducted in the period between 25–28 July 2015 and is referenced in Lesniczak (2016, p. 282).
20 Modrzejewski (2018).
21 Modrzejewski (2018, p. 255).

participant" status in the public sphere.[22] Earlier on, Catholic political parties have also echoed the Church's voice to the point that in 2003 the Church agreed to support Poland's accession to the EU provided that abortion laws would not be affected.[23] Overall, the *Motherland*[24] is being constructed on the "Us" versus "Them" dualist perception, which right-wing parties are currently utilizing and even furthering to maintain momentum in the political debate.

In parallel, religious pluralism in the country has grown during post-communist times. From religious communities from India and the Far East, to Protestants and Evangelists from within Europe or the U.S., Poland is gaining renewed exposure to the "religious market." This process has triggered renewed forms of *religious nationalism*, with the majority religion being transformed into a politicized "resistance" strategy but also a tool of exclusion for others.

Poland's integration in the EU precisely demonstrates and illustrates the trend: the Catholic Church in Poland already as of 2002 voiced its concerns by stating that "[Poland's] inclusion in the European system ought not mean the abandonment of national, political, and cultural sovereignty as well as religious sovereignty."[25] Issues such as abortion or same-sex marriage were at the base of its concerns.

As a result of these almost opposing factors, religious pluralism has gradually become a relatively eclectic concept, in conditions of a largely ethnically and religiously homogenous state, especially in conditions where the traditional faith has played a significant role in nation-building and national self-determination. The legal implications of this scenario lead to the questioning of the compatibility of religious freedom and pluralism with national self-definition understood as nationhood linked to one faith.[26]

It is established elsewhere that the otherwise rational principle of religious equality is heavily qualified by the historically shaped practices of each society.[27] As such, the law does not always respond or match abstract liberal and rational assumptions of social justice. In cases where national identification seems to overlap with religious affiliation, such as in the Polish case, the level of cultural embeddedness of religion(s) and the degree of protection of religious freedom do not necessarily match.[28] It is therefore not a surprise to observe how constitutional provisions for religious liberty "understand" religion as a Christian concept that stresses the individual (as opposed to the collective) dimension of religious freedom out of political fear for "organised religion."[29]

3. The Political Legitimation of Faith and the Role of the Catholic Church

With the arrival of the free markets, politics and religion were drawn closer to each other due to the disillusionment of the many becoming poorer and voiceless, as opposed to the few accessing power and wealth, very often in questionable terms.[30] Moreover, the search for the "truth" in spiritual and religious terms, clearly no longer to be found in Marxism, still had to be discovered.

In this climate, for Poland, an almost entirely Catholic country, very different for example to former Czechoslovakia, which is home to a number of diverse religious minority groups, the dynamics of faith have been unique. During socialism, the Catholic Church was instrumental in attracting believers on the basis of its position as an "alternative" pole to the state.[31] Following the collapse of

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22 Modrzejewski (2018, p. 256).
23 Heinen and Portet (2009, p. 20).
24 Personified either as *Matka Polka* (The Polish Mother), *Mater Polonia* (The Mother of the Nation) or in the form of the Marian cult (the Cult of the Virgin) (Cf. Heinen and Portet 2009, p. 4).
25 Wiadomości KAI (2002): No 13/2002 at 9 as quoted in Bilska-Wodecka (2009, p. 13).
26 For an example, see the discussion in this article on religious education in public schools and the limited availability of alternatives to Catholic religious classes.
27 See Topidi (2019).
28 Merdjanova (2001, p. 274).
29 Merdjanova (2001, p. 274).
30 Barker (2002, p. 60).
31 Barker (2002, p. 67).

the Iron Wall, however, the Polish Catholic Church found itself before a crucial turning point: faced with priests that had not developed practical theological skills in tune with the changing economy and politics, the Catholic Church leaned towards conservatism.[32] Social services had firmly remained in the realm of the state and even when there was a desire to engage with such services, there was a clear lack of expertise.[33]

At the same time, religiosity acquired new terms in Poland: while before the fall of the Wall, the national church was supported as an alternative ideology, even by *non-believers* (those belonging but not believing), for example when atheist parents insisted on baptizing children or attending mass as a form of resistance to the regime, the pattern shifted after 1989. Attendance to church was connected to self-interest in the sense of pursuing one's need to access power through the "right" connections.[34] The dominant Church's ability to symbolize and embody national unity while on a democratizing path was lessening significantly.[35] The broader concern remains the extent to which national community is compatible with civic institutions.

Historically, in postwar Poland, *Polishness* has been equated with Catholicism.[36] This connection is further attached to a certain messianic component that in the Polish Romantic tradition ascribes to the Polish nation a type of martyrhood, that of "Christ of Nations."[37]

It is consequently not entirely surprising to observe how the fusion between state and Church has evolved in Poland. Over time, the same questions are asked: does the Polish Catholic Church want political power in the State? Furthermore, is it possible to imagine state laws not reflecting Church values and principles?[38] With the burden of communism gone, is the Church, in particular its most conservative elements, seeking a new enemy to justify their presence in the public scene? Polish Catholicism, in its sui generis features, constitutes a paradigm where all the above can be answered in the positive. The declared beliefs of the vast majority of individuals give enough "weight" to the Church to intervene.

The role and position of the Polish Catholic Church can be further analyzed in connection (and contrast) to the Roman Catholic Church, with which it had fostered tight links during the period where John Paul II was Pope. The Roman Catholic Church, in its capacity as one of the most active transnational institutions, has historically played (and continues to do so) an active role in post-communist Europe.[39] After 1989, the then Pope had developed an explicit discourse on the role that his homeland was expected to play in the re-united Europe: the right and responsibility to become a member of Europe but based on its own values, without uncritically adopting Western customs.[40] The interpretation of such a critical stance relies on the assumption that "not everything that the West offers by way of theoretical vision and practical lifestyles reflects the values of the Gospel."[41] Resistance to perceived Western values such as secularism, consumerism, materialism, and even atheism, was coupled with the mission of re-evangelizing Europe.

The Polish Catholic Church's historical positionality as a beacon and source of Polish nationalism was furthered by the perception of its role in overthrowing communism. Projected as the defender of Polish national and cultural survival, under conditions of threat, Catholic symbolism embodied the

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32 Barker (2002, p. 68).
33 This lack is aptly juxtposed with the equivalent sophistication in the area of foreign missionaries (e.g., American Evangelical Protestants). This imbalance is in part responsible for the resentment and resistance towards such groups in Central and Eastern Europe. (Cf. Barker 2002, p. 68).
34 Barker (2002, p. 72).
35 Hann (2002, p. 438).
36 Krajewski (2002, p. 496).
37 Krajewski (2002, p. 496). The author describes the implications of this trajectory through the example of the anti-Semitic propaganda of 1968.
38 Krajewski (2002, p. 502), quoting priest Józef Tischner.
39 Byrnes (2002, p. 455).
40 Byrnes (2002, p. 459).
41 Byrnes (2002, p. 459).

resistance to a political system imposed from the outside.[42] In more concrete but only indicative terms, by the end of Communism, Catholic instruction was reintroduced in public schools, where a concordat was signed with the Holy See and access to abortion curtailed.

The political dimension of the role of the Catholic Church has therefore not only been shaping the public agenda, it has, as importantly, also reconfigured Poland's self-understanding as the "People of God." With the change of leadership in the Roman Catholic Church, the transnational dimension of the nexus between Rome and Warsaw has nevertheless shifted. The local elements of the Catholic Church within Poland resist the current Pope's vision, and together with individual Catholic believers, diffuse the content of messages coming from Rome in their own terms. This alternative vision of Catholicism, but also of the EU, directly challenges the degree to which the Roman Catholic Church, in its function as a transnational religious institution, can continue to affect the political process within Poland.

4. Religious Pluralism in Poland and the Protection of Religious Freedom

Poland under Communism made systematic efforts to confine religion to the private sphere.[43] Constitutionally, Article 35 of the Constitution adopted by the National Assembly on 2 April 1997, recognizes the right to national or ethnic minorities to maintain and develop their culture, including in paragraph 2, the right to establish and maintain institutions designed to protect their religious identity.[44] Yet the impact of the presence and influence of the dominant Catholic Church affected an extended array of issues, covering also some previously belonging to the private sphere, such as abortion.

Given that religious diversity is currently limited in Poland, as numerically few religious minorities have established presence on Polish territory, it is hard to assess social tolerance of religious difference. It is also difficult to discern the power competition between religious majority and minority actors in conditions of religious quasi-"monopoly." The inherent danger at present seems to be that the dominant Church may be pushing for social paradigms that by-pass religious diversity.[45] Can a pluralized religious market really exist in Poland? In an era where "majorities" have been advancing the argument that they have rights too,[46] the content of Article 53 of the Polish Constitution provides for freedom of religion to everyone,[47] respected, and protected by public authorities,[48] read together with Article 10(1) of the Charter of Fundamental Rights of the EU.

The real dimension of the legal landscape is, however, more fully described by Eileen Barker when she finds that:

> "States do not need to pass discriminatory laws to contribute to a society's discrimination. Even if the legislature does not discriminate against minority religions (...), the actual implementation of the law may be discriminatory, and there are numerous instances of a non-discriminatory law being grossly violated."[49]

In legal terms, and despite a relatively well-developed human rights compliance oversight, including on religious freedom, by the European Court of Human Rights, Poland similarly to other European countries has enjoyed relative autonomy on religious matters, which until the *Kokkinakis v.*

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42 Byrnes (2002, p. 460).
43 Hann (2002, p. 440).
44 Article 35(1) and (2) of the 1997 Polish Constitution, https://www.sejm.gov.pl/prawo/konst/angienski/kon1.htm (in English).
45 Merdjanova (2001, p. 293).
46 In post-Lautsi Europe, this is a point that is growing in importance. (Cf. Fokas 2015, p. 69).
47 Article 53 of the 1997 Constitution of the Republic of Poland stipulates that the freedom "shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites or teaching. Freedom of religion shall also include possesssion of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services."
48 Article 30 of the 1997 Constitution of the Republic of Poland.
49 Barker (1998, pp. 35–36).

Greece case in 1993, amounted to very wide discretion.[50] This reluctance to exercise a more intense level of control over "neutral" laws has resulted in the denial of exemptions from the application of general laws, even outside the remit of criminal law.[51]

From the point of view of religious organizations (e.g., Churches) as actors, the question of autonomy of religious organization becomes equally relevant. In Poland, although the model of separation of state and Church applies constitutionally speaking (Article 25(3) of the 1997 Constitution), it remains informative to observe how the state unfolds its preference for the traditional Church.

The introduction of religious education, endorsing the majority religion, and the concordat with the Holy See suggest the reticence to de facto separate the state from the Polish Roman Catholic Church. The positive obligation of the state to protect the (majority) faith is also stressed.[52] Simultaneously, governing elites "(. . .) try to appropriate religion through the constitutions that both constrain and empower them, for political legitimation."[53]

At the same time, in terms of religious diversity, Poland is not at present facing significant challenges related to its Muslim population, despite opposite public discourse and perception. The group counts an approximate 40 thousand members for a country of 38 million citizens.[54] They belong to three distinct groups: Tatar Poles, immigrants from Arab countries that came to Poland in the 1970s, and more recent Muslim immigrants, mainly from Bosnia, Chechnya, or other countries such as Afghanistan or Pakistan.

The case of the Polish Tatars is special: they represent a group present on Polish territory through the centuries with an ethnic distinctiveness based on religious difference. Yet, their religious identity is merged within Polish society, sharing multiple cultural elements with the majority. Absent a sense of connection with any other country, after the fall of the Iron Wall, Polish Tatars begun efforts to rebuild their ethnic identity.[55] These efforts have been the object of tension with the newly arrived Muslims: the "new" religious minorities have been openly competing with Tatars on the "authentic" version of Muslim religious identity.[56]

One of the most important recent Muslim groups in Poland, as mentioned, are Chechens, who arrived after the first war in Chechnya. Their projection in Polish public opinion is not based on their religious difference but instead on the poor quality of refugee aid they are receiving in the country.

Along with the Muslim Religious Association, established in 1936, the Muslim League in Poland was formed in 2001, attracting mostly immigrants from Arab countries, as opposed to the Polish Tatars who formed the body of the former association. Attempts of the Muslim League to establish a Muslim Community Centre in Warsaw in the early 2010s triggered anti-Muslim rhetoric, which approached the project as an unwelcomed expression of radical Islam linked to terrorism.[57]

This type of Islamophobia is reflecting the generalized sense of cultural distance that is echoing Western negative discourses on Muslim communities. It is worth reminding, however, that in Poland's case, the presence of such groups is very small, which suggests that the root of xenophobic tendencies is largely based on "imagined" communities, rather than real ones.[58]

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50 See European Court of Human Rights, *Kokkinakis v. Greece* Appl. N. 14307/88 (1993) where the first violation of Article 9 ECHR was found by the Court in Strasbourg. De facto, scrutiny has intensified since although the margin of appreciation remains widely used. For an opposite interpretation of legal doctrine arguing that minority rights leave no space for the application of the margin of appreciation because it operates at their detriment see, Eyal Benvenisti, Margin of Appreciation, Consensus and Universal Standards, 31 N.Y.U.J. Int'l L. & Pol. 843 (1999).

51 See European Court of Human Rights, *Efstratiou v. Greece*, Appl. No. 24095/94, 18 December 1996; *Valsamis v. Greece*, No. 21787/93 18 December 1996.

52 Merdjanova (2001, p. 277).

53 Markoff and Regan (1987, pp. 169, 180).

54 Górak Sosnowska (2011, p. 12).

55 ACCEPT Report (Buchowski and Chlewińska 2012, p. 25). These attempts took the form of periodic cultural and educational events (e.g., festivals) as well as press and media outlets aiming to stress their presence in the wider Polish cultural landscape.

56 ACCEPT Report (Buchowski and Chlewińska 2012, p. 25).

57 See indicatively the contents of the website http://meczet-ochota.pl where a large part of the public debate took place.

58 ACCEPT Report (Buchowski and Chlewińska 2012, p. 28).

The distinction between "our old Muslims" (referring to autochthonous Tatar Muslims)[59] and "those immigrants" (referring to new immigration) is fairly established in media discourse and public opinion.[60] Admittedly, Poland, along with a good number of Central and Eastern European Countries, has not had lengthy exposure to migratory trends of "distant" Others, arriving from countries of significant cultural distance,[61] although historically, Polish tolerance has been tested through co-existence with Tatar Muslims for centuries. The quasi-entirety of public opinion on Islam and Muslim minorities is currently shaped on discourses of fear relying on an external yet unreal threat: the forced Islamization of Europe.[62]

Overall, the discourse on religious diversity in Poland has distinct features, when compared to other Western European countries: in a country with almost no "Muslim issues," the "Muslim threat" is treated as a political emergency from political actors, including the most conservative parts of the Catholic Church. This is due in large part to the "oscillation between the *ethnos* and the *demos*."[63] Religious minority claims are thus perceived as disrupting the "perfect" overlap between the nation and its members. This form of *constitutional monotheism*[64] gives precedence to the rights of the majority and leads to social apprehension towards religious difference.

Despite a historically rooted discourse of Polish multiculturalism based on a past religiously diversified life state supported multiculturalist policies are at present largely "folklorist."[65] The type of current migration is very different in terms of the country of origin of immigrants,[66] and as such, religious otherness tends to be socially marginalized. To this end, the input of political and media discourses is important, as it tends to magnify the essentialized representations of the numerically limited Muslim communities in Poland. This dynamic is also widely reflected in public education.

5. Religious Education in Poland

It is well established that Christianity has historically used schools as a means to influence the development of values in any given society.[67] At the same time, involvement in education is useful for a church to establish and maintain its legitimacy.[68]

According to the Law on the Education System (1991), there are two types of schools in Poland: public (state) schools and non-public schools. The latter, to the extent that they are denominational, are autonomous in the sense that they can have their own curriculum, subject to the approval of the Minister of Education. Since the Law does not require religious neutrality[69] to become a public school,

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[59] At present, Muslim Tatar communities have presence within Poland in Warszawa, Białystok, Bohoniki, Kruszyniany, Gdańsk, Poznań, and Bydgoszcz. (Cf. Dziekan 2011, p. 29).

[60] Katarzyna Górak Sosnowska (2011, p. 15). The case of the autochthonous Tatars distinguishes itself insofar as these communities due to their long historical presence in Poland have been affected by local culture in terms of an intercultural type of integration. They are currently perceived as a religious group with ethnographic elements in Poland. (Cf. Dziekan 2011, pp. 35, 37).

[61] Górak Sosnowska (2011, p. 16). It should be noted, nevertheless, that at the end oft he 1930s the percentage of ethnic and national minorities corresponded to 35 per cent of the general population (Kyszczarz 2011, p. 54).

[62] The anti-Islamic sentiment is commonly used as a means to strengthen European Christian identity. See indicatively the work of the Association Europe of Future (http://www.euroislam.pl) as referenced in Górak Sosnowska (2011, p. 18).

[63] ACCEPT Report (Buchowski and Chlewińska 2012, p. 9).

[64] ACCEPT Report (Buchowski and Chlewińska 2012, p. 10).

[65] ACCEPT Report (Buchowski and Chlewińska 2012, p. 13). Treatment of Polish Tartars or Jews is indicative of this approach. A contrario, the 1991 Treaty with Germany gave political rights to Germans, with representatives in parliament. (Cf. ACCEPT Report, Buchowski and Chlewińska 2012, p. 14).

[66] ACCEPT Report (Buchowski and Chlewińska 2012, p. 17). The Report mentions that according to the International Migration Report 2006 of the UN Population Division foreigners are estimated to 703,000 (2005) or 1.8% of the total population.

[67] Rakar (2009, p. 317).

[68] In some instances, this can happen also through private denominational education, depending on the context of each country.

[69] According to the repealed Act of 7 September 1991, on the educational system, public schools are not religiously neutral because Christian values and teaching are included and taken into account in the educational process. The currently applicable Act on Education 2016 stipulates in its preamble that education and upbringing should respect the Christian value system (Cf. http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170000059/T/D20170059L.pdf).

these schools may at a later stage acquire the status of a public school.[70] In that case, a school becomes eligible for public financing.[71] Private schools, without the status of a public school, may receive financial support from local governments.[72]

Alongside the official state educational system, confessional schools are also being supported by the state in financial terms, as already mentioned. Churches and religious organizations are given the right to establish and run schools and day care centres, as well universities and denominational high schools.[73] Among them, one finds minority faith educational establishments, often connected to wider globalization processes aimed at the articulation and expansion of distinct socio-cultural identities.[74] These schools are part of external religious networks that claim a part of public space in national contexts. In these private schools, regulation of religious education is open and determined by the school board and/or parents.[75]

The philosophy of "faith" schools is not always geared exclusively at the preparation of Church ministers. It extends to the offering of alternative religious worldviews and, as importantly, to a religiously safe environment for students, which justifies, in good part, their popularity with parents.[76]

Overall, however, the percentage of learners attending denominational schools remains low in Poland,[77] despite the favourable legal framework. This is connected to the reluctance in general terms of the Catholic Church to found its own schools. The lack of significant religious heterogeneity (i.e., little demand for diversified religious schools), combined with the non-secular character of public/state schools in Poland, explains the slow development of denominational schools.

One of the most symbolic but also significant changes following the fall of the Wall in Poland concerned the introduction of courses on religion in schools. Prior to the end of communism, religious instruction was excluded from the school curriculum; religious schools were closed or were under strict state control. The post-1989 reinforcement of the power of the Church made a lasting impact on the public education system insofar as it institutionalized its presence by giving priests the status of ordinary teachers.[78] Article 12 of the Concordat between the Holy See and Poland[79] is explicit:

1. Recognizing parental rights with regard to the religious education of their children, as well as the principles of tolerance, the State shall guarantee that public elementary and secondary schools, and also nursery schools, shall be managed by civil administrative organizations or independent bodies, shall arrange, in conformity with the desire of interested parties, the teaching of religion within the framework of an appropriate school or pre-school curriculum.
2. The curriculum for teaching the Catholic religion, as well as the textbooks used, shall be determined by ecclesiastical authority and shall be made known to the relevant civil authorities.
3. Teachers of religion must have authorization (*missio canonica*) from their diocesan bishop. Withdrawal of this authorization signifies the loss of the right to teach religion."

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70 Rakar (2009, p. 323).
71 Until 2000, private denominational schools were entitled to 50% of the public funds per pupil spent by local governments on a public school. Since 2000, they are entitled to 100%, even in cases where they are not fulfilling a public educational duty. (Cf. Rakar 2009, p. 324).
72 See also Article 14 of the Concordat that stipulates that the state/local community must support Church schools according to the relevant laws.
73 See articles 21 and 22 of the Law on the Guarantees of Freedom of Conscience and Religion, *Journal of Laws*, 1989, No. 29, item 155.
74 A clearcut example are neo-protestant movements in Central and Eastern Europe (Gog 2011).
75 In non-public schools, corresponding to approximately 10 per cent of the total number of school in Poland, state funding is between 20–40% of school needs and the rest is provided by parents' and sponsors' donations. One third of such schools are run by religious associations. (Cf. Zielinska and Zwierżdżyński 2013). These schools are governed by the Minister of National Education Ordinance on the Conditions and Methods of Organizing Religious Education in Public Schools and Kindergartens.
76 Gog (2011).
77 Rakar (2009, p. 327).
78 Heinen and Portet (2009, p. 3).
79 Concordat between the Holy See and the Republic of Poland, signed on 28 July 1993 and ratified on 23 February 1998.

The equivalent provisions in the 1997 Constitution organizing the constitutional framework concerning the role of religion in public education include the ideological impartiality of the state (Article 25 (2)),[80] the collaborative conception of the relation between state and church (Article 25 (3)), the prohibition of discrimination "for any reason whatsoever" (Artile 32 (2)) and the freedom of religion and conscience (Article 53 (1) and (2)). Particularly with respect to religious education, the Constitution stipulates in Article 53 that:

> "3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions (. . .).
>
> 4. The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby."

Two further laws regulate religion in education matters: the Act of 7 September 1991,[81] on the system of education and the Ordinance of the Minister of National Education of 14 April 1992,[82] on the organization of religious instruction lessons in public pre-schools and schools. According to Article 12 of the Act, in public pre-schools, primary schools, and gymnasiums, religious instruction lessons are introduced in school timetable upon the parents'/guardians' wish, which can be retracted at a later stage. Participation in such classes is therefore optional. The classes must be offered for two hours per week. The Church draws the content of such lessons, including the choice of textbooks. The relevant ordinance allows furthermore for the placing of a cross in the classroom as well as the conducting of prayers before and/or after classes. School supervision bodies can only control the methods of education but cannot exercise overview on the content of instruction.[83] In financial terms, all aspects of religious education courses are covered by the state budget within public schools.[84] Training and pedagogical preparation of religious teachers is laid out in the Concordat[85]: clergymen with a seminary diploma automatically qualify to teach these classes while lay teachers must have theological higher education qualifications to do so.

Other faiths and religious organizations are required to establish similar agreements with the Polish state in order to regulate their relationship with the Polish state.[86] The teaching of minority religions is however marginal in numerical terms. Listed educational institutions must organize lessons of religion. For situations where between two and seven learners express interest in a given school, these children can be placed together in one class for religion lessons.[87]

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[80] Article 25 (2) and (3) of the Constitution declare:

> "2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks of life, and shall ensure their freedom of expression within public life."
>
> "3. The relationship between the State and Churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and common good."
>
> Internal autonomy pursuant to Article 25(3) implies here the right to make their internal law while the state authorities cannot interfere or define the direction of their functioning internally. It also means that the state and religion should be financially independent from each other.

[81] J.L. of 1991 No 95, item 425 as amended.

[82] J.L. of 1992 No.36, item 155 as amended.

[83] Article 12 item 4 of the Concordat (1998).

[84] Zielinska and Zwierżdżyński (2013).

[85] Article 12 item 5 of the Concordat (1998).

[86] See for example Act of 4 July 1991, on the relationship between the State and the Polish Autocephalous Orthodox Church (J.L. of 1991 No. 66) or Act of 13 May 2014, on the relationship between the Evangelical Church of the Augsburg Confession in the Republic of Poland (J.L. of 1994 No. 73). Today, 14 historical religions have such separate acts. The status of other religious organizations is regulated by registration with the Register of Churches and Other Denominations on the basis of the Law Guaranteeing Freedom of Conscience and Belief, passed on 1989 but amended in 1998 (Cf. J.L. 1989, No. 29, item 154).

[87] Paragraph 2 No. 1–2 of the Ordinance of the Minister of National Education (1992). The Ordinance distinguishes between two sets of situations: where there are not enough learners in a group but at least seven in one school (para. 1), and when there are fewer than seven learners in the whole school (para. 2).

Assessment of these classes is also organized by the Church: it establishes its own criteria for evaluation.[88] Since 2007, the final grade in these classes counts towards the general average of the learner.[89] In 2007, under Roman Giertych, a right-wing conservative politician and chairman of the League of Polish Families, who at the time was serving as Education Minister, religious education was made to count for a learner's general average by ministerial order.[90] The arrangement was constitutionally challenged before the Constitutional Tribunal, which in its pronouncement of 2 December 2009, found it compatible with the Constitution.[91]

In parallel, the alternative option to religious education, ethics, has emerged as a "fiction,"[92] due to lack of adequate teaching personnel, which leads to unavailability of the course and a consequent lack of demand. In some cases, school directors opt to employ catechists, when qualified ethics teachers are not available, to teach ethics.[93]

The privileged teaching of the Catholic religion in public schools has thus gradually acquired structural features in the education system rooted both in its organizational elements but as importantly on culturally embedded perceptions in a country where constitutionally speaking religion is deemed separate from the state. Each student must however have the opportunity to study ethics in school as an alternative to religion. In other terms, refusal to organize ethics classes is not legal. The European Court of Human Rights confirmed this by finding in *Grzelak* that it is discriminatory to prevent students from studying ethics, instead of religion.[94]

In practice, the number of children attending ethics classes remains small. There is resistance on the ground to organize ethics or religious education classes for minority religions in the form of passivity, institutional obstacles, or flat rejections.[95] Additionally, there is an overwhelming tendency in schools to direct students automatically to religious education classes. Similarly, in the 2017 Report,[96] the Ombudsman highlighted concerns over the organization of Great Lent spiritual retreats in state schools. In fact, aspects of discrimination and indoctrination are present in a number of educational activities (e.g., presence of religious symbols in classrooms, plaques in cafeteria areas inciting to prayer, etc.).

In more substantial terms, the organization of such classes, even in their optional nature, gives rise to a number of concerns in their daily realization: the will of minors is not always respected, as they are forced in some instances to attend religious education classes by their parents or through peer pressure. Additionally, the minimum number of participants to hold such a class essentially penalizes agnostic learners and those adhering to a minority faith.[97] For learners that do not wish to take neither religion nor ethics courses, there is a gap in their school certificate. This is problematic insofar as it

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[88] These are knowledge, competence, activity, diligence, conscientiousness, and reliability (Cf. General Directory of the Polish Episcopate for Cathechesis in Poland, 20 June 2001).

[89] Paragraph 20 item 4a of the Ordinance of the Minister of National Education of 13 June 2007, J.L. of 2007 No. 130, item 906.

[90] Under Article 12(2) of the Education Act, the government cannot make any changes to religious education absent the agreement of religious organizations.

[91] Judgment of the Polish Constitutional Tribunal of 2 December 2009, U10/07, LEX No.562823.

[92] Joanna Podgórska, "Nietyczna Szkoła" ("Unethical School"), *Polityka*, 24 September 2007. Data from 2014 indicate that ethics classes are provided in 12.5% of public schools of different types in Poland (Zwierżdżyński 2017, p. 145).

[93] Krzysztof Lubczyński, "Nauka religii obowiazkowa?" ["Mandatory Religious Education"], Trybuna, 14 January 2009.

[94] European Court of Human Rights, *Grzelak v. Poland*, Appl. N. 7710/02, decision of 15 June 2010.

[95] See Summary of the Report on the Activity of the Ombudsman in Poland 2015, available at https://www.rpo.gov.pl/sites/default/files/Summary%202015.pdf at 73.

[96] Summary of the Report on the Activity of the Ombudsman in Poland 2017, https://www.rpo.gov.pl/sites/default/files/SUMMARY%20of%20the%20Report%20on%20the%20Acivity%20of%20the%20Ombudsman%20in%20Poland%20in%202017.pdf at 36.

[97] Zielinska and Zwierżdżyński (2013) mention the example of the Orthodox Church and the Evangelical- Augsburg one that are able to meet the requirement only in some parts of the country where the adherents are locally concentrated.

discloses the learner's worldview in unconstitutional terms.[98] As for the use of religious symbols (e.g., cross) and practices (e.g., prayer), there is a degree of ambiguity.

Additionally, the content of religious classes per se has a distinctly catechetical dimension, with the ultimate aim of developing the learner's personal faith in consonance with the official position of the religious organization to which the class corresponds.[99] The pedagogical expectation is for learners to identify and further their faith in the direction suggested. Some elements on various other religions are included in non-denominational education primarily through literature, history, geography, or civic education, through a distinct Christian trajectory.

In general terms, the introduction of religious education in the Polish school curriculum, like in other Central and Eastern European countries, was organized in a hasty manner: pushed under the assumption that the Church should exercise political power, there has been little debate and limited preparation in terms of resources required to support the decision, on both material and personal infrastructure (e.g., content of curricula, teacher training, etc.).[100]

In a social context where findings on religiosity of Polish Roman Catholics show selective acceptance of religious dogmas, especially among the young generation,[101] it is worth inquiring whether learners are increasingly questioning the Church's privileged position in the social and political system. Their opinions seem to suggest that the legitimation of the Polish Catholic Church should be limited to strictly spiritual matters.[102]

The young Polish generation socialized in the post-socialist world, and exposed to the birth, even in Poland, of a pluralist type of religious culture, is shaping in its own terms a modern type of religiosity, almost at odds with religious education in schools. The pluralization of worldviews makes way for the questioning of a "sole and exclusive religious social world."[103] One obvious effect of this process is the de-coupling of religiosity and morality.

It is relatively safe to assume that the practice of religious pluralism is missing from the Polish public education system. Since 2004, when Poland joined the EU, some external pressure has been applied toward the development of more sophisticated multicultural guidelines for teachers, though with limited impact, as corresponding teaching tools and training for educations are not available.[104] Also, the structure of the public education system places significant weight on each school's executive management. It functions with the input of local governments, to which the state has delegated the management of schools and kindergartens. In simpler terms, the headmaster's personal approach to religious difference is crucial in shaping the daily practices regarding religious education in a school.[105]

In such conditions, calls for religious pluralism are still viewed as excessive or exotic. The follow-up of the *Grzelak* case is telling: even though the parents sought and obtained a judgment in their favor from the European Court of Human Rights on the discriminatory effects of how religious education/ethics classes are organized (or not) in public schools, the matter soon disappeared from the

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98 See European Court for Human Rights *Grzelak v. Poland* Appl. N. 7710/02, decision of 15 June 2010. The case concerned a Polish learner that refused to attend religious education classes in primary school, with the full approval of his parents. As no ethics class was available in his school, the place for marks for religion/ethics was left blank in his school certificate and a straight line was inserted allowing the revelation of his confession to whoever read it. The court found a violation of Article 9 ECHR but no violation was found by virtue of the margin of appreciation against Poland for the unavailability of ethics classes.

99 Zajac and Mąkosa (2009, p. 172).

100 Gog (2011).

101 Rafał Boguszewski, Moralność Polaków po dwudziestu latach przemian (Warszawa, CBOS, 2009) at pages 7–9. Seventy-five per cent of young people (18–24) who declare participation in Church at least once per week accept pre-marital sex and 50% divorce as non-negative.

102 See also Herbet and Fras (2009, p. 85).

103 Gog (2011).

104 ACCEPT Report (Buchowski and Chlewińska 2012, p. 35).

105 ACCEPT Report (Buchowski and Chlewińska 2012, p. 36).

public space. At the same time, it is worth remembering that the introduction of religious classes in schools has been periodically legally contested on a number of occasions.[106]

Overall, the practice of the legal framework on religious education paints a problematic picture: there is no genuine choice offered to learners between religious classes and ethics classes, as schools tend to require negative statements from those that do not wish to attend religious classes.[107] Religious classes are taught for two hours per week, while ethics classes may be limited to one hour by headmaster's decision.[108]

The teaching of religion in public schools and the corresponding involvement of the Catholic Church in public education reflect a type of "ritualistic religiosity"[109] that no longer gathers broad social agreement, as it did in the aftermath of the collapse of communism in Poland. Despite that distance, however, one observes limited resistance from parents to the "domination" of the Catholic faith within public schools. Challenging the "obviousness" of Catholic religious education has produced limited space for change, particularly since a growing majority of actors (parents as well as learners) show uninterest, tending to accept the prevailing situation.[110]

6. Towards a Re-Definition of Religious Freedom and Religious Pluralism: The Polish Catholic Church at a Turning Point

The firmly set monopoly of the Catholic Church in public education is the symptom of a broader phenomenon, defying the limits of constitutional and human rights law. Ties between the Catholic Church and the ruling Law and Justice (PiS) party have been growing unmistakably close: the Church's silence in the ongoing constitutional crisis since 2015, related to the judicial reform in Poland, in continuation of past instances of state interaction with the Church on voluntary religious education in schools and the increase in state subsidies for the Church demonstrate such ties.[111] The PiS endorsement in 2016 of a total abortion ban pushed by the Church hierarchy has had similar effects.[112] Other areas of entanglement include in vitro fertilization procedures that under the previous centrist president Bronisław Komorowski were refunded by law, while under the current PiS leadership were declared non-refundable as of June 2016.[113]

The ruling party's dependence on the Church for Catholic voters is also explicit.[114] The political dimensions of this "alliance" are often labeled as "Catholic" and "nationalist" populism that relies on strong anti-elitism combined with (over)-simplicity of political argumentation.[115] They are further strengthened by significant overlap on the declared values of both actors (i.e., the Polish Catholic church and the governing PiS party), including family, tradition, religion represented by the Catholic Church, and a strong state.[116] Predictably, the nationalist turn in Polish politics therefore includes and relies on Catholic discourse.

Post-2015, when the migrant crisis erupted, the ruling party's stance was justifying refusal to accept relocated migrants with arguments based on fear of further "collective subjugation" of the

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106 In 1991, the Constitutional Court dismissed the Ombudsman's complaint on the incompatibility of the regulations introducing religious classes with the Constitution. In 1992, her successor again challenged the Minister of Education's regulation on the conditions and manner of teaching religion in public schools on the basis of the secular character of the state. That challenge was also dismissed by the Constitutional Court. The provisions on religious education in schools were authorized by the Polish Constitution of 2 April 1997 (Dziennik Ustaw, 16 July 1997, No. 78 pos. 483].)

107 ACCEPT Report (Buchowski and Chlewińska 2012, p. 54).

108 ACCEPT Report (Buchowski and Chlewińska 2012, p. 54.)

109 ACCEPT Report (Buchowski and Chlewińska 2012, p. 59).

110 ACCEPT Report (Buchowski and Chlewińska 2012, p. 62).

111 Welle (2017).

112 The statement at the time of Kaczyński on the issue is symptomatic of this process: "In these matters, as a Catholic, I follow declaring the teachings of the bishops," Cienski (2016).

113 Cienski (2016).

114 Sixsmith (2017).

115 Modrzejewski (2017, p. 22).

116 Modrzejewski (2017, p. 23).

Polish nation:[117] national identity and autonomy (against European, politicians, and foreign refugees) is labeled as Catholic and as such finds its place in nationalist politics. Indicatively, in 11 November 2017, upon the celebrations of Poland's Independence Day, parades were organized by the National Radical Camp (ONR) formed under the motto of "bringing together young Poles who are close to such values as God, Honour, Homeland, Family, Traditions and Friendship,"[118] to stress the link between religion and nation.

The nation as a cultural and political semantic category is also an "exclusive" community of Poles as opposed to non-Poles.[119] Within this frame, the Catholic Church's position in the Polish legal and political system appears to be that of a privileged participant thanks also to its political legitimization by the ruling party. Within the Church itself, however, two main factions have clearly emerged: on one side, the conservative part of the episcopate and lower party clergy openly support the PiS, and on the other, Catholic progressive intelligentsia, representing the *open* Church, abstaining from political declarations of support and favouring evangelical ideas of reconciliation and peace.[120]

The drop in Sunday Mass attendance,[121] apart from its sociological dimension, especially when combined with EU sanctions on Poland over the controversial judicial reform programme, has intensified the sharp debate within the Church on the effects of "tolerating and praising nationalism,"[122] while inciting fear and hatred towards migrants and refugees. Part of such critique aims precisely at challenging the troubling closeness between the Catholic Church's bishops with the governing Law and Justice Party since 2015, when the latter accessed power.

The terms of the linkages between nationalism and the Polish Catholic Church are certainly not unique to contemporary Poland and exist in other European contexts. They follow the rhetoric of the prospect of a new *culture war* between Christianity, Islam, and secularism.[123] Presented as a genuine desire to preserve the purity of Christian values, Polish nationalism, in its messianic traditional self-perception, offers the argument of the necessary "crusade for the homeland and against globalism."[124] This "new European nationalism" found in other European countries as well (e.g., in Italy at present) has become a convenient container for identity values that transcend politics and religion.[125] Sparked by the epidemic reaction against Islam, even when faith weighs little on the individual level,[126] national identity in Poland matters the most for voters.[127] This type of "white identity politics" in the Polish case appears to be using Christianity as the identity marker to justify the division between "Us" and "them," claiming at the same time to defend the rights of the majority.

Within this discourse, Catholic religious language, symbols, and rituals are combined to serve secular policies. The ambiguity of the position of the Polish Catholic Church is based on the dilemma of keeping cultural Christians on board, albeit increasingly "unchurched" ones, or challenging right-wing populism with uncertain results.[128]

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117 Adekoya (2018).
118 Sixsmith (2017).
119 Modrzejewski (2017) at page 24 argues that the political discourse of the PiS includes however the possibility of being Polish by "origin" or "choice."
120 Modrzejewski (2017, p. 28).
121 Data suggest a drop of 3.1% in one year, with 36.7% of Poles attending regularly Church. The date was gathered by the Statistics Office of the Catholic Church run by the Pallotine Order of Warsaw. Luxmoore (2018).
122 See for example the article by Father Ludwik Wisniewski in Poland's weekly magazine Tygodnik Powszechny entitled "Oskarzam" ["I accuse"].
123 Cremer (2018).
124 Capurso and Paci (2018).
125 Capurso and Paci (2018).
126 It is interesting to observe that far-right supporters in Europe according to polls are disproportionately a-religious despite intense use of religious themes (Cf. Cremer 2018).
127 Cremer (2018).
128 Cremer (2018).

In that light, the Church as a regulatory actor of the Polish society is not homogeneous in its stance: there is an inherent plurality of views and self-reflection growing.[129] The silence of the hierarchical Church in the face of the present political crisis in Poland has been awkwardly placed at the centre of this debate.[130] The background feeding this plurality in part is sourced from the constitutional crisis within Poland, already mentioned, that culminated in 2017 when the President of Poland, Andrzej Duda, vetoed bills aimed at the reform of the judiciary system. Some of the leaders of the Catholic Church, in particular Cardinal Gadecki, Cardinal Nycz, and Archbishop Polak, faithful to the expectation that the Catholic Church acts as an agent of democratization in the country, applauded the move. The base of the Catholic Church, however, has been actively supporting the ruling party, occasionally encouraging nationalist, conservatist, and anti-liberal expression and intention.[131]

The help of some media in staging the ideological platform of the division between the "true heroic Poles" versus "the false Poles" also explains the distance of Church leadership from the political crisis. Coupled with the rise of the far right in the country, Catholic fundamentalism is gaining space. The sources of discontent explaining this are, similarly to other populist settings in Europe, the uneven distribution of wealth and the perceived threat of non-Christian immigration.[132] The fusion between religious conservatism and Polish nationalism emerges as fertile soil for far-right discourse to flourish.

The issue of refugees highlights a further current trend: Pope Francis' position on the issue is very directly and practically contested by the Law and Justice ruling party. The latter argues for the imminent threat of Islamic terrorism, while manipulating nationalistic sentiments,[133] in order to refuse refugees, reducing Catholicism to a factor of national identity.[134] The extent of this evolution is quite wide to the point that some members of the Catholic elite in Poland are actively critical of Pope Francis' agenda on the toleration of Muslim migrants in Europe.

The imagined Muslim threat, in the case of Poland, actively promoted by the Law and Justice party from 2015 onwards has been translated into escalating xenophobic attitudes.[135] The trend is also connected to the earlier controversy in 2010 on the construction of mosques in Warsaw, which also led to violence in the form of physical and verbal attacks on religious minorities.[136]

Building on Poland's history of martyrdom, a vision of a country entirely surrounded by enemies, a new generation of Polish "patriots" is forged, including through programmes for high school and university students. The Church's uniformly apolitical stance in Polish society and politics seems long lost,[137] although it remains open to further inquiry how Poland's post-Communist secularization can be reconciled with the overwhelming (declared) faith to Catholic Christianity of the population and the trust expressed towards the PiS. In the meantime, the Church is becoming an institution that is the source of division and fragmentation in an intensively polarized society that is under populist attack. One can start wondering whether indeed "in Poland, it is not usually those who stop going to church that lose their true faith in God (. . .) [but] those who still go to Church and even start dominating in their Christian communities."[138]

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[129] The division was again felt on the occasion of the Law and Justice party backed law criminalizing claims about Polish complicity in the Holocaust in January 2018 (Cf. Luxmoore 2018).
[130] Wierzbicki (2018).
[131] The typical example cited is the activitiy of "Radio Maryja" in Toruń and the work of Father Tadeusz Rydzyk (Cf. Wierzbicki 2018).
[132] Charnysh (2017). The 2015 statement of Jaroslaw Kaczynski that immigrants carried "very dangerous diseases long absent from Europe" and would use Christian Churches as "toilets" is widely repeated. (Cf. Charnysh 2017).
[133] No Syrian refugees have been accepted in Polish territory. See (Kuziemski 2016).
[134] Wierzbicki (2018).
[135] Narkowicz (2018, p. 358).
[136] Narkowicz (2018, p. 360).
[137] The connection of the Catholic Church with nationalist groups such as the ONR (National Radical Camp) or the All Polish Youth are cause of much debate. See (Ojewska).
[138] Quote borrowed from Beniuszys (2018).

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References

Adekoya, Remi. 2018. Extreme Nationalism Is as Polish as Pierogi. *Foreign Policy*. November 9. Available online: https://foreignpolicy.com/2018711/09/extreme-nationalism-is-as-polish-as-pierogi/# (accessed on 25 April 2019).

Barker, Eileen. 1998. But who's going to win? National and minority religions in post-communist society'. In *Informationes Theologiae Europae: Internationales ökumenisches Jahrbuch für Theologie, 7. Jahrgang*. Edited by Ulrich Nembach, Heinrich Rusterholz and Paul Zuleher. Frankfurt am Main: Peter Lang, pp. 11–39.

Barker, Eileen. 2002. The Protection of Minority Religions in Eastern Europe. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*. Edited by Peter Danchin and Elizabeth Cole. New York: Columbia University Press, pp. 59–86.

Beniuszys, Piotr. 2018. Strange death of the Catholic Church in Poland. *4LIBERTY.EU*. January 22. Available online: http://4liberty.eu/strange-death-of-the-catholic-church-in-poland (accessed on 25 April 2019).

Bilska-Wodecka, Elźbieta. 2009. Secularization and Sacralization: New polarization of the Polish religious landscape in the context of globalization and European integration. *Acta Universitatis Carolinae, Geographica* 1–2: 3–18.

Buchowski, Michał, and Katarzyna Chlewińska. 2012. Tolerance of Cultural Diversity in Poland and Its Limitation, ACCEPT Pluralism, 2012/34 Country Synthesis Report. Available online: http://cadmus.eui.eu/bitstream/handle/1814/24381/ACCEPT_WP5_2012_34_Country-synthesis-report_Poland.pdf (accessed on 25 April 2019).

Byrnes, Timothy. 2002. The Catholic Church in Post-Communist Europe. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*. Edited by Peter Danchin and Elizabeth Cole. New York: Columbia University Press, pp. 456–76.

Capurso, Federico, and Francesca Paci. 2018. When the Far-Right Teams up with those Critical of Pope Francis. *La Stampa*. September 13. Available online: https://www.lastampa.it/2018/09/13/vaticaninsider/when-the-farright-teams-up-with-those-critical-of-the-pope-SreAjQc4708I0s9rAxc3GO/pagina.html (accessed on 25 April 2019).

Casanova, José. 2009. The Religious Situation in Europe. In *Secularization and the World Religions*. Edited by Hans Joas and Klaus Wiegandt. Liverpool: Liverpool University Press, pp. 206–28.

Charnysh, Volha. 2017. The Rise of Poland's Far Right: How Extremism is Going Mainstream. *Foreign Affairs*. December 18. Available online: https://www.foreignaffairs.com/articles/poland/2017-12-18/rise-polands-far-right (accessed on 25 April 2019).

Cienski, Jan. 2016. Poland's PiS in Bed with Catholic Church, Backs Abortion Ban' POLITICO. Available online: https://www.politico.eu/article/polands-church-state-alliance-to-ban-abortion (accessed on 25 April 2019).

Cremer, Tobias. 2018. Defenders of the Faith: Why right-wing populists are embracing religion. *New Statesman*. May 20. Available online: https://www.newstatesman.com/2018/05/defenders-faith-0 (accessed on 25 April 2019).

Danchin, Peter. 2002. Religion, Religious Minorities and Human Rights: An Introduction. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*. Edited by Peter Danchin and Elizabeth Cole. New York: Columbia University Press, pp. 1–29.

Davie, Grace. 1990. Believing without Belonging: Is this the future of religion in Britain? *Social Compass* 37: 455–69. [CrossRef]

Dziekan, Marek M. 2011. History and Culture of Polish Tatars. In *Muslims in Poland and Eastern Europe: Widening the European Discourse on Islam*. Edited by Katarzyna Górak Sosnowska. Warsawa: University of Warsaw, Faculty of Oriental Studies, p. 29.

Fokas, Effie. 2015. Directions in Religious Pluralism in Europe: Mobilizations in the shadow of European Court of Human Rights Jurisprudence. *Oxford Journal of Law and Religion* 4: 54–74. [CrossRef]

Gog, Sorin. 2011. Religious Education as a counter-secularization strategy in contemporary Romania. *Modernities Revisited, Vienna IWM Junior Fellows Conferences*. Edited by Mahren Behrensen, Lois Lee and Ahmet

Selim Tekelioglu. vol. 29. Available online: http://www.iwm.at/publications/5-junior-visiting-fellows-conferences/vol-xxix/sorin-gog-2/ (accessed on 25 April 2019).

Górak Sosnowska, Katarzyna. 2011. Muslims in Europe: different communities, one discourse? Adding the Central and Eastern European perspective. In *Muslims in Poland and Eastern Europe: Widening the European Discourse on Islam*. Edited by Katarzyna Górak Sosnowska. Warsawa: University of Warsaw, Faculty of Oriental Studies, pp. 12–26.

Hann, Christopher. 2002. The Development of Polish Civil Society and the Experience of the Greek Catholic Minority in Eastern Europe. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*. Edited by Peter Danchin and Elizabeth Cole. New York: Columbia University Press, pp. 437–54.

Heinen, Jacqueline, and Stéphane Portet. 2009. *Religion, Politics and Gender Equality in Poland, Heinrich Böll/UN Research Institute for Social Development*. Final Research Report. Geneva and Berlin: UNRISD.

Herbet, David, and Max Fras. 2009. European Enlargement, Secularizations and Religious Republicization in Central and Eastern Europe. In *Religion, Politics and Law in the European Union*. Edited by Lucian N. Leustean and John T. S. Madeley. Abingdon: Routledge.

Krajewski, Stanislav. 2002. Catholic-Jewish Dialogue in Poland: A Difficult Road to Tolerance. In *Protecting the Human Rights of Religious Minorities in Eastern Europe*. Edited by Peter Danchin and Elizabeth Cole. New York: Columbia University Press, pp. 409–507.

Kuziemski, Maciej. 2016. Poland refuses to accept refugees- but is happy to accept other countries' hospitality. *Quartz*. March 25. Available online: http://qz.com/647663/poland-refuses-to-accept-refugees-but-its-happy-to-accept-other-countries-hospitality (accessed on 25 April 2019).

Kyszczarz, Michał. 2011. Generational changes among young Polish Tatars. In *Muslims in Poland and Eastern Europe: Widening the European Discourse on Islam*. Edited by Katarzyna Górak Sosnowska. Warsawa: University of Warsaw, Faculty of Oriental Studies, pp. 54–68.

Lesniczak, Rafal. 2016. The communicative role of the Catholic Church in Poland in the 2015 presidential election and its perception by the public. *Church, Communication and Culture* 1: 268–85. [CrossRef]

Luxmoore, Jonathan. 2018. Poland's Catholic Church takes on its critics. *National Catholic Reporter*. February 16. Available online: https://www.ncronline.org/print/news/world/polands-catholic-church-takes-its-critics (accessed on 25 April 2019).

Mach, Zdzisław. 2007. The Roman Catholic Church in Poland and the Dynamics of Social Identity in Polish Society. In *The Religious Roots of Contemporary European Identity*. Edited by Lucia Faltin and Melanie J. Wright. London: Continuum Publishing, pp. 117–33.

Markoff, John, and Daniel Regan. 1987. Religion, the state and politics: legitimacy in the world's constitutions. In *Church-State Relations: Tensions and Transitions*. Edited by Thomas Robbins and Roland Robertson. New Brunswick: Transactions Books, pp. 161–82.

Merdjanova, Ina. 2001. Religious Libert, New Religion Movements and Traditional Christian Churches in Eastern Europe. *Religion, State and Society* 29: 265–304. [CrossRef]

Modrzejewski, Arkadiusz. 2017. Catholic and Nationalist Populism in the current Poland. *Perspective Politice-An* 10: 21–31.

Modrzejewski, Arkadiusz. 2018. The Catholic Church and Polish Democracy: The Attempt of Normative Discernment. In *Development, Democracy and Society in the Contemporary World*. Edited by Andrei Taranu. Bologna: Filo Diritto Editore, pp. 249–58.

Narkowicz, Kasia. 2018. Refugees Not Welcome Here: State, Church and Civil Society Responses to the Refugee Crisis in Poland. *The International Journal of Politics, Culture, and Society* 31: 357–73. [CrossRef]

Need, Ariana, and Geoffrey Evans. 2001. Analyzing patterns of religious participation in post- Communist Eastern Europe. *British Journal of Sociology* 2: 229–48.

Ojewska, Natalia. 2018 Catholic Nationalism: The Church of the Far Right in Poland. Available online: https://www.euronews.com/2018/02/08/catholic-nationalism-the-church-of-the-far-right-in-Poland (accessed on 25 April 2019).

Pew Research Center. 2018. Eastern and Western Europeans Differ on Importance of Religion, Views of Minorities and Key Social Issues. Available online: http://www.pewforum.org/2018/10/29/eastern-and-western-europeans-differ-on-importance-of-religion-views-of-minorities-and-key-social-issues/ (accessed on 25 April 2019).

Rakar, Tatjana. 2009. Explaining Differences in the Development of Denominational Schools: The Cases of Slovenia, Hungary and Poland. *Teorija in Praksa Let* 46: 316–43.

Sixsmith, Ben. 2017. How influential is Poland's Catholic Church? *Catholic Herald*. December 14. Available online: https://catholicherald.co.uk/issues/december-15th-2017/how-influential-is-polands-catholic-church (accessed on 25 April 2019).

Stala, Krzysztof. 2012. Open Catholicism vs Theocratic Impulses: The Catholic Church as a source of liberal Democratic Values or a Hegemonic Structure? In *Rethinking the Space of Religion, Authenticity and Belonging*. Edited by Catharina Roudrere, Krzysztof Stala and Trine Stauning Willert. Lund: Nordic Academic Press, pp. 163–89.

Topidi, Kyriaki. 2019. *Law and Religious Diversity in Education: The Right to Difference*. ICLARS Series; Abingdon: Routledge.

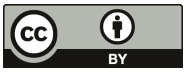
Welle, Deutsche. 2017. How the Catholic Church Ties in to Poland's Judicial Reform. Available online: https://www.dw.com/en/how-the-catholic-church-ties-in-to-polands-judicial-reform/a-39809383 (accessed on 25 April 2019).

Wierzbicki, Alfred Marek. 2018. The Present Condition and role of the Catholic Church in Poland. *La Stampa*. May 3. Available online: https://www.lastampa.it/2018/05/03/vaticaninsider/present-condition-and-role-of-the-catholic-church-in-poland-0M7s1BBrbLjBuVzXxdDkHL/pagina.html (accessed on 25 April 2019).

Zajac, Marian, and Pawel Mąkosa. 2009. Poland: Faithfulness to God and to People: Religious Educatioin in Poland. In *How Teachers in Europe Teach Religion: An International Empirical Study in 16 Countries*. Edited by Hans-Georg Ziebertz and Ulrich Riegel. Berlin: Lit Publishers.

Zielinska, Katarzyna, and Marcin K. Zwierżdżyński. 2013. Religious Education in Poland. In *The Routledge Handbook of Religious Education*. Edited by Derek Davis and Elena Miroshnikova. Abingdon: Routledge, pp. 264–71.

Zwierżdżyński, Marcin K. 2017. The Politics of Religious Education in Poland after 1990. In *Religion, Politics and Values in Poland: Continuity and Change since 1989*. Edited by Sabrina P. Ramet and Irena Borowik. Basingstoke: Palgrave Macmillan, pp. 137–59.



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Article

Church-State Separation and Challenging Issues Concerning Religion

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Abstract: In its declaration of principles, the 1987 Philippine Constitution provides for the separation of Church and State. While the principle honors distinctions between temporal and spiritual functions, both Church and State maintain a unique and cooperative relationship geared towards the common good. However, traditional boundaries governing political and religious agency have been crossed during Duterte's presidency causing a conflict between leaders of government and the Catholic hierarchy. In the process, the conflict has resurfaced issues about the principle of Church-State separation. What accounts for the changing Church-State relations in the Philippines? How will this conflict affect State policy towards religion, religious freedom, and religious education? In the present study we discuss the present context of the Church-State separation principle in the Philippines. We argue that institutional relations between Church and State remain stable despite the Duterte-Catholic Church conflict.

Keywords: religion; religious freedom; separation of Church-State; Philippine church

1. Introduction

Until recently, church-state relations have been generally friendly in the Philippines. Although prominent Catholic leaders and members have been known to participate in historic political upheavals (e.g., People Power 1 in February 1986 and People Power 2 in January 2001) as well as in matters of public policy (e.g., Reproductive Health Law), the State has generally accorded respect for all religious institutions and has allowed religious plurality and diversity. State behavior toward religion and religious institutions is usually seen as the result of the observance of the constitutional principle of separation between church and state, which has been entrenched in the country since the past century.

However, recent altercations between the Philippine president and Catholic Church leaders have apparently blurred traditional secular and religious boundaries. The emergence of Rodrigo Duterte as a national political actor has ushered in a new period in government relations with the Catholic hierarchy. During the presidential campaign, Duterte entertained his audiences with populist jokes, including one where he cursed the Pope for creating a massive traffic jam in Manila during his visit. The controversial and offensive remarks did not endear Duterte to many Church leaders. A few days before election day, the Catholic Bishops Conference of the Philippines (CBCP) issued a pastoral letter encouraging Catholics not to vote for a candidate who is "morally reprehensible" and who has "scant regard for the rights of others and the teachings of the Church" (ABS-CBN News 2016). While waiting for his installation as Philippine president, Duterte began criticizing the Catholic Church for its hypocrisy, corruption, and political meddling (*Manila Standard* 2016, May 23). The incoming Chief Executive argued that because of their political meddling, Catholic leaders have violated the principle of separation of Church and State. The conflict between the presidency and the Catholic establishment had thus begun.

For several reasons, the conflict is unique in the contemporary history of church-state relations in the Philippines. First, previous presidents, whether from the Catholic faith or not, have sought the blessings of the Catholic Church; Duterte did not, signaling the ascendancy of a new secular elite leader in the country. Second, for the first time a Philippine president has publicly cursed the Pope (even as a joke) and has openly challenged and criticized the Catholic Church and its teachings. Third, Catholic leaders have openly and repeatedly criticized the president on key public policy issues, especially his anti-drug war and attendant violations of human rights.

In observing how traditional boundaries governing political and religious agency have been crossed during Duterte's presidency, we ask: How can we account for this shift in Church-State relations? How will this conflict affect religious freedom and religious education?

The present study attempts to address these questions by examining historical, constitutional-legal, and political perspectives pertaining to Church-State relations in the Philippines. It begins with a brief survey of relevant theories on changing church-state relations, leading to a framework that underscores clashing interests and ideologies in order to shed light on the politics of religion. Then, we discuss the issue of "separation", noting constitutional and legal traditions of benevolent neutrality rather than interpretations of strict separation or neutrality. This legal setting nevertheless has not constrained state and religious actors from attacking each other. The article then proceeds with an analysis of clashing interests and ideologies and discuss its implications on the future of Church-State relations and their possible impact on religious freedom and education. Materials used for the study include news reports, relevant journal articles and books, Supreme Court decisions, and data obtained from websites of government agencies and Catholic affiliated organizations.

2. Theoretical Perspectives

A few theories have attempted to analyze changing patterns of church-state relations, or in general the relationship of religion, politics, and democracy. Modernization or secularization theory (Berger 1969; Inkeles and Smith 1976; Norris and Inglehart 2004; Pollack 2015) contends that religion's political role and importance declines through the process of modernization and economic development. Extreme variants of the theory even predict religion's demise. However, religious politics of the late 20th century and the persistence of religiosity and spirituality in many countries disprove the demise of religion argument. As Baring (2018, p. 1) argues, "Instead of losing its place in social life, religion resurfaces in unique articulations each time."

Based on case studies in the Philippines, Canceran (2016) observes the transformation of religion as secularism induced the decline of the authority and tradition of the institutional church represented by the ecclesiastical hierarchy. He argues, " . . . religion is no longer controlled by organized religion but has been democratized through personal agency" (Canceran 2016, p. 128).

While modernization theory gives importance to structural changes in society to explain changing Church-State relations, rational choice theory emphasizes the role of *interests* and human agency, based on assumptions of decisionmakers as self-interested and utility-maximizing individuals. Particularly, Gill (2007, pp. 7–8) prescribes examining "the political and economic interests of politicians (rulers) as well as the institutional interests of religious leaders in the policy-making arena." A "thin" version of the theory is criticized for taking individual preferences as given and for understating the role of ideology in the making of state policies toward religion (Kuru 2009, p. 21).

Philpott (2007) and Kuru (2009) underscore the role of ideational factors (political theology and ideology). Philpott (2007) interest is in explaining the political pursuits of religious actors. He identifies two powerful influences, namely: differentiation (or the degree of autonomy between religious actors and states in their basic authority) and political theology (the set of ideas that religious actors hold about political authority and justice) (Philpott 2007, p. 505). Accordingly, Catholic political action (which led to democratization in countries like Poland and the Philippines) was based on the political theology adopted by the Second Vatican Council. The Council's political theology incorporated

"human rights, religious freedom, democracy, and economic development" into Church teachings (Philpott 2007, p. 510).

Kuru (2009) proposes that two ideologies—assertive and passive secularism—explained variations in secular state policies toward religion. Accordingly, assertive secularism attempts to exclude religion from the public sphere and confine it to the private domain (Kuru 2009, p. 11). He cites the case of France as an example. Passive secularism on the other emphasizes state neutrality toward religion. This is observed in the case of the United States.

In explaining the changing pattern of church-state relations in the Philippines, it is difficult to single out any of the abovementioned theories. All have valid points that can be incorporated into a framework that applies to the local setting. Though criticized for its determinism, the structural approach, such as modernization theory, provides a context for agency action. However, it has been pointed out that modernization theory cannot fully explain political agency since individuals and institutions have different values and preferences.

Rational choice theory tends to remove ideational and non-material factors from the analysis. It also assumes that values and preferences are the same for a particular set of actors such as government leaders and members of the clergy. This assumption does not reflect the reality of differences in values and preferences of members of an institution. However, the theory cannot be easily dismissed since interests are an important variable to changes in public policy and church-state relations. Finally, ideational approaches often find difficulty in establishing causality and the links to political action (Lieberman 2002). Despite conceptual and methodological weaknesses in many works, an approach that recognizes the importance of ideas and ideology cannot be completely ignored; ideas and ideologies do matter in accounting for change.

In this study, we focus on the clash of interests and ideologies within a secularizing environment in order to clarify changing church-state relations in the Philippines. As such, the framework combines elements of structure, interests, and ideas (ideologies) in the analysis of change. The institutional interests of the Catholic Church fused with its theological doctrines guide its political action, which in turn, finds friction with rising secularism and government illiberalism. Changing church-state relations, or more precisely Catholic Church-State relationship, is demonstrated by two recent cases, to wit: the Reproductive Health legislation (Baring 2012) and the current Catholic church conflict with President Duterte.

3. The Secular State and Church-State Separation

The Philippines is a secular state that is friendly to religions. The secular state, according to Kuru (2009, p. 7), is defined by two main characteristics, namely: (1) the absence of institutional religious control of legislative and judicial processes, and (2) constitutionally mandated neutrality toward religions, and non-establishment of an official religion or atheism. Although a majority of the population is Catholic, the country is host to a variety of faiths (Baring 2011) with constitutional guarantees on the freedom of religion and the non-adoption of a State religion. This dispensation differs from other Southeast Asian countries like Burma, Malaysia and Thailand where religion is given a central role in national development (Von der Mehden 1986, p. 145).

The Philippines as a secular state is distinct from the one that prevailed during the Spanish colonial era (1570–1898). During Spanish rule, church and state in the Philippines enjoyed an unparalleled union. "Church influence was so strong, thinking became uniform, unorthodox ideas were condemned, and original scholarship was non-existent" (Aprieto 1981, p. 23). Church-state relations changed with the American occupation of the Philippines (1901–1946). The Americans established secular rule that strictly adhered to religious neutrality and toleration.

The American occupation has produced a strong ideological and institutional legacy for State-Church relations in postcolonial Philippines. Previous colonial laws and post-colonial constitutions had already established the secular tradition based on the first amendment of the United States Constitution. The 1987 Constitution reinforces this tradition to direct Church-State relations in

the Philippines. Article III (The Bill of Rights), Section 5 of the 1987 Constitution provides that "no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights." (The Republic of the Philippines 1987). Religious neutrality is further provided by the constitutional provision that bars the use of public money or property to benefit or support any religious group (Article VI, Section 29).

The Philippine Constitution is more explicit than the American Constitution in its declaration of Church-State separation. In Article II (Declaration of Principles), Section 6, the Constitution states: "The separation of Church and State shall be inviolable." The application of this principle could be readily seen in the Omnibus Election Code, which disallows religious groups from registering as political parties, intervening in village-level elections, raising campaign funds, as well as coercing subordinates to vote for or against any candidate (Pangalangan 2015, p. 566).

The constitution nevertheless specifies religious accommodation in certain State affairs. First, the State allows the assignment of priests, preachers, ministers or dignitaries to "the armed forces, or to any penal institution, or government orphanage or leprosarium" (Article VI, Section 29.2). Second, it provides for tax exemption of religious institutions and their property "used for religious, charitable, or educational purposes" (Article VI, Section 28.3). Third, the State allows without additional cost to the government, optional religious instruction in public elementary and high schools, subject to the expressed written consent of parents and guardians and to the designation of instructors approved by religious authorities of the religion to which the children belonged (Article XIV, Section 3.3).

Jurisprudence further guides governmental actions with respect to the Church. In the United States, from where many Philippine legal doctrines are based, interpretations of Church-State relations vary, from "strictly separationist" (generally a hostile interpretation disallowing interaction in order to protect the State from the Church) and "strictly neutral" (not necessarily hostile but striving for a more secular state) to "benevolently neutral" (to protect the Church from the State). In the Philippines, a landmark ruling by the Supreme Court in 2003/2006 established that jurisprudence on Church-State relations is guided by benevolent neutrality (Estrada vs. Escritor 2003, 2006). In fact, the Supreme Court affirms that the Constitution is inspired and guided by this doctrine: "It is indubitable that benevolent neutrality-accommodation, whether mandatory or permissive, is the spirit, intent and framework underlying the Philippine Constitution" (Estrada vs. Escritor 2006). By benevolent neutrality, "the government must pursue its secular goals and interests but at the same time strives to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests." (Estrada vs. Escritor 2003).

In view of the above-cited constitutional provisions and jurisprudence, it could be said that the principle of Church-State separation in the Philippines does not strictly prevent the Church from engaging the State, and vice-versa. The observance of the principle should not be construed as a prohibition of state actors to act on public policies that might encroach upon certain religious beliefs nor should it be construed as a prohibition on religious organizations to shape public opinion and express their moral positions on executive policy and legislative issues. In this sense, Church-State political engagements are considered part of democratic processes subject to constitutional and legal constraints.

4. Changing Church-State Relations

Cooperative church-state relations have been demonstrated in various instances in the past. For instance, in the crafting of the 1987 constitution, members of the religious hierarchy were included in the constitutional commission, including two Catholic priests, a Catholic nun, a Protestant Minister and a member of the religious group, Opus Dei. In that commission, Joaquin Bernas, a Jesuit priest, prominently advocated for the principle of separation of Church and State (Buckley 2013, p. 204). The Church also engaged in numerous collaborations with the State in areas of political, social,

economic, and human development. Such engagements include housing development projects, charity works for poverty alleviation, and mobilization of parish-based church members for honest and clean elections through the Parish Pastoral Council for Responsible Voting (PPCRV).

Of the various religious organizations in the Philippines, the Roman Catholic Church is among the oldest and most powerful. The Catholic Church wields enormous influence in the country's social and political affairs even if it does not have any formal role in secular governance (Pangalangan 2015, p. 568) nor has its influence been determinative of political and policy outcomes. From a pluralistic purview, the Catholic Church and its allied organizations could be seen as one of many interest groups that could influence public policy. However, it has also been considered as one of the major "extra-electoral strategic groups" during and after the Marcos regime that "can buttress or challenge the power of a president" (Thompson 2018, p.124). Indeed, the Catholic Church had figured prominently in the ousters of the late dictator, Ferdinand Marcos, through People Power 1 in February 1986 and of President Joseph Estrada in January 2001.

Yet by the mid-2000s, the political influence of the Catholic Church had begun to wane (Lagman 2017). Church leadership suffered with the death of Cardinal Jaime Sin in 2015. Sin was the key figure of the Catholic hierarchy instrumental to the rise of the Catholic Church as a strategic group that helped in the ouster of Presidents Marcos and Estrada.

After Cardinal Sin, Catholic political influence was tested by the reproductive health (RH) bill issue. For years since it was proposed in 1998, the Catholic Church had lobbied hard against the bill since the proposed legislation promoted the use of abortifacient contraception, which is contrary to Catholic beliefs about life. In contrast, RH advocates argued that the bill critically addresses many problems associated with poverty and overpopulation. Thus, the bill represented an ideological clash that involved religious doctrine and secular beliefs. Then, political interests came into play unexpectedly in July 2012. In his State of the Nation Address (SONA) in July 2012 (Official Gazette 2012), President Benigno Simeon Aquino III, who was favored by many Church leaders, suddenly pushed for the passage of the bill. During his presidential campaign, Aquino had promised support for the bill on reproductive rights. RH advocates therefore pressured Aquino to act on this promise. After his SONA, the president certified the bill as urgent in Congress.

During congressional deliberations, the Catholic Church came up with an organized national resistance to the proposed bill. RH proponents advanced "pro-choice" legal arguments while the Catholic Church advocated a "pro-life" moral stance (Baring 2012). Catholic leaders believed that they were protecting religious freedom rather than suppressing reproductive rights (Griffin 2015). It must be noted that many non-Catholic religious groups supported the bill. As it is, Catholics were also not united in their stand on the issue. For instance, professors from the Ateneo de Manila University issued a statement favoring the bill despite the University's formal rejection of that bill (Esmaquel 2012).

Mounting public tensions produced an impasse in Congress. In August 2012, House Speaker Feliciano Belmonte, a key Aquino ally and Liberal Party leader, suddenly moved to terminate the debates and prepared the House of Representatives for a vote. The vote stalled for lack of a quorum as Lower House legislators feared a political backlash. It was at this time that executive intervention stepped up. Apparently, without help from the executive branch, the bill would not have passed in Congress. Aquino, his budget secretary, Florencio Abad, and allies at the Liberal Party (LP) in Congress worked hard to persuade other legislators to vote for the bill. Since President Aquino already issued his commitment, it was in his interest as well as his allies' to see that the legislation succeeded. In late November 2012, the CBCP responded by issuing a statement urging Catholics not to vote for candidates who favored the bill (Pangalangan 2015, p. 568). This apparently bore little effect on the decision of many legislators. Eventually, in late December 2012, after much discord, the bill was passed into law.

A case was later filed at the Supreme Court questioning the constitutionality of the law. In Imbong vs. Ochoa (2014), the Supreme Court ruled on the constitutionality of the RH law but struck down certain provisions that violated the constitution's "no-abortion, non-coercion" principle.

In deciding on the case, the court declared, "In conformity with the principle of separation of Church and State, one religious group cannot be allowed to impose its beliefs on the rest of the society. Philippine modem society leaves enough room for diversity and pluralism" (Imbong vs. Ochoa 2014).

The enactment of the RH bill signified a political setback for the Catholic Church. As Canceran (2016, p. 123) argued," In this RH debate, we are witnessing the decline of the power of the ecclesiastical authority and the traditional teachings of the church . . . Society is no longer dominated by the singular authority and tradition of the Church but it has become diversified and fragmented by different forces and spheres competing for legitimacy."

The clash of ideologies and interests is also apparent in the antagonisms surrounding the Duterte-Catholic Church relations. Social justice and respect for life have been at the core of Catholic social doctrine. As such, the conduct of Duterte's anti-drug war, which has resulted in the extrajudicial killings of thousands of suspected drug peddlers and addicts, go against Catholic doctrine. Likewise, recent Church pronouncements regarding the inadmissibility of the death penalty directly opposes the Duterte government's proposal for the return of capital punishment. On the other hand, Duterte's populist ideology focuses on restoring social order (such as fighting drugs and criminality) and addressing other failures of the "liberal reformism" of previous administrations (Thompson 2016). However, violence and illiberalism, and perhaps even his irreverence toward Catholic authority, seem to form part of that populist ideology.

The recourse to forceful methods, to which many Filipinos silently agree given the inefficient criminal justice system (Batalla et al. 2018), is in the president's interests in order to fulfil his promise to deliver on his campaign against drugs, crime, and corruption. Thus, while the Catholic Church and President Duterte share certain common goals for the greater good, their approaches fundamentally differ. Duterte continues to maintain high public approval ratings amidst human rights criticisms from the Catholic establishment, foreign governments, and human rights organizations ((Alto Broadcasting System, Chronicle Broadcasting Network) ABS-CBN News 2019).

Over and above Duterte's verbal attacks and the Church's response, constitutional provisions guaranteeing religious freedom remain in place. The threats remain disturbing but have never altered the constitutional and legal boundaries between church and state. The Catholic Church as well as other religious institutions continue to participate in civil society in shaping public opinion (e.g., PPCRV) and expressing their moral positions in the political realm. However, the war of words may have set a precedent in government interactions with religious authority.

5. Church-State Relations and Religious Education

As earlier mentioned, the State allows optional religious instruction in public schools but subject to the written consent of the child's parent or guardian. Religious Education responds to social demands of lifelong learning through values formation, development of soft skills and conscientization. It is estimated that 87% of basic education students in the Philippines receive instruction from public schools while the private schools serve the remaining 12% (Estrada 2017). Private schools are further classified into two general categories: faith-based and non-denominational basic education schools. Faith-based schools include schools categorized by different religious orientations: Islam, Iglesia ni Kristo, Protestants and Bible Christians, non-Christian sects, Buddhist and Hindu, and Catholic schools. Catholic schools only serve less than 12% of the basic student population.

The Catholic Educational Association of the Philippines (CEAP) identifies ethical religious views and religion for the total development of the human person as the core of the curriculum in basic education programs. With a membership of about 1400 Catholic affiliated schools operating throughout the country, the CEAP declares its commitment as mandated by its by-laws that Catholic education contributes towards social transformation and integral national development (CEAP 2014). Another Catholic organization, the Association of Catholic Universities of the Philippines (ACUP) aims to "contribute to social transformation by helping to seek and discover the root cause of contemporary problems" that impact on human life and relations among others (ACUP Primer, ACUP 1973). As

such, it could be said that Philippine Catholic schools adhere to government policies that favor social and human development. Through character formation and conscientization, Religious Education lays the ground for Catholics to pursue collaboration with a critical mind. Responsible citizenship training (Lee et al. 2017) and soft skills development complement Religious Education's thrust to cultivate social and political awareness among Catholics as an essential dimension of religious commitment.

Since 2016, leaders of the Catholic Church and of Catholic universities have been at the forefront of criticizing the Duterte government's policies and policy proposals, such as anti-drug war and the proposed death penalty bill. Against the backdrop of this conflict with President Duterte, state policy toward religious freedom and religious education has not changed because of the pertinent constitutional guarantees. This has been tested recently when some Duterte supporters broached the idea of removing tax exemptions on Church properties and income, including those of religious educational institutions (Chanco 2016; Kapunan 2018).

At the House of Representatives, then Speaker Pantaleon Alvarez proposed in March 2017 that incomes of schools run by religious institutions be taxed (Cayabyab 2017). Schools run by the religious in the Philippines are non-stock, non-profit corporations that are exempted from taxes. Alvarez argued that the proposal was a government revenue-enhancing measure rather than a retaliation against the Catholic church and religious educational institutions critical of the administration. However, the proposal was met coldly even by government cabinet members and the Bureau of Internal Revenue who admonished him that this would go against the constitution. Facing stiff opposition to the proposal, Alvarez later opined that constitutional restrictions on taxing the Church shall be considered in a new federal constitution that the administration has been pushing (Inquirer.net 2018).

Reacting to Alvarez's tax proposal, Tabora (2018), president of a Catholic University, opined that while the tax proposal will not affect religious freedom, it threatens the sustainability of Catholic and other religious schools in the country. He urged all Catholic schools and supporters to oppose all new taxes on private education, especially Catholic non-profit, non-stock schools. Alvarez was later ousted as House Speaker and was replaced by former Philippine President Gloria Macapagal-Arroyo, a devout Catholic who maintains good relations with many bishops.

In addressing government leaders' "hateful speech" against the Catholic Church, the use of 'counterspeech' has been proposed to neutralize the impact of offensive discourse (Regidor 2017). It further identifies policy enforcement e.g., social media, etc. and education as meaningful antidotes to address hate speech. Such recommendations are consistent with higher education institution's vocation to promote "lifelong learning" (Yang et al. 2015) which includes responsible citizenship as an area of concern. As the conflict could induce fear and pessimism among students, university accompaniment provides students the confidence and fundamentals to express religious commitments without fear (Boys et al. 1995). Secondly, academic institutions can do best through conscientization (Freire 2007) to arouse young learner's imagination to honor the truth and engage with relevant social issues.

Outside the ambit of higher academic institutional involvement are untapped opportunities for families, parishes and basic education schools. A systematic response from these units provide potential resolutions to possible conflicts arising from changing Church-State relations. Actual engagements of Parishes come through educational initiatives to raise political consciousness and social responsibility through grassroots-based Basic Ecclesial Communities (BEC). The social encyclicals of the Church (Massaro 2016) provide comprehensive ideas covering the common good, solidarity, human rights, and dignity among others. Alongside this initiative, basic education schools can focus on processing children's awareness for possible mental stresses brought about by institutional conflicts.

6. Conclusions

Church-State relations in the Philippines have radically changed from its previous order in the Spanish colonial times to the present. From a "union" during the Spanish era, institutional relations are now guided by the principle of separation of Church and State. Common interpretations of this principle have been misguided, to the extent that religious institutions are expected to be absolutely

detached from secular/public affairs. As such, "encroachments" on the political realm have often received accusations of violation of the principle of separation of Church and State. Such reaction draws from a strict separationist view of the principle. Going beyond the mutual respect usually accorded by the two institutions to each other, the recent conflict between the Catholic hierarchy and the Duterte government points to different ways of looking at the principle of separation not typically observed in other contexts.

While the formation of the Philippine secular state could be traced to the American colonial period, Philippine Church-State relations and jurisprudence were markedly different from the American tradition. Anti-clericalism never gained a strong foothold in the Philippines, much more deeply felt in its legal traditions. As the Philippine Supreme Court pointed out in Estrada vs. Escritor (2003), separationist interpretations were part of American jurisprudence on religion clauses but "the wellspring of Philippine jurisprudence on this subject is for the most part, benevolent neutrality which gives room for accommodation".

The present tension between President Duterte and ecclesiastical leaders could be perceived as a test on religion and democracy in the Philippines. Rather than a violation of the principle of separation of Church and State based on strict separationist and raw interpretations, the conflict represents the clash of interests and ideologies in a rapidly secularizing sociopolitical environment. As demonstrated by the two episodes discussed in this study, the institutional interests of the Catholic Church based on its social doctrines have come in conflict with those of the political interests of government leaderships. The latter's political interests in legislative and executive action (i.e., RH law, Duterte's drug war) were conditioned by prior commitments to the broader public, and not to the Catholic hierarchy alone. Moreover, the legislative and executive policies reflected secular and ideological beliefs of the dominant political coalition, however thin they may be, which contradicted Catholic Church beliefs on human life and dignity. The two presidents' conflict with the Catholic Church on these issues have not diminished their popularity and public approval ratings.

However, it could be argued that the clash of interests and ideologies, despite the pain and anguish it might have inflicted on either party, has not produced any significant impact on state policy toward religion. Certainly, there have been threats from some government leaders, such as taxing the church, but such threats are hollow in view of existing constitutional provisions that guarantee and support religion and religious freedom in the country. Religious participation in civil society is an integral part of Philippine democratic processes; church expressions of its moral positions in the public/political sphere is part of the religious freedom guaranteed by the constitution.

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References

ABS-CBN News. 2016. CBCP to Voters: 'Reject Morally Reprehensible Bet'. Available online: https://news.abs-cbn.com/halalan2016/nation/05/01/16/cbcp-to-voters-reject-morally-reprehensible-bet (accessed on 3 February 2019).

ABS-CBN News. 2019. International Groups Press Duterte to End War vs. Human Rights Defenders. Available online: https://news.abs-cbn.com/news/02/28/19/international-groups-press-duterte-to-end-war-vs-human-rights-defenders (accessed on 3 March 2019).

Association of Catholic University of the Philippines (ACUP). 1973. ACUP Primer. Available online: http://www.acup.org.ph/downloads/primer2019.pdf (accessed on 3 March 2019).

Aprieto, Pacifico. 1981. *Book Publishing and Philippine Scholarship*. Manila: Daily Star Publishing Co.

Baring, Rito. 2011. Plurality in Unity: Challenges toward Religious Education in the Philippines. *Religious Education* 106: 459–75.

Baring, Rito. 2012. Challenges to Reproductive Health in the Philippines: Profiling the Attitudinal Sources of Conflict. *Asia-Pacfic E-Journal of Health Social Science* 1: 1–11.

Baring, Rito. 2018. Emerging Transitions in the Meaning of Religious Constructs: The Case of the Philippines. *Religions* 9: 387. [CrossRef]

Batalla, Eric Vincent, Michelle Sta Romana, and Karen Rodrigo. 2018. The judiciary under threat. In *Routledge Handbook on the Contemporary Philippines*. Edited by Mark Thompson and Eric Vincent Batalla. London and New York: Routledge, pp. 130–43.

Berger, Peter L. 1969. *The Sacred Canopy*. New York: Doubleday.

Boys, Mary, Sara Lee, and Dorothy Bass. 1995. Protestant, Catholic Jew: The Transformative Possibilities of Educating cross Religious Borders. *Religious Education* 90: 254–76. [CrossRef]

Buckley, David. 2013. Benevolent Secularism: The Emergence and Evolution of the Religious Politics of Democracy in Ireland, Senegal, and the Philippines. Ph.D. dissertation, Georgetown University, Washington, DC, USA.

Canceran, Delfo. 2016. Interrogating Secularism: The Case of the Filipino Experience. *Journal of Asian Theology* 30: 115–30.

Cayabyab, Marc Jayson. 2017. Alvarez Eyes Taxing Church-Run Schools. *Inquirer.Net*. March 6. Available online: https://newsinfo.inquirer.net/877942/alvarez-eyes-taxing-church-run-schools (accessed on 18 February 2019).

Catholic Educational Association of the Philippines (CEAP). 2014. Available online: https://www.ceap.org.ph/ (accessed on 2 February 2019).

Chanco, Boo. 2016. Will Duterte dare to tax the Church? *Philippine Star*, July 4. Available online: https://www.philstar.com/business/2016/07/04/1599267/will-duterte-dare-tax-church (accessed on 16 February 2019).

Esmaquel, Paterno. 2012. Catholics clash over controversial RH bill. *Rappler.com*. August 4. Available online: https://www.rappler.com/nation/9795-catholics-clash-over-controversial-rh-bill (accessed on 26 February 2019).

Estrada, Joseph Noel. 2017. It Isn't about the Salary, Your Honor! March 14. Available online: http://www.manilatimes.net/isnt-salary-honor/317086/ (accessed on 11 February 2018).

Estrada vs. Escritor. 2003. A.M. No. P-02-1651. August 4. Available online: http://sc.judiciary.gov.ph/jurisprudence/2003/aug2003/am_p_02_1651.htm (accessed on 25 February 2019).

Estrada vs. Escritor. 2006. A.M. No. P-02-1651. June 22. Available online: http://sc.judiciary.gov.ph/jurisprudence/2006/june2006/A.M.%20No.%20P-02-1651.htm (accessed on 25 February 2019).

Freire, Paolo. 2007. *Pedagogy of the Oppressed*. New York: Continuum.

Gill, Anthony. 2007. *The Origins of Religious Liberty*. Cambridge and New York: Cambridge University Press.

Griffin, Leslie C. 2015. The Catholic Bishops vs. the Contraceptive Mandate. *Religions* 6: 1411–32. [CrossRef]

Imbong, James, Lovely-Ann Imbong, Lucia Carlos Imbong, and Bernadette Carlos Imbong vs. Ochoa, Paquito Jr., Florencio Abad, Enrique Ona, Armin Luistro, Manuel Roxas II. et al. 2014. G.R. No. 204819. April 8. Available online: http://sc.judiciary.gov.ph/jurisprudence/2014/april2014/204819.pdf (accessed on 25 February 2019).

Inkeles, Alex, and David Horton Smith. 1976. *Becoming Modern: Individual Change in Six Developing Countries*. Cambridge: Harvard University Press.

Inquirer.net. 2018. Tax Exemptions for Religious Groups May Soon End. *Philippine Daily Inquirer*, April 10. Available online: https://newsinfo.inquirer.net/981279/tax-exemptions-for-religious-groups-may-soon-end-alvarez (accessed on 18 February 2019).

Kapunan, Rod. 2018. Tax All Church Properties. *Manila Times*, June 2. Available online: http://www.manilastandard.net/opinion/columns/backbencher-by-rod-kapunan/267084/tax-all-church-properties.html (accessed on 18 February 2019).

Kuru, Ahmet. 2009. *Secularism and State Policies toward Religion*. Cambridge and New York: Cambridge University Press.

Lagman, Oscar. 2017. Church Lost Its Influence during the Arroyo Presidency. *Inquirer.net*, January 23. Available online: https://opinion.inquirer.net/101048/church-lost-influence-arroyo-presidency. (accessed on 24 February 2019).

Lee, Romeo, Rito Baring, Madelene Sta Maria, and Stephen Reysen. 2017. Attitude towards Technology, Social Media Usage and Grade-Point Average as Predictors of Global Citizenship Identification in Filipino University Students. *International Journal of Psychology* 52: 213–19. [CrossRef] [PubMed]

Lieberman, Robert. 2002. Ideas, Institutions, and Political Order: Explaining Political Change. *The American Political Science Review* 96: 697–712. [CrossRef]

Manila Standard. 2016. Duterte and the Bishops. Editorial. May 23. Available online: http://manilastandard.net/opinion/editorial/206271/duterte-and-the-bishops.html (accessed on 24 February 2019).

Massaro, Thomas. 2016. *Living Justice: Catholic Social Teaching in Action*. London: Rowman & Littlefield.

Norris, Pippa, and Ronald Inglehart. 2004. *Sacred and Secular: Religion and Politics Worldwide*. Cambridge: Cambridge University Press.

Official Gazette. 2012. Benigno S. Aquino III, Third State of the Nation. July 23. Available online: https://www.officialgazette.gov.ph/2012/07/23/benigno-s-aquino-iii-third-state-of-the-nation-address-july-23-2012/ (accessed on 3 March 2019).

Pangalangan, Raul. 2015. National Report for the Philippines. In *Religion and the Secular State: National Reports*. Edited by Javier Martinez Torron and William Cole Durham Jr. Madrid: Universidad Complutense, pp. 559–71.

Philpott, Daniel. 2007. Explaining the Political Ambivalence of Religion. *The American Political Science Review* 101: 505–25. [CrossRef]

Pollack, Detlef. 2015. Varieties of Secularization Theories and their Indispensable Core. *The Germanic Review: Literature, Culture, Theory* 90: 60–79. [CrossRef]

Regidor, Anna. 2017. Digong vs. the Catholic Church. UPdate Diliman. Available online: https://upd.edu.ph/digong-vs-the-catholic-church/ (accessed on 3 March 2019).

Tabora, Joel. 2018. Taxation for Catholic Schools? [Blog Post], April 24. Available online: https://taborasj.wordpress.com/2018/04/24/taxation-for-catholic-schools/ (accessed on 18 February 2019).

The Republic of the Philippines. 1987. The 1987 Constitution of the Philippines. Available online: https://www.officialgazette.gov.ph/constitutions/1987-constitution/ (accessed on 1 February 2019).

Thompson, Mark. 2016. Bloodied Democracy: Duterte and the Death of Liberal Reformism in the Philippines. *Journal of Current Southeast Asian Affairs* 35: 39–68. [CrossRef]

Thompson, Mark. 2018. The Presidency: A Relational Approach. In *Routledge Handbook on the Contemporary Philippines*. Edited by Mark Thompson and Eric Vincent Batalla. London and New York: Routledge, pp. 118–29.

Von der Mehden, Fred R. 1986. *Religion and Modernization in Southeast Asia*. Syracuse: Syracuse University Press.

Yang, Jin, Chripa Schneller, and Stephen Roche, eds. 2015. *The Role of Higher Education in Promoting Lifelong Learning*. Hamburg: UNESCO Institute for Lifelong Learning.

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Article

How Loud Is Too Loud? Competing Rights to Religious Freedom and Property and the Muslim Call to Prayer (Adhan or Azan) in South Africa †

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Abstract: This article approaches the position of the call to prayer (adhan or azan) in South Africa from the perspective of both legislation and case law. Although only an unamplified adhan has religious status in Islam, Muslim religious authorities (ulama) have since the twentieth century also approved of, and permitted, an amplified adhan. The adhan has been rendered in both forms from South African mosques (masjids) for some 223 years. However, the unamplified adhan has recently come under the legal and judicial spotlight when the volume of its rendering by human voice was restricted. In August 2020, after prior attempts at municipal level and mediation had been unsuccessful, a high court in KwaZulu-Natal, South Africa, ruled that the sound of the unamplified adhan emanating from a mosque located on the premises of an Islamic institution (madrassa) in the city of Durban should not be audible within the house situated on nearby property belonging to a Hindu neighbor. Wide media coverage reported that the ruling was publicly decried and met with criticism. The Madrassa lodged an appeal in September 2020 and the matter is ongoing. The High Court's decision is binding in KwaZulu-Natal, a province where Hindus, as a religious minority, are concentrated. The article highlights that although the decision is not binding on similar courts in other provinces, its outcome may yet have far-reaching consequences for the adhan as a religious and cultural heritage symbol, and for religious symbols generally, because similar complaints have been lodged, albeit against amplified adhans, against several mosques located in major cities (Cape Town and Tshwane) of two other provinces where Muslims, as a religious minority, are largely concentrated. The article examines the adhan in the context of competing constitutional rights to religious freedom and property (neighbor law) in South Africa. The article proffers some recommendations for the way forward in South Africa based in some instances on the position of the adhan in several countries. It concludes that, ultimately, unamplified, unduly amplified and duly amplified adhans may all yet be found to constitute a noise nuisance in South Africa, if challenged and found to be unreasonable.

Keywords: Muslim call to prayer (adhan or azan); unamplified; amplified; loudspeakers; mosques (masjids); constitution; freedom of religion; cultural heritage; religious symbol; property rights; neighbor law; noise nuisance; noise pollution; South Africa; Indonesia; India

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1. Introduction

This article approaches the position of the call to prayer (adhan[1] or azan) in South Africa from the perspective of both legislation and case law. Although only an unamplified adhan, vocalized purely by human voice without the aid of a loudspeaker, has religious status in Islam, Muslim religious authorities (ulama) have since the twentieth century also approved of, and permitted, an amplified adhan.

Currently, Muslims constitute the largest of several religious minorities in a predominantly Christian South Africa. During a period of Dutch and British colonization, Muslims

were only formally accorded religious freedom some 150 years after their arrival from Indonesia and India in the mid-seventeenth century. Since then the adhan has been rendered in both unamplified and amplified forms from South African mosques (masjids) for some 223 years. However, the unamplified adhan has recently come under the legal and judicial spotlight.

On 21 August 2020 Judge S B Mngadi, in *Ellaurie v Madrasah Taleemuddeen Islamic Institute and Another*[2] (hereafter, the *Ellaurie* case) ruled that the sound of the unamplified adhan emanating from a mosque located on the premises of Madrasah Taleemuddeen (hereafter, the Madrassa[3]) should not be audible within the house situated on nearby property belonging to Mr. Ellaurie, a Hindu neighbor. In 2003 and 2004 Mr. Ellaurie had lodged similar complaints about the sound of the adhan emanating from the Madrassa's mosque, respectively, with the EThekwini Municipality (which has jurisdiction in the area on such matters) and the South African Human Rights Commission (hereafter, the SAHRC). His complaints then included a second nearby community mosque, the Isipingo Beach Mosque, which renders adhans through amplification. As a consequence of the outcome of the *Ellaurie* case, the Madrassa was ordered to reduce the volume of an unamplified adhan, thus impacting on its religious and associated manifestation and the group rights of its students and staff members. As a consequence of wide media coverage, Mr. Ellaurie was also characterized as an "Islamophobe".

On 4 September 2020, the Madrassa (the first respondent) lodged a notice of application for leave to appeal the High Court's decision " . . . to the Supreme Court of Appeal [SCA], alternatively the Full Court of the KwaZulu-Natal High Court, against the whole of the judgment and order of Mngadi J"[4]. On 26 March 2021, the leave to appeal was not granted by Mngadi J and an appeal to the SCA against that ruling is being considered.[5] In a nutshell, the Madrassa contends that the judgment is flawed as there is a disconnect between the law and the facts of the case. The Judge, in his reasoning and ruling, was criticized by the Madrassa for failing to weigh up and balance the competing human rights interests of the parties pertaining to religious freedom and property (which includes neighbor law), and to apply the common law nuisance principles (which form part of neighbor law) and appropriate case law. The Constitution of the Republic of South Africa, 1996 (hereafter, the final or 1996 Constitution) makes provision for the accommodation of the adhan (and other religious symbols) in a plural South Africa. Although not banned, its manifestation may be restricted if found to be unreasonable. The article examines Mr. Ellaurie's noise nuisance complaint to determine whether it was reasonable and whether or not the legal validity and rationale of the judgment, and therefore its outcome, may be questioned. There is the likelihood that the case may yet proceed all the way to the Constitutional Court (CC) which is the highest (or apex) court in South Africa for constitutional matters, while the SCA, formerly the Appellate Division (AD), is the highest court for criminal and civil cases.

KwaZulu-Natal is one of nine provinces of South Africa where Hindus as a religious minority are concentrated. Although the doctrine of stare decisis[6], which entails that where facts are similar courts are bound by previous decisions, is part of South African law, the decision in one province is not binding in another. The article highlights that the *Ellaurie* case may nevertheless yet have far-reaching consequences for the adhan, and for religious symbols generally, because similar complaints have been lodged, albeit against the use of amplified adhans, against several mosques[7] located in Cape Town, in the Western Cape province, and Tshwane (formerly Pretoria) in the Gauteng province. These are also major cities where Muslims are largely concentrated. Classical Islamic tradition provides little guidance to Muslims as to how to live as minorities.[8] The article, therefore, also explores the possibility of unamplified adhans being allowed unrestricted rendering in areas where Muslims, as a religious minority, are concentrated, and where historical areas and mosques have been accorded protected status as cultural heritage sites. The article proffers some recommendations for the way forward in South Africa based in some instances on the position of the adhan in several countries and the lessons they may hold. It concludes that,

ultimately, unamplified, unduly amplified and duly amplified adhans may all yet be found to constitute a noise nuisance in South Africa, if challenged, and found to be unreasonable.

This article is accordingly divided into seven Sections, including this introduction (Section 1) and the conclusions (Section 7) as follows:

Section 2 (i) briefly examines the religious origin and purpose of the early unamplified and later amplified forms of adhan in order to highlight why they are an integral part of the current practice of Islam. Section 2 (ii) examines the historical origin of both forms of adhan in South Africa and its possible status as a protected cultural heritage symbol. It briefly examines past legal discriminations against Muslims in support of the argument (in Section 4) that, in order to avoid past injustices, religious diversity should be celebrated, protected and tolerated.

In South Africa, religious symbols like the adhan may constitute a "noise nuisance" and may be regulated at national, provincial or municipal levels.[9] The South African Constitution empowers municipalities to both pass and manage their own by-laws. These by-laws have the same legal status as other national and provincial legislation.[10] Although the EThekwini Municipality (second respondent) did not participate in the case, the properties of Mr. Ellaurie and the Madrassa fall under its jurisdiction. Section 3, therefore, briefly examines the complaint lodged by Mr. Ellaurie with the Municipality; the SAHRC mediation process and its reported recommendations; and the facts and outcome of the *Ellaurie* case mainly in so far as they pertain to the mosque belonging to the Madrassa. Although Mr. Ellaurie's complaint in the High Court did not include the Isipingo Beach community mosque, brief reference will be made to this mosque and the recommendations pertaining to it insofar as they may shed further light on the case.

Section 4 deals with municipal complaints received about the rendering of the adhan in Cape Town and Gauteng both before and after the *Ellaurie* case.

Section 5 provides an analysis of competing constitutional rights to religious freedom and property in the context of the *Ellaurie* case in order to determine whether or not its outcome was justified.

Section 6 proffers some recommendations as to the way forward in South Africa (based in some instances on the position of the adhan in several countries) which may assist courts dealing with matters pertaining to the adhan, and includes co-operation between local ulama (Muslim religious authorities) and the municipalities (as representatives of the State).

2. The Adhan as a Religious Symbol and as a Cultural Heritage Symbol in South Africa

This Section highlights that the adhan is a symbol of both religious and cultural significance for Muslims in South Africa.

(i) The adhan as a religious symbol

The adhan is an important practice for the Islamic faith. The origin of the ritual and recitation of the unamplified adhan, by a muezzin (English word derived from the Arabic word "mu'addin") in the Arabic language and in wording that is still in current use, can be traced back to Prophet Muhammad (on whom be peace) and the foundations of Islam in the seventh century. Muhammad wanted to upgrade a then simplified version of the adhan and was inspired by the sounding of the Christian church bell and the Jewish ram's horn (shofar) to introduce the adhan as a dedicated symbol in Islam.[11] The amplified adhan involving loudspeakers is a more recent innovation. Saudi Arabia ("seat of Islam"), followed by Pakistan[12] and Singapore[13], began to use loudspeakers to broadcast the adhan during the 1950s.

The Qur'an (holy book of Islam) revealed to the Prophet Muhammad and his Sunna (received custom or traditions associated with him) are the two primary sources of Islamic legislation.[14] Muhammad's traditions were collected in book form, known as ahadith (singular, hadith), after his death.[15] While there are several Qur'anic verses[16] enjoining believers to pray at "stated times" which may allude to the historical foundation of the

adhan, the Qur'an does not specifically refer to the adhan. According to the Islamic law (Shari'a) established by the jurists of the four main Sunnite (Hanafite, Malikite, Shafi'ite and Hanbalite) schools of Islamic thought (madhahib, singular: madhhab), the adhan is a Sunna (tradition) established by the Prophet through his personal intervention. Although, therefore, not compulsory, the unamplified adhan is a strongly recommended practice, especially given the fact that Muhammad's Sunna is second in status only to that of the Qur'an. When reference to the adhan is made, as it is in several ahadith, it is taken seriously by Muslims because it embodies his Sunna.

The five obligatory daily prayers constitute one (the second) of the five pillars of Islam.[17] These five prayers are thus each preceded by the rendering of an adhan primarily to invite Muslims to perform these prayers and to inform them of the arrival of the time for prayer. The Qur'an[18] dictates the timing of the five prayers to occur in the morning before sunrise (named "fajr" in Arabic); the afternoon (named "thuhr" or "dhuhr" in Arabic); the late afternoon (named "asr" in Arabic); the evening after sunset (named "maghrib" in Arabic); and late at night (named "isha" in Arabic). Factors, such as, location, season and climate, may also play a contributing role. The cycle repeats itself for 365 days of the year and there is no option of occasional occurrences. The adhan for each prayer usually lasts for some three to five minutes.

The wording of the adhan is essentially a summary of Islamic belief. It has been translated into English as follows:

> "Allāh [God] is most great. I testify that there is no god but Allāh. I testify that Muḥammad is the prophet of Allāh. Come to prayer. Come to salvation [success]. Allāh is most great. There is no god but Allāh."[19]

The adhan begins with an affirmation of the supremacy of God, followed by a profession of faith (consisting of the unity of God, the negation of polytheism, and the confirmation that Muhammad is his Messenger). The actual call to prayer ("come to prayer") only comes after these phrases. Each line is repeated for emphasis.

Singled out for the first (fajr) call to prayer is the additional line: "prayer is better than sleep".

During the COVID-19 lockdown period, muezzins in South Africa were allowed to physically render amplified adhans from mosques. In doing so, they simply replaced the line of the adhan "come to prayer", with the line "pray at home".

(ii) The adhan as a cultural heritage symbol

When 1994 (27 years ago) finally marked the end of apartheid (politically motivated racial segregation) in South Africa, the footprint of Islam had already been firmly rooted in the South African soil for over three and a half centuries. Although a minority group, the history of South African Muslims is inextricably intertwined with South Africa's history of colonialism (the Dutch followed by the British), apartheid, and constitutional democracy. Muslims first arrived as slaves and political exiles on the shores of Cape Town in the mid-17th century, when the Dutch brought them to the Cape from their colonies in the Indonesian Archipelago and India.[20] A far cry from section 15 of the final South African Constitution, which guarantees Muslims (and other religious minorities) the right to freedom of religion and belief, in 1657 the Dutch introduced a set of laws (the Statutes of India or Code of Batavia (present-day Jakarta) drafted by then Batavian governor Van Diemen in 1642)) which prohibited the public practice of Islam.[21] As a consequence, Muslims were forced to practice their religion in private and no public congregations were allowed.

Muslims were only formally granted religious freedom by the Dutch authorities in 1804, 150 years after their arrival.[22] However, its practical implementation was still being hampered during a period of British rule and Muslims still required permission to build mosques. As explained below, the ritual adhan calling Muslims to prayer, preferably in mosques, is a long-standing practice that formally started in Cape Town in 1798, and is a tradition that continues to the present day in other provinces like KwaZulu-Natal (where

Muslims arrived in the nineteenth century and where the first mosque, the Juma Masjid (also known as the Grey Street Mosque), was built in 1884[23])) and Gauteng (where the first mosque, the Jumah Mosque (also known as the Kerk Street Mosque) was built in Johannesburg in 1888[24])) and where Muslims also reside in large numbers.

Muslims constitute a minority in a predominantly Christian South Africa. The current (2020) mid-year population of South Africa is 59.6 million.[25] Based on the 2015 statistics, Christians were estimated to constitute 86% of the total population. While Jews were estimated to only constitute 0.2%, Muslims were estimated to constitute 1.9% (or roughly 1 million) of the total population making them the largest religious minority group at the time.[26] The majority of South African Muslims are Sunni and mostly followers of the Hanafi and Shafi'i schools of law. The figures indicate that there are currently more Hindus (3.3%) than Muslims (2.2%) in KwaZulu-Natal and that the largest number of Muslims are located in the Western Cape (5.3%), followed by Gauteng (2.4%) and then KwaZulu-Natal (2.2%).[27]

There are some 194 mosques in the Western Cape, followed by 78 in KwaZulu-Natal and 19 in Gauteng.[28]

The first, though not the oldest, mosque in Cape Town to install a loudspeaker was the Zeenatul Islam Mosque (also known as the Muir Street Mosque) in 1966. This was followed by other mosques in the area and, lastly, by mosques in the Bo-Kaap.[29] The Bo-Kaap achieved heritage status in 2019, along with a prayer quarry and six (of eleven) mosques in the area[30]. It is argued that the amplified adhan in these and surrounding areas must also be viewed in its historical context. During apartheid the then government of South Africa had promulgated the Group Areas Act No.41 of 1950 specifically to assign racial groups to different residential areas. While Muslims, in a pre-Group Areas Act and pre-apartheid era, lived in multi-religious and religiously tolerant communities in areas like District Six, for example, today loudspeakers are used in remnants of these communities (some families have recently repatriated back to the District Six area after a restitution process).

In terms of the historical context, the first weekly Friday congregational prayer (jumu'a) was read in a disused stone quarry in Chiappini Street in Cape Town in 1793.[31] The Qur'an (62:9) highlights that the jumu'a prayer is preceded by an adhan. This implies that the first unamplified adhan was rendered from this site already prior to 1804 when religious freedom was formally granted. The Auwal Mosque[32] in the Bo-Kaap, the first mosque established in the Cape in 1798 and the oldest mosque in South Africa, was also the first mosque to conduct public prayers. Religious freedom was permitted from 1804. Hence its establishment "came at a crucial period in the history of the Cape Muslim community"[33] and remains symbolic of the recognition of Islam and of the freedom of slaves to worship. Since its establishment, the call to prayer has been rendered for 223 years in South Africa. Thereafter, the proliferation of mosques spread throughout the country.

Since Bo-Kaap and six of its mosques now have protected heritage status, some of its residents are also arguing that the adhan must be part of the city's "living heritage".[34] I contend that the National Heritage Resources Act No.25 of 1999, given the support for cultural heritage in its provisions, may be a further potential instrument in terms of which the ritual rendering of the adhan can be protected. I briefly explore the possibility of "living heritage" in Section 4, and whether the constitutional right to culture could be invoked in support of such an argument in Section 5.

3. Mr. Ellaurie's Complaints to the Ethekwini Municipality, the SAHRC and the High Court in Clarifying Context

It becomes evident from the SAHRC Report[35], the facts of the case[36] and Mr. Ellaurie's Founding Affidavit[37] (in support of his application), that the conflict with the sounding of the adhan, which started when the complaint was first lodged in 2003 with the EThekwini Municipality, was long-standing. After a meeting with the Municipality and interested parties held on 15 December 2003 led to an inconclusive outcome, Mr. Ellaurie reported the matter to the SAHRC on 28 July 2004. As is evident from its report, the SAHRC duly conducted mediation on 1 March 2005[38] and made several recommendations[39] as far as

both the Isipingo Beach Mosque and the Madrassa and its mosque were concerned. Mr. Ellaurie decided to remove himself from the process and opted not to sign the report. Given that these were merely recommendations that do not have the same binding and legal effect as a court interdict, Mr. Ellaurie was well within his rights to bring the same complaint to a different forum (the High Court) for further redress and relief. In 2020, some 16 years after the SAHRC mediation process was concluded in 2004, Mr. Ellaurie decided to approach the High Court. The passage of time between the SAHRC and High Court processes is an indication that Mr. Ellaurie's grievances remained unresolved and ongoing.

The complaint to the SAHRC was directed at the adhans emanating from two mosques. First, there is the Isipingo Beach Mosque administered by the Isipingo Beach Muslim Association. This is a larger mosque utilized by the community in the area. As confirmed in the case,[40] it is a separate mosque from that belonging to the Madrassa. According to Mr. Ellaurie it is situated some 200 metres[41] from his property. Secondly, there is the mosque belonging to the Madrassa itself which is located nearer to Mr. Ellaurie's home. The Madrassa is situated some 20 m (literally two doors away) from Mr. Ellaurie's property, with another dwelling between the two properties.[42] While the case simply refers to the Madrassa as an "Islamic institution" or as a "school for Islamic religious studies"[43], on its website[44] the Madrassa Taleemuddeen refers to itself as a "university". As such its vast property consisting of three (numbers 703–705) lots or plots, includes a mosque and "a teaching institution for Islamic religious studies with about 340 students . . . and accommodation for staff and students".[45] The Madrassa's mosque, therefore, serves the needs of its program and of its staff and students, some of whom reside on the property. This would also explain why the Madrassa does not broadcast the adhan through radio or television (as indicated in Para. 15 of the judgment).

This article is primarily concerned with the Madrassa, because Mr. Ellaurie (the applicant) sought an order interdicting only the Madrassa (first respondent) "from emanating calls to Prayer [adhans] that can be heard beyond the boundaries of its property in Isipingo Beach".[46] The Court granted the interdict and ordered the Madrassa "to ensure that Calls to Prayer made from its property, to wit, Lots 703, 704 and 705 lsipingo Beach, are not audible within the buildings in the applicant's property at . . . , lsipingo Beach, Durban".[47] This confirms that the adhan, whether emanating from the Madrassa or its mosque, must not be audible within Mr. Ellaurie's house (dwelling) only and excludes the areas outside of it. Ironically, it is the Isipingo Beach Mosque that utilizes an "external sound amplifier system"[48] whilst the Madrassa's mosque, although it also has such a system, does not utilize it. It is evident in the SAHRC's reported recommendations (which are repeated in the judgment) that the Madrassa's mosque was advised not to use it and from the judgment itself (Para. 15) that it did not intend to do so in the future. The recommendation reads:

"That the siren attached to Madrasah Taleemudeem [which we understand is meant to assist with its operation] to remain [in] its location within the building. That whilst the amplifier system at the [community] mosque being operated by the lsipingo Beach Muslim Association is operational, the Madrasah Teleemudem would not use its facilities to call people to prayer through the sound [a]mplifier outside the mosque."[49]

It appears that the representative of the Madrassa at the time of the mediation (Moulana M.I Patel) " . . . found the recommendation reasonable and supported it".[50]

As recorded in the SAHRC reported recommendations, the mediators then were a commissioner from the SAHRC and a commissioner from the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (hereafter, the CRL Rights Commission).[51]

According to the facts of the case[52], the introduction in his Heads of Argument[53] and his Founding Affidavit[54], Mr. Ellaurie currently resides in Isipingo Beach in a property obtained by his family over fifty years ago and that he now owns.

Isipingo, a formerly white area, was declared an Indian area in 1960 in terms of the Group Areas Act.[55] According to the facts of the case Mr. Ellaurie's family moved to lsipingo Beach in 1966 whilst the Madrassa only acquired its property, some 33 years later,

in 1999.[56] Given that there would be churches but not any mosques in that formerly white area, mosques would therefore have to be constructed by the Muslim community to serve their needs. Both mosques were, therefore, only built in the Isipingo Beach area after Mr. Ellaurie's family moved there: the Madrassa's mosque in 1999 or 2000 (now some 21 years old) and the Isipingo Beach Mosque in 1970 (now some 51 years old), four years after his family moved in.

The Madrassa's mosque had only been in operation for some three years at the time Mr. Ellaurie first lodged complaints with the Municipality against both mosques in 2003, while the community Isipingo mosque had already been in operation for some 33 years. Mr. Ellaurie, having lived in the area, therefore had to have been aware of the adhan and its sounding.

Although it is not clear from the SAHRC Report and the *Ellaurie* case whether or not the Isipingo Beach Mosque may at that stage have been "formally" in compliance with municipal regulations, Mr. Ellaurie chose to target only the Madrassa (even though its adhan was unamplified). However, if Mr. Ellaurie had included the Isipingo Beach Mosque, and its amplified adhan was found not to be compliant with the noise regulations of the applicable by-laws, it would certainly have made for a stronger legal case and more credible precedent.

The current religious leader at the Madrassa, Mufti E. Muhamad, who did not participate in the mediation process, provided the author with further clarity as follows. He confirmed in a personal communication (see Muhamad 2020) that the five daily, but unamplified, adhans are rendered from the mosque on the Madrassa's premises. He explained that the adhan is rendered from an area which, although it still forms part of the mosque, is located one step outside of the building where the shoes of the worshippers or mosque attendees (musallis) are kept. While the adhans are all unamplified, and usually rendered in a moderate tone, this cannot always be controlled. Given the nature of the operations of the Madrassa, where courses[57] are offered to students of mixed race on both a full-time and part-time basis and include the training to become imams of mosques and ulama (religious leaders), rather than dedicated persons who render the adhan (muezzins), different persons (mostly students), whose voices may differ in volume, render the adhans and this may sometimes result in an increase in their volume. Mr. Ellaurie[58] subsequently also provided the author with further clarity about his views and the outcome of the case. Mr. Ellaurie's Heads of Argument includes a video clip[59] of an unamplified adhan rendered from the Madrassa which Mr. Ellaurie had taken from his property after sunset. While the reader is able to view the video and make his or her own assessment, the author, having listened to it, contends that its volume would certainly appear to sound magnified (almost amplified) to someone living in such close proximity to the Madrassa as Mr. Ellaurie did. In the background one can also hear a second adhan being rendered (probably from the Isipingo Beach Mosque) which reinforces the argument (in Section 5 (iii)(d) and Section 6) of clashing of sounds when adhans are not synchronized.

Mr. Ellaurie conducted his own defence[60] and the presiding Judge made it clear that Mr. Ellaurie was acting on his own behalf and not in the public interest.[61] Mr. Ellaurie contended that the Madrassa has turned "a [once] diverse, peaceful residential suburb" into "a Muslim enclave".[62]

Mr. Ellaurie sought "an order, firstly, interdicting the [Madrassa] from emanating Calls to Prayer that can be heard beyond the boundaries of its property in lsipingo Beach. Secondly, that the [Madrassa] ceases its operations in the area, and its property in the area be sold to the State or to a non-Muslim entity".[63]

The Judge ordered that the Madrassa's volume be toned down and denied the order for the Madrassa to be shut down.[64] Since Mr. Ellaurie's request for the "banning of the Madrasah from the area"[65] was not entertained, the focus of this article is on the first order.

The Municipality (second respondent) was represented in the SAHRC mediation process but did not participate in the *Ellaurie* case. The eThekwini Municipality "Nuisances and Behavior in Public Places By-law, 2015"[66] was published on 11 September 2015 and is

up to date as at 7 August 2020. Section 8 (1) of the by-law prohibits an unauthorized noise that impairs the convenience or peace of any person as follows:

> "No person may in a public place cause or permit to be caused any disturbance or impairment of the convenience or peace of any person by shouting, screaming or making any other loud or persistent noise or sound, including amplified noise or sound, except where such noise or sound is emanating from—(a) an authorised public meeting, gathering, congregation or event" (emphasis added).

The by-law therefore clearly includes within its ambit both unamplified and amplified adhans. In fact, a public law expert points out that "[e]ven a noise that has strictly speaking passed the scientific test required for a noise disturbance might still be considered a noise nuisance if found to be unreasonable".[67] Mr. Ellaurie provided video evidence to highlight the effect of the noise nuisance on him. However, "[t]he Municipality did not participate in the litigation".[68] The volume of the adhan ("noise nuisance") was, therefore, not established to be in contravention of the municipal noise control regulations.

4. Municipal Complaints Directed against the Adhan in Cape Town and Gauteng Prior to and Since the *Ellaurie* Case

In December 2018, several complaints by a single individual were lodged against the adhan emanating from a mosque (Masjidus Saligeen) located in Strandfontein, a coastal settlement within the jurisdiction of the City of Cape Town Municipality. It is reported in the media that:

> "Following meetings with the City and the [Cape-based Muslim Judicial Council] MJC [founded in 1945], it was agreed that the athaan would not be silenced. The entire saga upset Muslims and Christian residents, with thousands signing a petition to apply pressure on the city council."[69]

A few months later, in May 2020, and a few months before the outcome of the *Ellaurie* case in August 2020, the rendering of the adhan at the Zeenatul Islam Mosque in District Six also became a contentious issue after a single complaint was lodged with the City of Cape Town by a person living in a nearby flat.[70] While the City was obliged, in terms of its municipal noise by-laws, to investigate the complaint,[71] the City had, as a consequence, apparently gone a step further and "publicly announc[ed] it would amend its noise by-law to exempt religious activity".[72]

According to a statement released by the Office of the Secretary General of the MJC[73], the MJC had participated in a meeting called by the City of Cape Town on 30 April 2020 after concerns were raised of an alleged intent by the City of Cape Town to amend its existing "Streets, Public Places and the Prevention of Noise Nuisances By-law, 2007"[74], notably section 3 dealing with "noise nuisance", which the MJC (and the Muslim community) understood would negatively impact the sounding of the five daily adhans.

Section 3 provides as follows: "No person shall in a public place—(a) cause or permit to be caused a disturbance by shouting, screaming or making any other loud or persistent noise or sound, including amplified noise or sound; or (b) permit noise from a private residence or business to be audible in a public place, except for the purposes of loud-speaker announcements for public meetings or due to the actions of street entertainers" (emphasis added).

The City representatives acknowledged that the by-law was in the process of being updated and apparently assured the MJC that its (singular) proposed change to the by-law was unrelated to places of worship, and therefore, would not have an impact on the adhan. The City did, however, indicate that the rest of the by-law

> "will be subjected to further review later [in 2020] or early [in 2021], which will allow for additional amendments, which could also apply to the exemption of places of worship from the current noise nuisance provisions".

The above by-law was opened for public comment in May, 2020. Although many comments were received, no amendments have as yet been approved.[75]

The Cape Town by-laws were deemed "insensitive" and are currently under review. In 1966, some 54 years ago, the then apartheid government declared District Six a "whites only" area in terms of the Group Areas Act No.41 of 1950. As a consequence, many Muslim families were among the thousands of residents who were slowly, but forcibly, removed from District Six to other more remote areas over a period of some ten years.[76] Muslims had no option but to relocate from areas where they had painstakingly raised private funding for, and established, mosques which as endowed ("waqf" in Arabic) property, were fortunately not demolished. They had to start the process from scratch in the areas to which they were subsequently relocated. One such mosque located in District Six is the Zeenatul Islam Mosque in Muir Street established in 1920 by early Muslim settlers from India. This mosque was 100 years old in 2020. Given its age, a cogent case could be made also for it to be declared a heritage site. However, according to a trustee of the mosque, the Muir Street mosque has not applied for such status.[77] There is an ongoing call for the area to be declared a national heritage site.

A third general complaint is highlighted in a Public Announcement dated 22 August 2020, where the Imam of the Nural Huda mosque in the Bo-Kaap (est. 1958 and declared a heritage site since 2019), alerted the community that on 21 August 2020 (the same day that the judgment in the *Ellaurie* case was delivered) a complaint had been lodged against the adhan emanating from the mosque and was being investigated. This was the second such complaint directed at this mosque. It is reported that the complainant (like Mr. Ellaurie) had "found the noise disturbing"[78]. A fourth general complaint (although the third in Bo-Kaap) pertaining to a different mosque in the area (deemed to be the Jamia Masjid (est.1850 and a heritage site since 2019) was also lodged around the same time. Unlike Mr. Ellaurie, the complainants (assuming there was more than one) against the adhan in the Bo-Kaap have not been identified, nor were official notices (summonses) or fines issued. The City of Cape Town law enforcement officers simply paid the respective mosques a formal visit to inform the imams of the complaints against the sounding of the adhan. The three complaints were apparently the first such complaints in the history of the Bo-Kaap and were received in quick succession (within a period of two months).

Falling back on a traditional defence, the Imam indicates that the Nural Huda Mosque in Bo-Kaap was " ... the first mosque [in that area] to have sounded the Athaan over a speaker more than 50 years ago. Those making these complaints expect us to discontinue something we have been doing for many years ... "[79]

It has also been reported that residents believe that "people's lack of knowledge about Bo-Kaap's long history of mosque practices" has led to these complaints being unfairly lodged, and that "[t]hey should know when they buy properties here that the Athaan is part of the package, with all our other customs and practices".[80] The chairperson of the Bo-Kaap Civic and Ratepayers Association was of the opinion that it needed to be ascertained whether the complaint was due to "intolerance" or "ignorance" since their investigation found that " ... people moving into the area hear the athaan and claim ignorance that they didn't know. People are using this to settle personal scores as we see with the Isipingo case ... "[81] However, this argument may not exempt mosques from complying with nuisance by-laws as the reverse case scenario can also apply.

It appears that the adhan, even if religious activity is to be exempted from the ambit of the City of Cape Town's municipal noise and nuisance by-laws, will not exempted from being deemed a noise nuisance in terms of the City's by-laws because people already lived there or because people moved into the area subsequently.

If mosques, whether located in residential or business areas, adhere to noise nuisance by-laws, neighbors would not feel compelled to lodge municipal complaints or to move from areas in which they have lived for years (in some cases even before mosques were built). By the same token, while consideration is given to location, businesses or people working there, new or foreign home buyers or businesses should not be deterred from moving into an area simply because of the existence of mosques. However, when persons

opt to live in such areas, or to establish businesses there, it would be considered reasonable to expect them to tolerate some noise from religious symbols, and regardless of their nature.

The City's executive director for safety and security in another report indicated that although the adhan complaint was "a very technical matter", it did lend itself to "an amicable solution". Further, that "enforcing the city's bylaws was a balancing act between the rights to practi[s]e religion and the rights of residents. "If it is proved that the decibel reading is higher than what is permissible in that area, environmental health staff will contact both parties to find an amicable solution. Sometimes the volume needs to be turned down slightly or the speaker needs to be turned in a different direction. The City's view is that the rights of both parties must be respected".[82]

In approaching the various mosques with complaints, the City of Cape Town was relying on a by-law that is in the process of being amended. Although the complaints against the Bo-Kaap mosques were unprecedented, it can be inferred from the above views expressed by the City's executive director that it is highly unlikely that any proposed amendments to the by-law will exempt the unlawful rendering of an amplified adhan from its ambit. It is contended that the adhan, although of religious origin, is nonetheless only a Sunna (tradition) and even if it is to be considered part of a "living" or "lived" heritage, as is now being called for, it would not be able to enjoy complete legal immunity regardless of whether its sounding is amplified or unamplified. Although Muslims may still appear to be concentrated[83] in certain parts of the Bo-Kaap, it is not an exclusively Muslim area. The Bo-Kaap is a mixed area where Muslims and Christians live side by side.

It might, however, be cogently argued that it might be an appropriate historical heritage in that the adhan is disseminated by human voice from mosques in areas where Muslims form a majority (as in certain parts of the Bo-Kaap), as it serves the majority. The role of the size of a community (minority or majority) and its impact on the adhan is further explored in the criterion of reasonableness under Section 5 (iii)(b).

On 28 August 2020, barely a week after the outcome of the *Ellaurie* case, City of Tshwane authorities in the capital city, Pretoria, (in Gauteng Province), following several complaints received from residents, ordered the Raslouw Jamaat Khana, a mosque located in Centurion, Pretoria, to reduce the volume of its broadcasting of the adhan through loudspeakers.[84]

The mosque was served with a notice and ordered by the City of Tshwane's health department to also reduce, with immediate effect, the volume of the sounding of its call to prayer, failing which legal action would be taken.[85] The notice detailed that the mosque should not "operate, play or allow to be operated or played a radio, television set, drum musical instrument, sound amplifier, loudspeaker system, or a similar device producing, reproducing or amplifying sound so as to cause a noise nuisance".[86]

As is also evident from the notice, it appears that the City of Tshwane has developed a unique, "first of its kind in … South Africa", Noise Management System[87] based on its Noise Management Policy[88]. This system (and its procedures—starting with an investigation as a first step and legal action resorted to only as a last measure) provides a good model for other municipalities on how to efficiently handle noise nuisance complaints emanating from religious symbols like the adhan. In three of the four general complaints recounted above, reference is made to media reporting of community responses. In Section 5 (iii)(b) it will be highlighted that, although community opinion is an important determinant in the criterion of reasonableness, such comment may not necessarily be representative of general/predominant community views.

Legal and practical issues of sounding the adhan in a diverse, Muslim-minority context need not be controversial. In some cities of the USA allowances are being made for amplified adhans to be broadcast to the outside. In an example of what in 2004 was construed to be an exception to the national norm for Muslim minorities in the USA, a city council effectively granted a religious exemption from the city's noise ordinances.[89]

In The Netherlands, although amplified adhans have been legally authorised since the 1980s, municipalities are able to restrict unreasonable use of amplification.[90] Ironically, it

appears that after initially being banned by Dutch colonisers, support for formal recognition of amplified (and by implication unamplified) adhans in the City of Cape Town can be found in the current and unique Dutch example.

5. An Analysis of Competing Constitutional Rights to Religious Freedom and Property in the Context of the *Ellaurie* Case

The South African Constitution (1996) is the supreme law in South Africa. Since apartheid only ended in 1994, the main aim of the Constitution is to avoid the injustices of the past. The Preamble to the Constitution, although it has little legal value, encourages the South African people to be "united" in their "diversity". Section 15 (1) (freedom of religion, belief and opinion) of the Constitution guarantees the right to freedom of religion to all South Africans and provides as follows: "Everyone has the right to freedom of conscience, religion, thought, belief and opinion." Although section 15 is narrowly constructed and makes no formal reference to manifestation, the apex court has interpreted the right to religious freedom to include the right to manifest and practice such beliefs. However, the fundamental rights protected in its Bill of Rights, including freedom of religion, are not absolute and may be limited in terms of section 36 (1) of the Constitution to promote the public interest or to protect other human rights like property (section 25), for example. Section 36 (1) (limitation clause) contains specific criteria according to which a limitation must be justified.[91] Although section 36 (1) uses the phrase "reasonable and justifiable" rather than the terms "balancing" or "proportionality"[92], the Judge, in his reasoning and ruling in the *Ellaurie* case, was criticized by the Madrassa for failing to weigh up and balance competing rights to religious freedom and property (which includes neighbor law and noise nuisance) and case law pertaining thereto. To test whether this criticism is justified, and whether therefore the Madrassa's appeal may yet meet with success, this section provides an analysis of freedom of religion and property clauses in the Constitution and the common law pertaining to neighbors (noise nuisance) and case law pertaining thereto in the context of the *Ellaurie* case. Section 39 (2)[93] (interpretation clause) of the final Constitution encourages us to strive for the achievement of an effective and meaningful development of the common law. This implies an engagement with nuisance law (private law) within the ambit of human rights law (public law). As such, it is divided into three Sub-sections, with some overlap because property law straddles private and public law, as follows: (i) freedom of religion and its manifestation and limitation; (ii) the right to property (neighbor law and noise nuisance); and (iii) the criterion of reasonableness and its four main principles:

(i) Freedom of religion and its manifestation and limitation

The adhan as a religious symbol is an expression of the manifestation of religion. Section 31 (cultural, religious and linguistic communities) deals with the protection of minority rights. Section 15, read together with section 31, guarantees the right of a person belonging to a religious community to enjoy and practice his or her religion with other members of that community. Although the right to religious freedom is always guaranteed and protected, its manifestation may be limited under section 36 if it conflicts with other rights, such as, property (section 25), privacy (section 14), expression (section 16) and environment (section 24), for example, which are also protected. However, even if restricted, some sort of balance has to be sought between the conflicting rights. I contend that since such a balancing of rights did not occur in the *Ellaurie* case, that therefore, the Madrassa was not treated equally or fairly (section 9). Section 9 (3) provides:

> "The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including . . . religion, conscience, belief, culture [and] language . . . ."

The Judge gave little, if any, consideration to the rights of the students and staff who were exercising their right to religious freedom and the manifestation thereof through the adhan (a ritual and religious symbol) rendered from the mosque on the property of the

Madrassa and, moreover, failed to conduct a limitation analysis according to the criteria identified in section 36 and interpretive guidelines provided in international law.

I provide the following, often overlapping, further explanation and analysis in support of my contentions.

The Bill of Rights of both the interim[94] (section 14) and final (section 15) Constitutions contain provisions relating to freedom of religion. However, the interim Constitution did not contain the equivalent of section 31 (1) of the final Constitution. There are Constitutional Court cases in South Africa dealing with both the interim and final Constitutions confirming that "manifestation" is included within the ambit of freedom of religion. In *Lawrence*[95], the first case dealing with the right to religious freedom heard by the Constitutional Court (though in the context of section 14 of the interim Constitution which was then still in force), the court (per Chaskalson P) adopted the Supreme Court of Canada's[96] definition of freedom of religion:

> "The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination."

In a separate judgment O' Regan J argued (at Para. 128) that in her view,

> "the requirements of the Constitution require . . . that the legislature refrain from favouring one religion over others. Fairness and even-handedness in relation to diverse religions is a necessary component of freedom of religion."

While the interpretations of section 14 of the interim Constitution remain relevant to section 15, based on the values of the final Constitution of equality, freedom and human dignity, and as confirmed in several subsequent court cases referred to in this Sub-section (*Pillay*, *Prince* etc.), all religions, beliefs and ideologies are seen as equal in terms of, and protected under, section 15. This implies that the adhan, as a religious symbol, ought not to be subject to different treatment simply because its oral (declamatory) nature may be different from the aural nature of, for example, Christian, Jewish and Hindu religious symbols.

The foundation of a range of individual human rights contained in the Constitution were sourced from international human rights instruments. In 1998 (after the *Lawrence* case) South Africa ratified the International Covenant on Civil and Political Rights (ICCPR) of 1966.[97] In terms of section 39 (1)(b) (interpretation clause) and sections 231 to 233 (providing for international law) of the Constitution, courts are obliged to apply the provisions of the ICCPR. The Judge in the *Ellaurie* case (Para. 11), although relying only on the earlier *Lawrence* case, correctly interprets the freedom of religion clause of the Constitution to include the manifestation thereof. However, the Judge appears to contradict himself by stating in Para. 16 that while section 15 (1) of the Constitution guarantees everyone the right to religious freedom, " . . . it *does not guarantee practice or manifestations of religion*. The *Call to Prayer, is a manifestation of the Islam* religion, it is not Islam itself" (emphasis added). Unfortunately, in so doing, the Judge also confuses the integral role of the adhan in Islam and fails to draw a distinction between the status of the unamplified and amplified adhan in Islam.

Although more relevant, but not referred to in the *Ellaurie* case, the *Christian Education*[98] case is a later Constitutional Court case which can be cited in support of section 15 of the final Constitution being interpreted as including the manifestation of religion. Moreover, the *Christian* case included the right to freedom of religion under sections 15 (1) and 31 (1)(a) of the final Constitution. At Para. 18, Sachs J expresses his approval of the Canadian Supreme Court's definition as quoted by Chaskalson P in the *Lawrence* case above: "I cannot offer a better definition than this of the main attributes of freedom of religion." The *Prince* case[99] is another such later Constitutional Court case which deals with manifestation of religion:

> "This Court has on two occasions [*Lawrence* and *Christian* cases] considered the contents of the right to freedom of religion . . . On each occasion, it has accepted

> that the right to freedom of religion at least comprehends . . . (c) the right to manifest such beliefs by worship and practice, teaching and dissemination . . . Seen in this context, sections 15 (1) and 31 (1)(a) complement one another . . . In the context of religion [section 31 (1)(a)] emphasizes the protection to be given to members of communities united by religion to practi[s]e their religion". Although the Judge in the *Ellaurie*[100] case does refer to the *Prince* case, unfortunately it is in the context of doctrinal entanglement (detailed below) and not manifestation of religion.

Articles 18 (1) and (3) of the ICCPR, respectively, go further than section 15 (which does not formally include manifestation) and include both the manifestation ("to manifest his religion or belief in worship, observance, practice and teaching") and limitation ("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") of religious freedom.

The "Siracusa Principles"[101] is an international guideline published by the UN Commission on Human Rights on how these grounds of limitation should be interpreted in the ICCPR. It makes allowances for States to limit and derogate from certain rights contained in the ICCPR, provides specific conditions on the limitation of rights and contains several general interpretative principles about limitation clauses. For example, it requires States to ensure that a limitation is "prescribed by law", must "pursue a legitimate aim" and is necessary "in a democratic society".

Section 36 (1) of the Constitution (limitation of rights) provides and lists certain criteria as follows:

> "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including—(a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose."

In terms of both the ICCPR and South African constitutional case law, freedom of religion includes the manifestation thereof. The Madrassa (also described in the case as a "school for Islamic religious studies"[102]) by rendering of the adhan (religious symbol) was giving effect to a manifestation of religious freedom. The adhan is accommodated in a plural South Africa and not banned. Although Judge Mgnadi did not refer to the *Pillay* case in which the Constitutional Court[103] stated that if a practice is integral and important for a person or religion it should be respected, he does nonetheless acknowledge the adhan as a manifestation of Islam.

Article 18 (2) of the ICCPR provides that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". Although always protected, religious freedom per se is not absolute and parts of it can be limited. While the forum externum—external manifestation—can be limited under Article 18 (3), the forum internum cannot be limited and is absolute. The manifestation of religious freedom may be limited in terms of the specific criteria detailed in section 36 above. Mr. Ellaurie, in his Founding Affidavit (Para. 81) called upon the court to apply the limitation clause "to stop the Call to Prayer from mosques into the surrounding neighborhood". In doing so, he was seeking to limit the Madrassa's manifestation of its religion and not its religious freedom to do so. In order to answer the question as to whether the adhan (manifestation of faith) can be limited in the instances of the *Ellaurie* case, the limitation clause (section 36) gives rise to a two-stage enquiry. In *Director of Public Prosecutions, Transvaal*[104], the Constitutional Court, in the judgment of Ngcobo J, described this two-pronged inquiry as follows:

> "The question of whether a right in the Bill of Rights has been violated generally involves a two-pronged enquiry. The first enquiry is whether the invalidated

> provision limits a right in the Bill of Rights. If the provision limits a right in the Bill of Rights, this right must be clearly identified. The second enquiry is whether the limitation is reasonable and justifiable (under section 36 1) of the Constitution . . . Courts considering the constitutionality of a statutory provision should therefore adhere to this approach to constitutional adjudication."

Both stages, thus, "themselves encompass a number of enquiries."[105] It needs to be ascertained whether the limitation was "prescribed by law" and "necessary". The Constitution affords municipal by-laws the same legal status as other national and provincial legislation. Although the Madrassa's adhan was unamplified, the municipal by-law in question included unamplified adhans within its ambit. However, the Madrassa was ordered to tone down the volume of its adhan without it being established that its sounding contravened the by-law. The order may therefore have been unnecessarily drastic especially since the Madrassa gave the assurance that it would not use amplification and since other "less restrictive" measures (to be detailed in Section 6) could have been considered which would also have resulted in a reduction in volume.

A brief engagement with the UN Human Rights Committee's General Comment 22[106], highlights that there may yet be scope in the limitation clause of the ICCPR to justify a limitation or reduction of the sound levels of adhans. Renteln[107] explains that since the exceptions in Article 18 (3) effectively imply a reduction in the scope of the right to religious freedom,

> "[t]o provide direction, the Human Rights Committee issued General Comment 22 giving an interpretation of Article 18. It interprets practice as covering a 'broad range of acts'; [including] . . . 'the right to build places of worship'. Furthermore . . . that the restrictions may not be applied in a discriminatory manner. Although there is no reference to religious sounds per se . . . With regard to the call to prayer, regulation may be justifiable if it is deemed incompatible with public morals or public health. Some might argue that the frequency of the calls deserves consideration . . . evidence regarding the health effects of the call to prayer is non-existent or inconclusive; it is hard to separate the noise levels it produces from general measures of community noise. Yet there are, most assuredly, adverse physical and psychological consequences for those who find the sounds objectionable. Should there be a determination that the decibel level regularly exceeds internationally agreed-upon standards . . . then that might provide a basis for limiting the call to prayer . . . In international law, *the limitations clause might provide a rationale for a limitation on sound level.* There is some basis for religious exemptions in the international jurisprudence. *Whether states would make exception in the case of nuisance or noise pollution for the loud sounds of religious minorities remains to be determined"* (emphasis added).

In the first motion of his Founding Affidavit, Mr. Ellaurie calls for the cessation of the Madrassa's broadcasting of the adhan "with or without amplification". Although the basis of his High Court case was the actual volume of the adhan, it appears that his main motivation may have been the silencing (not reducing the volume) of the adhan, whether amplified or not. I, therefore, contend that Mr. Ellaurie, given the implications that the wording of the adhan, as both a summation and declaration of the principal tenets of the Islamic faith, may hold for his Hindu faith, may also have found its wording offensive.

Mr. Ellaurie has indicated in his Founding Affidavit that the 16-year period between the mediation process and his approaching the courts had afforded him the opportunity to study Islam. I quote the following extracts contained in it on Islam and on the adhan in which he states that:

> "*It . . . allow[ed] him the opportunity to study the Muslim religion and what he found was deeply troubling* . . . In [his] opinion . . . there is only one God, the creator of the universe . . . [but that he] . . . is firmly of the opinion that Muhammad was not a Messenger of God *and therefore finds objectionable the following line from the*

> *Muslim Call to Prayer that is broadcast from mosques*: 'I bear witness that the Prophet of the Muslim religion is the Messenger of God'. Allowing a continuation of the Call to Prayer means that our country is giving the nod to racism and bigotry" (emphasis added).[108]

According to the Judge (Para. 17) "[u]nfortunately, the applicant *finds the Call to Prayer* particularly *offensive due to his views towards Islam*" (emphasis added).

This is a clear indication that he was offended by some of the wording of the adhan in addition to its sounding. The wording of the first part of the adhan as a manifestation of one (first of several) of the articles of faith in Islam, namely, belief in the existence of one God, would not have been problematic to Mr. Ellaurie because he was also of the opinion that "there is only one God". However, he did have a problem with the second part of the adhan pertaining to the Prophet Muhammad (which forms part of the basic statement of the Islamic faith). It can, therefore, be argued that the implied meaning of the Islamic confession of faith, and therefore the adhan, could be offensive for non-Muslims like Mr. Ellaurie.

In Schirrmacher's opinion[109], "the muezzin, in making a verbal confession of faith, compels other people to participate in the exercise of another religion five times a day. As a result, this . . . touches upon the concept of negative religious freedom". Given the uniqueness of the adhan and the difference between it and other religious symbols, his is a view that I am inclined to agree with. One can therefore argue that the adhan should not only be examined at the level of noise disturbance but also whether it could infringe upon negative religious freedom by the incessant confessional statement imposed on involuntary and coerced listeners like Mr. Ellaurie.

Although I refer below to an Indian High Court case (*Moulana Mufti Syed*) which deemed that it could, Renteln[110] effectively rationalizes away a possible argument that the wording of the adhan may be restricted on the basis of section 16 (Freedom of expression) of the South African Constitution:

> "One might consider the possibility that the adhan is a question of religious speech. If laws regulate it on the basis of its content, this would clearly constitute an impingement on freedom of speech. However, mandating a lower decibel limit might well be acceptable under time, place, and manner restrictions."

The adhan is rendered and freely expressed in the Arabic language. Given that prayer is an integral part of their faith, most local Muslims may be able to interpret and understand the meaning of the wording of the adhan. However, while many are taught to read and recite their prayers in Arabic, most do not understand Arabic per se. Nonetheless, although Arabic is not one of the eleven official languages of South Africa, it can be inferred that section 30 (language and culture) of the Constitution, read with sections 9 and 31, both permit and protect the use of Arabic as a language, and that section 16 (freedom of expression) guarantees religious speech.

The judgment contains a lengthy Paragraph [4] where the Judge describes what could be construed as Mr. Ellaurie's derogatory view of Islam (including being a religion that promotes "cultural racism"). A few lines of this paragraph, containing the gist thereof, are quoted:

> "The applicant is Hindu and . . . unashamedly opposed to the Islamic faith, which is propagated by the Madrasah. The applicant regards Islam as a false religion that discriminates against non-Muslims as non-believers . . . The applicant holds the view that Islam promotes cultural racism."

The Constitution does not guarantee South Africans the right not to have their religious beliefs or practices questioned or criticized. Regardless of any discomfort it may have caused for the Madrassa, the guarantee contained in section 15 (1) (freedom of religion) afforded Mr. Ellaurie the constitutional right to form, hold and express the opinions he did. However, it appears that he may have gone too far in doing so. In *Minister of Home Affairs v Fourie*[111], another important case not referred to in the *Ellaurie* case, the Constitutional

Court affirmed that "the rights of . . . minority faiths must be fully respected". What is, therefore, problematic, is that the Judge did not ask for the striking out of statements against Islam nor did the judgment include the Madrassa's response countering them.[112] As a consequence of media reporting of community responses following the outcome of the case, the stigmatizing label "Islamophobe"[113] was imposed on Mr. Ellaurie. This was an assertion which he denied and disputed and therefore also challenged with the Press Council. However, Mr. Ellaurie technically lost this case.[114]

Although further along in Paragraph [4] the Judge includes Mr. Ellaurie's averment that Islam as a religion falls outside the protective ambit of the South African Constitution,[115] the Judge does rectify that it does. The Judge also highlights the SCA case (*De Lange*) which states that courts may not interfere or question doctrinal practices of religions ("doctrine of entanglement"):

> "A court should only become involved in a dispute of this kind where it is strictly necessary for it to do so. Even then it should refrain from determining doctrinal issues in order to avoid entanglement."[116]

The mixed racial profile of the Madrassa refutes the view that "Islam promotes cultural racism". As far as the adhan is concerned, the very first person tasked with rendering the adhan in Islam was a black man (Bilal ibn Rabah) accorded this role on merit (his resonant and melodious voice). To date, the person who renders the adhan (muezzin) in a mosque in Cape Town, where Islam was also first established, is still referred to as "bilal" in his honor.

The Judge correctly asserts that Courts have a disinclination to get involved with doctrinal matters. The Judge also quotes Ngcobo J, who delivered the minority judgment in the Constitutional Court case of *Prince*[117], in support of such disinclination:

> "Human beings may freely believe in what they cannot prove. Yet that their beliefs are bizarre, illogical or irrational to others, or are incapable of scientific proof, does not detract from the fact that these are religious beliefs for the purposes of enjoying the protection guaranteed by the right to freedom of religion. The believers should not be put to the proof of their beliefs or faith."

He highlights that courts would need to be guided by expert evidence to deal with matters of doctrinal interpretation and that since there are other mosques in the area, it would be futile to only ban the Madrassa.[118] The Judge (in Para. 11) provides clear reasoning for his position by saying that Islam is protected by the Constitution. However, the question was not whether Islam is protected under section 15, but whether a very specific manifestation of the faith (the adhan) can be limited in the very specific instances of the *Ellaurie* case. Para. 11 is the only instance in the case where the Judge refers to the limitation clause: "There is no law of general application envisaged in s 36 of the Constitution, which outlaws Islam." Unfortunately, Judge Mgnadi did not conduct a limitation analysis and therefore it was not ascertained whether the High Court's limitation of the Madrassa's manifestation (through the adhan) of the right to religious freedom was justifiable.

South Africa can heed and take lessons from the Supreme Court (apex court and the court of final appeal) cases dealing with amplified adhans in India (a Muslim minority State) and Indonesia (a Muslim majority State), whence local Muslims originated. In both countries, the human rendering of the adhan is unrestricted.

In India, the unamplified adhan thus far seems to have attracted little challenge because of the acceptance by the courts of the integral role it plays in Islam and the lives of Muslims living there. The use of loudspeakers is permitted in both countries, although its unauthorised use may be restricted by measures in place to restrict its volume. Several High Court and Supreme Court[119] cases in India dealt with noise pollution justified on the basis of religion. The Indian Supreme Court (in *Church of God*) has ruled that the adhan rendered by human voice is protected by Article 25 (freedom of religion clause) of the Indian Constitution (1949). However, it can be inferred from some of the cases, that, like South Africa, the rights contained in Article 25 are not absolute and may be subject to

restrictions (limitations) imposed by other provisions in the Constitution. Since Islam does not prescribe voice amplification, it can also be inferred from the Supreme Court judgment that when voice amplification is used, it must comply with rules regulating noise pollution. The outcome of this decision, is therefore, that all religions in India must comply with this ruling. It is interesting to note that, in comparison, in the USA[120] and the Netherlands[121] the use of electronic devices such as megaphones and loudspeakers also fall under constitutional protection.

Meiliana is a recent controversial Indonesian case involving the volume of the adhan as a noise nuisance in the context of freedom of religion which proceeded all the way to the Supreme Court. The objection by Ms Meiliana, a Chinese (Buddhist)–Indonesian woman, to the noise nuisance caused by the loudspeakers was perceived as questioning the "azan" as a religious symbol. As a consequence, she was charged in the District Court with religious blasphemy because of her "hostility" towards Islam. The High Court upheld the District Court's decision and her appeal to the precedent-setting Supreme Court (which upheld the High Court's decision) was rejected.[122] It appears from the final outcome of the *Meiliana* case, that the Indonesian courts, in failing to take into consideration the distinction between the status of amplified and unamplified adhans in Islam, may inadvertently be sending out a message that it does not matter whether amplified adhans may be deemed loud by non-Muslims, let alone Muslims (even if they are in the majority). In both India and Indonesia objections to the silencing of amplified adhans often gave rise to communal tension and riots. However, loudspeakers on churches and mosques can mediate religious violence as was the case closer to home in Jos, Nigeria[123], and in response to which citizens developed "techniques of inattention". Although these examples hold lessons for averting such possible violence locally, ultimately, the sounding of the adhan should not be deterred by agendas of nationalism.

(ii) The right to property (neighbor law and noise nuisance)[124]

This Sub-section will examine the outcome of the *Ellaurie* case in the context of property law and the nuisance laws that form part of neighbor law. It appears that Judge Mngadi, while elaborating on Mr. Ellaurie's right to both the use and undisturbed enjoyment of his private property[125], failed to analyze the extent to which South African law guaranteed Mr. Ellaurie such right.

An important function of property law in South Africa is to manage and harmonize competing interests of property owners. As such, it does not bestow on property owners "absolute and unlimited entitlements" and "various limitations exist in the interest of the community and for the benefit of other people".[126] Pope and Du Plessis[127] highlight that "overarching criteria of reasonableness and fairness govern neighbor relations in property law . . . To determine nuisance in each case, an objective reasonableness test is applied. The enquiry is whether the conduct complained of is to be tolerated."

A valid question is whether the unamplified adhan was found to be unreasonable in terms of such a test and therefore to constitute a noise nuisance warranting an interdict? Pope and Du Plessis[128] explain that although the personality of the applicant (Mr. Ellaurie) may be relevant, reasonableness applies to the activity complained of (in this case the unamplified adhan), rather than to whether or not the neighbor (in this case the Madrassa) was being reasonable, since it is the former that is the "test for delictual liability".[129] South African law permits the regulation of objectionable sounds or "noise" if they cause a disturbance. Was the noise, therefore, objectively measured (in decibels) with the use of technical instruments and found to be unacceptable in terms of the by-law of the Ethekwini Municipality? Or was it ascertained to be unacceptable based purely on Mr. Ellaurie's subjective evaluation (and possibly his video evidence)? Was there any attempt to weigh up and strike a balance between the noise (of the Madrassa's adhan) and the peace and quiet (not "silence") (sought by Mr. Ellaurie) to justify lowering its volume?

It appears that the Judge in the *Ellaurie* case, when he decided that the Madrassa must reduce the volume of the sound of its unamplified adhans, basically not only ignored the Madrassa's right to practice religion, but also ignored neighbor law and relevant case law

when he conferred on Mr. Ellaurie the right to undisturbed enjoyment of his property, and therefore set a "poor precedent". The Judge failed to follow precedent and as a consequence also set a bad precedent.

The dispute in the *Ellaurie* case is not an uncommon one in South African neighbor law. There are many examples of neighbor law disputes in reported cases, including precedent setting cases. For example, the Western Cape case, *Garden Cities Incorporated Association Not For Gain v Northpine Islamic Society* 1999 (2) SA 268 (C), although not binding in KwaZulu-Natal, related directly to the adhan yet was not referred to in the *Ellaurie* case. In *Garden Cities*, the applicant, as a result of complaints received from surrounding residents, successfully sought an interdict against the noise nuisance caused by the respondent's loud sounding of an electronically amplified adhan. The applicant, however, had no objection to an unamplified adhan being rendered by a human voice. The applicant had sold a property designated for religious purposes to the respondent to be used to build a mosque. The written agreement contained clauses which specifically prohibited the respondent from utilising sound amplifying equipment (which included a loudspeaker) and that the adhan would be signalled by using a light on top of the minaret of the mosque which would be switched on at the appropriate times of prayer.[130] Judge Conradie noted in his judgment in *Garden Cities* that "[a]lthough there was evidence that it had become a widespread practice for calls to prayer to be electronically amplified, there was nothing to suggest that such amplification had become a precept of the Islamic religion after centuries of calls to prayer without sound equipment".[131] In his comment on the case, Van der Schyff[132] highlights that although the agreement may have constituted a limitation (in terms of section 36) on the right to religious freedom, it was reasonable because " . . . the religious practice was not forbidden but merely a particular form of its expression. The amplification of the call to prayer had thus not been an essential element of Islam".

In the *Ellaurie* case, the noise nuisance (unamplified adhan) was not found to be unreasonable and therefore the interdict granted in favor of Mr. Ellaurie may not have been justifiable. Furthermore, the Court granted the interdict on the ground of alleged infringement of Mr. Ellaurie's property rights without giving due consideration of how the Madrassa's right to freedom of religion and manifestation thereof (which includes the rendering of the adhan) may limit his property rights. South African neighbor law expects that neighbors (even if they are related as was the case with the Gien brothers detailed below) living in urban areas would endure occasional, reasonable noise nuisances that give rise to disturbances of the peace. For example, when neighbors or their teenagers host occasional parties with loud music and courteously inform each other of the event and possible parking congestion. However, when this becomes a regular activity and neighbors have been approached to no avail it would not be unreasonable to ask law enforcement officers to intervene in terms of the applicable by-law, and to resort to the courts only as a last resort to seek an interdict to stop such events from recurring.

In *Gien v Gien* 1979 (T)[133], a case that can be described as "nuisance in the narrow sense"[134], two brothers were neighbors. The one brother was granted an interdict in terms of which his brother was prohibited from using an apparatus meant to ward off baboons from his property. The loud noise made by the apparatus was a disturbance (nuisance) and found to be unreasonable. The criterion of reasonableness is examined in the next Sub-section with some overlap between the four principles.

(iii) The criterion of reasonableness in neighbor law and the four principles[135] taken into consideration in its application.

I contend that if the criterion of reasonableness and its principles were applied to the *Ellaurie* case, the interdict may not necessarily have been denied:

> "(a) The nuisance must usually be repetitive or continuous, since a single action of short duration must be tolerated, except if there is a reasonable expectation that the activity will be repeated."

Do the five daily adhans fall within this category?

The Judge, although he indicates that he did not do so "lightly", granted an interdict in favor of Mr. Ellaurie on the legal basis that he had established that the adhan "interferes with his private space".[136]

> "[T]he Call to Prayer by the Madrasah is made five times a day. A person standing outside, in the premises of the Madrasah makes the first call at 03h30 in the morning. [T]he Call to Prayer *is a foreign sound, which invades his private space. It bears down over to him. It deprives him of the enjoyment of his property* and interrupts his peace and quiet. It further disrupts his sleep, listening to music and meditation."[137]

Mr. Ellaurie's assertion that the adhan is a "foreign sound" may be discounted by the fact that the Isipingo Beach Mosque was established in the area some four years after his family moved in. He also indicated to me that he found the sound to be "foreign to South Africa". Although Dutch colonization inadvertently imported it into South Africa along with Muslims, it has been rendered here for some 223 years and can therefore hardly be considered to still be foreign. It is also possible that it might refer to its intrusive nature (from the outside into the privacy of the property) rather than solely to the foreignness of the Arabic language.

Mr. Ellaurie's complaint about the timing of the early dawn prayer is not unjustified (especially since it is the only adhan confirming that prayer is better than sleep). The timing of the first (dawn) prayer may be deemed unreasonable. Mr. Ellaurie may reasonably be aggrieved by the fact that the first (of five) daily adhans is recited very early in the morning (prior to sunrise) while he may still be asleep, and the fact that all five (amplified, 200 meters away, and unamplified, 20 meters away) adhans are sounded within close proximity to his home. In fact, Mr. Ellaurie estimated the annual number of adhans as follows: "five times a day, hundred and fifty times a month, and over eighteen hundred times a year".[138] One prayer (the fifth and last) takes places at night after the fourth (sunset) prayer.

Although each adhan only last for a few minutes, the fact of a nuisance and its repetition, rather than its duration, is at issue when determining noise nuisance in South Africa.

In applying the criterion of reasonableness, the AD in the case of *Prinsloo v Shaw* 1938 (A)[139] held that "the holding of noisy religious exercises several times per day, which were usually accompanied by the clapping of hands and the stamping of feet, was prohibited by an interdict".[140]

In the *Prinsloo* case[141], the applicant was the owner of a house in a residential area. The respondent, his neighbor, was a leader of a religious organization who also used his premises to conduct religious services. The distance between their properties was some 21 meters. Services were held on the neighbor's property three times a day, on three days of the week. On the remaining four days of the week there was another service. The Judge in the *Ellaurie* case unfortunately did not consider the *Prinsloo* case.

> "(b) Only annoying actions which would be unreasonable in the opinion of the community can be seen as an unusual activity."

This Section will highlight that, when it comes to establishing whether noise amounts to nuisance, the role of community "opinion" is an important determinant in the criterion of reasonableness. However, there is no reference to empirical research about community responses to noise nuisance in the *Ellaurie* case.

Wide media coverage (not included in this article due to space constraints) highlighted that the "community" had expressed support for the adhan being rendered from the Madrassa. Several Muslim religious (ulama) bodies expressed their objections to the *Ellaurie* judgment and to the lowering (misconstrued as silencing) of the volume of the adhan. These included the Sunni Jamiatul Ulama South Africa (SJUSA) (Durban, South Africa)[142], the Jamiatul Ulama KwaZulu-Natal (JUKZN)[143], and the MJC in the Western Cape[144]. However, comment by particular groups and institutions, or on any kind of media, is, or may not, necessarily be representative of general/predominant community views

and is therefore also not a measure of the correctness or incorrectness of a judgment. De facto representative community views would have to be ascertained by empirical methods. For example, there are a number of Hindu temples, mosques (besides the two mosques referred to in this article) and churches in the Isipingo area. When it comes to public voices, it is therefore also important to consider the phenomenon of a "spiral of silence"[145] and a possible "silent majority", which is not detected by only weighing vocal opinions.

The Judge, when referring to his refusal to grant Mr. Ellaurie's requested relief of banning the Madrassa from the area, made a similar observation regarding a lack of empirical evidence. The Judge[146] pointed out:

> "The applicant states . . . that . . . he was acting on behalf of himself as well as in the public interest. He, however, had no answers when asked *which public* he was acting on behalf of, or who had given him authority to act. In my view, *there is no evidence* as to *which members of the public share the applicant's sentiments relating to Islam. On an issue where the public is divided, an individual cannot claim to act on behalf of the public*."

In doing so the Judge is stating (confirming) that there is diversity of opinion in the community. However, although the Judge alluded to differences of opinion, there appears to be no formal empirical evidence in the case to this effect.

In Section 2 (ii) and Section 4, I argued (in respect to the Bo-Kaap and the unamplified adhan as "living" heritage) that a consideration would be the size of a religious group in a particular community. While this could apply to any religion or culture, more specifically: would this also apply in contexts where Muslims form a minority and others might find it an imposition? If the adhan only serves to call Muslims to prayer, and they are a minority (as they are in KwaZulu-Natal), would not the nuisance to the majority community be of greater weight? Although it can be inferred from information attributed to Mr. Ellaurie that the adhan gave the Isipingo area "a distinctly Muslim atmosphere" and "[t]he Muslim community in the area has increased by 30 percent in the past 15 years"[147], no empirical evidence is provided in the case to indicate that Muslims may outnumber other religious groups in Isipingo. If Muslims did constitute a majority in the area, it could have made the case for an unamplified (or amplified) adhan to be rendered stronger, but not necessarily that it could continue unhindered and unimpacted by noise nuisance regulations in the relevant by-law.

> "(c) The action or activity must be a nuisance according to a normal person."

According to the AD in *Prinsloo v Shaw*[148]:

> "A resident in a town, and more particularly a resident in a residential neighborhood, is entitled to the ordinary comfort and convenience of his home, and if owing to the actions of his neighbor he is subjected to annoyance or inconvenience greater than that to which a normal person must be expected to submit in contact with his fellow-men, then he has a legal remedy. *The standard taken must be the standard not of the perverse or finicking or over-scrupulous person, but of the normal man of sound and liberal tastes and habits*."

As detailed in Section 5 (i), Mr. Ellaurie was characterized as an "Islamophobe" and maybe unfairly so.

In many apartheid-designated Indian neighborhoods (after forced removals because of the Group Areas Act) mosques, temples and churches often co-exist harmoniously as centers of religious and cultural activities for their residents. However, this does not mean that complaints cannot be justifiably lodged.

Muslim retired or elderly people living in the vicinity of a mosque usually both await and welcome the call and/or opportunity to perform prayers in congregation at the mosque since it is often a means for social contact with peers outside of the home. However, a small singled out group may not be equated with "the greater good of neighbors". Moreover, if age, disability (example, hearing impairment) and vulnerability are to be introduced

as criteria, these must be applied in a balanced way, looking at all vulnerable groups, including those who are negatively affected by the adhan, such as people with sleep impairments, hypersensitivity, etc. Mr. Ellaurie's complaint may therefore be warranted. It is indicated in the case that the adhan "interrupts" Mr. Ellaurie's "peace and quiet" and "disrupts his sleep, listening to music and meditation" (Para. 6).

> "(d) Aspects like the location of the properties, the zoning of the properties as residential, business or industrial areas, the habits of the inhabitants and the question whether the health of the neighbor might be affected, are important in the determination of the reasonableness of the actions."

Although Mr. Ellaurie may allude otherwise[149], the properties of the Madrassa (and zoned for such use) relevant to the case " ... are in a residential suburb within the jurisdictional area of the second respondent [eThekwini Municipality]".[150]

It was only after the attainment of democracy in South Africa in 1994 that racial segregation and apartheid laws like the Group Areas Act No.41 of 1950 were abolished. It is, therefore, contended that the argument that Mr. Ellaurie's family lived in Isipingo before the Madrassa and its mosque were established there, although a factor, cannot be the deciding factor that should be taken into consideration. The family moved into an area classified as Indian and where it can reasonably be expected that Indians of diverse religions (including Hindu and Muslim) will establish mosques, temples and churches, as indeed was the case. A similar argument holds true for non-Muslims moving into areas in the Western Cape where Muslims may no longer live in sizeable numbers but where mosques already exist and are still in use (for example, the single noise complaint directed against the Muir Street mosque by a current resident) and also against mosques in the Bo-Kaap (a heritage site that has attracted many foreigners[151] to buy residential properties in the area).

In fact, according to Mngadi, J "[i]t could be argued that [Mr. Ellaurie] moves away from the area ... "[152] In *Allaclas Investments (Pty) Ltd. & Another v Milnerton Golf Club & Others* [2007] 167 SCA (RSA), the SCA overturned the ruling of the court a quo[153] and found that golf balls from a neighboring golf course infringed on the home owner's enjoyment of his property. Although the golf course had been in existence since 1925 and the home owner only moved into his house in 2003, a mandatory interdict that the Golf Club must prevent such infringement was granted.[154] Judge Farlam[155], citing *De Charmoy v Day Star Hatchery (Pty) Ltd.* 1967 (4) SA 188 (D) at 192 A-B, made it clear that when home owners live near a golf course, it would not be unreasonable to expect them to endure some form of nuisance caused by "badly hit golf balls". However, citing *Assagay Quarries (Pty) Ltd. v Hobbs* 1960 (4) SA 237 (N) at 240 G, the Judge highlighted that the nuisance that the appellants had to endure was much more than what they were expected to tolerate in terms of the application of the principle of "give and take, live and let live", which forms the basis of South African law on this point. The Judge was mindful that the golf course had been in existence since 1925 and that, when the property was purchased, the first appellant was aware that it was next to a golf course. While the Judge opined that this would ordinarily have been a relevant factor, "it is clear that the *appellants did not know that the hole was badly designed and gave rise to the safety concerns*" (emphasis added).

I have pointed out that reasonableness applies to the activity complained of and not whether the neighbor (the Madrassa) was being reasonable. It is stated in the case that the Madrassa gives the further assurance that "[n]o external sound amplification is used in making the Call to Prayer"[156] and that it " ... has no intention of using external sound amplification [even] in the future".[157] Although in the *Allaclas* case (Paras. 8 and 19) a preventative measure (construction of a high net to stop golf balls) appeared to be of little help, this could also have been construed as a proactive step on the Madrassa's part to not further increase the volume of the adhan. Despite the assurances that it did not, and did not intend to, use amplification, the Judge failed to give any real consideration to the fact that the adhan was not an unusual activity for the Madrassa and the right to manifest religious belief of those worshipping, teaching and learning at the Madrassa.[158] I contend that had

the management of the Madrassa applied to the Municipality to use its voice amplification system and if it did so within the parameters of the law, this would have resulted in greater disturbance to Mr. Ellaurie. The fact that there is already a community mosque in the vicinity of the Madrassa that uses a voice amplification system is probably why the Madrassa, in consideration of its neighbors, would have considered it to be duplicitous for it to also render the adhan over its own voice amplification system. Given the timing of the adhans, it would have resulted in a cacophony of colliding sounds which would have caused a further noise nuisance for the residents of the area, including Mr. Ellaurie. This may also be why Mr. Ellaurie decided to be proactive and call for the cessation of the Madrassa's broadcasting of both forms of adhans in his Founding Affidavit.[159]

While the *Allaclas* case reminds us that each case is decided on its own merits (in this case its unique deciding factor was a "badly designed hole"), it is also evident from the Durban and Natal cases cited by Judge Farlam that the Judge in the *Ellaurie* case failed to apply the precedents of his own province.

Thus, if there are mosques from which amplified adhans are rendered in contravention of municipal by-laws, then irate neighbors are not necessarily obliged to tolerate them in terms of the principle of "give and take" or "live and let live". In fact, even if the adhans do comply, they can still be found to be unreasonable and such conduct could still be interdicted. In the *Ellaurie* case it should also not have mattered, or been of much relevance, that Mr. Ellaurie moved into the Isipingo Beach area before the Madrassa was established. By the same logic, the SCA ruling also implies that even if non-Muslim residents in Bo-Kaap in Cape Town moved in after the establishment of mosques in the area, the volume of the adhans rendered from their precincts must not be in excess of the by-laws. This does not detract from the fact that the adhan is a religious symbol and its sounding an integral part of the rich cultural and historical make-up of the area. The decision in the *Ellaurie* case should be overturned because it had little, if any, sound basis in either public or private law and case law. If not, it may yet have dire ramifications not only for the adhan but for the symbols of other religions and cultures since sounds emitted from all religious symbols can be defined as "noise".

6. Some Recommendations for the Way Forward

The adhan is an integral part of Islam and the culture of South African Muslims. In addition to the physical rendering of adhans from mosques, and not in lieu thereof, pre-recorded adhans are also broadcast in homes using radio and television transmissions. Recently, more people are utilizing digital technology like dedicated adhan apps on cellular (mobile) phones. Although it is broadcast over dedicated Muslim radio stations five times a day, this does not preclude (nor do I foresee it replacing it anytime soon) its daily rendition from mosques (with and without amplification) five times a day. Nor did it preclude it during the COVID-19 lockdown periods when government, with the support of most Muslim religious scholars (ulama), ordered the formal closure of mosques. For this reason, the local suggestion (in the *Garden Cities* case) of "using a light on top of a minaret" in lieu of the adhan to signal the call to prayer, will not work in South Africa. I propose that for the sake of good neighborliness that the ulama continue along this forward-thinking trajectory as far as the adhan is concerned.

While there are other judgments that do (*Garden Cities*), it is unfortunate that the *Ellaurie* judgment does not, set a credible precedent on the law relating to the adhan in South Africa. To make the job of municipalities (and ultimately, the courts) easier, and in keeping with some of the recommendations made by the SAHRC in respect of the Isipingo Beach Mosque (as detailed in Para. 8[160] of the *Ellaurie* case), I recommend that the two major national ulama (religious) umbrella bodies in South Africa, the Jamiatul Ulama of South Africa (JUSA) established in 1970, and the United Ulama Council of South Africa (UUCSA) established in 1994[161], although they usually compete with each other, collaborate to issue formal legal opinions or directives known as *fatawas* (singular, fatwa) (as was suggested in Indonesia[162]) in order to provide the imams and managements of

mosques located in the different provinces with uniform guidance as to the regulation of both the sound volume and timing of adhans. The provinces referred to in this article each have their own Muslim theological bodies and imams of mosques are members of these organizations. These local bodies are also members of the national bodies. This will ensure a, more or less, uniform rendering of amplified and unamplified adhans along the following lines:

> A dedicated muezzin should ideally be appointed and should preferably be schooled in both the art of rendering the adhan and the proper use of modern technology (microphones and sound amplification); an adhan should be timed to not last longer than three to five minutes; if there is more than one mosque in a neighborhood, the timing of the adhans should be synchronized to avoid further noise nuisance; since according to the Hanafite school of law (which the Madrassa follows), the timing (waqt) of the late afternoon prayer (asr) commences much later than is the case for all the other schools, a comprise should be reached so that the adhan for this prayer is only rendered once; to avoid potential clashes with the provisions of municipal by-laws (which generally do not allow for noise nuisances early in the morning or late at night), the adhan for the first (dawn) and last (late night) of the five daily prayers should be unamplified (loudspeaker muted) and recited only by human voice preferably within the precincts of the mosque rather than atop a minaret; not only does the timing of adhans vary according to the season, but the sounding of the first adhan at dawn occurs when most people may still be asleep and the final adhan occurs at night when some people may have just retired to bed. Some Muslims, young and old, who may not be able to perform prayers, or who may not be as devoted to performing their prayers on time, may also welcome this consideration. Since it would be difficult to distinguish between noise levels resulting from the adhan from general community noises in the area, the remaining three adhans should be allowed to be rendered through amplification; given that, for practical reasons, mosques may not be able to afford the appointment of dedicated muezzins, and that therefore the random persons (imam, muezzin, caretaker, or failing them, a worshipper present in the mosque) rendering the adhan may differ on a daily basis, to obviate both the discretion and disparity of the reciter, the sounding of the amplified adhans for the remaining three compulsory prayers, and those rendered for weekly, and occasional celebratory, congregational prayers, should be fixed at a moderate tone (as is the case in Pakistan[163]) and an appropriate decibel level in conformity with municipal by-laws and through collaboration and consultation between ulama and municipalities (as representatives of the State). Along the lines of their counterparts in Singapore[164], consideration should be given to issuing a national fatwa to the effect that the loudspeakers of new or proposed mosques be directed towards the interior in order to minimize noise. Given that the duration of these adhans may be short-lived, they should be tolerated as long as they comply with the noise parameters of by-laws; the sounding of unamplified adhans are also subject to by-laws and should therefore strive to be reasonable. Mosques that do not comply with the fatawas should be disciplined.

Although the Madrassa may contend that the adhan is technically rendered from inside the building, according to Mr. Ellaurie[165] (and his video recording appears to support this) the unamplified adhan from the Madrassa's mosque was rendered from outside of the mosque, though not from a minaret. Since the nearby Isipingo Mosque uses amplification, I proffer the following suggestions for the Madrassa's mosque, and my rationale therefor, as a reasonable compromise. The Madrassa could reduce the volume of its unamplified adhan to a moderate level and strive to regulate its volume (which it admits can vary due to a range of factors) in accordance with some of the recommendations proffered in this Section. It could also consider rendering the first (dawn) and last (night)

adhans from inside its mosque. Given other peripheral and surrounding noises in the area during the day which residents are in any case subjected to, the remaining adhans could still be rendered from outside. Since the Madrassa's adhan is meant primarily for its staff and students (some of whom live on the premises), doing so will not only pose less of a noise nuisance to especially its non-Muslim neighbors like Mr. Ellaurie, but will engender harmonious relationships and go a long way in fostering social cohesion.

Such compromise and accommodation would find condonation in the two primary sources of Islam, namely, the Qur'an and Sunna. Muslims regard the Prophet Muhammad as a role model and aspire to emulate his character and behavior. South African Muslims should therefore be mindful of the numerous rights he bestowed upon neighbors, and his tolerant behavior even towards a disrespectful neighbor, who both vilified his character and physically harmed him. The seventh century Qur'an is likened to a religious Constitution by Muslims. The following Qur'anic verse can be interpreted to advocate mutual rights and duties of neighbors regardless of their nearness to, or physical distance from, each other: " ... do good- to ... neighbors who are near [and] neighbors who are strangers [far]".[166] It is also evident from several, including authentic, traditions (ahadith)[167] attributed to the Prophet of Islam, that good and kind treatment of neighbors is part and parcel of the conduct of being Muslim (faith).

The South African Constitution (supreme law) both safeguards and limits the diverse religious, cultural and customary rights, practices and identities of its citizens. The role that mosques can play in educating neighbors about the purpose of the adhan in the religious practice of Muslims is an important element in contributing to good neighborliness and avoiding unnecessary lawsuits and complaints based on possible or perceived Islamophobia. A successful practical example of fostering a climate of religious tolerance and interfaith dialogue is the participation of some 45 mosques from six provinces in South Africa in the 2019 "National Mosque Open Day" hosted by the South African Muslim Network (SAMNET), an NGO located in Durban, and in which over 2000 people of various faiths participated.[168]

In order to avoid unnecessary complaints, lawsuits and friction among neighbors, I recommend the following as a further way forward. The City of Cape Town municipal by-laws are in the process of being amended and this may be a good opportunity to emulate and model some of the unique provisions of the Noise Management System of the City of Tshwane referred to in Section 4. Municipalities should also not wait for mosques to comply with their by-laws. Instead, they should be proactive and undertake regular site visits and inspections to assist mosques, that do not have the requisite permission to render amplified adhans, with their applications, and to ensure that, as part of responsible mosque administration, those who have such permission do not abuse this privilege.

7. Conclusions

This article has approached the position of the adhan in South Africa from the perspective of both legislation and case law.

Although both forms are permitted, the traditional rendering of the adhan through human voice, though not its later amplification, is an integral part of Islam. This religious position has been reaffirmed in the Indian cases and in the *Garden Cities* case. Nonetheless, although the adhan is a Sunna (tradition) introduced by the Prophet Muhammad some 1400 years ago and therefore not compulsory, it has been practiced since then without becoming outdated. The adhan is primarily used for spiritual purposes, its main purpose being to remind Muslims to heed the call to prayer, not to force them to do so. A Muslim's faith is not measured by the loudness of the adhan and mosques that do not use loudspeakers or microphones still perform their religious function.

As far as the amplified adhan is concerned, Renteln[169] astutely observes:

> "As people migrated to live in pluralistic societies, the sound of the adhan has sometimes been startling to others. Because of its frequency and volume, there has been, in some quarters, little tolerance for it."

Although, as detailed in Section 2 (ii) and Section 4, we are now having to contend with similar situations in the District Six and Bo-Kaap areas, the dynamics of forced removals during apartheid makes the comparison different in South Africa. Past discriminations against Muslims in South Africa support the argument that religious diversity should be celebrated and protected to avoid the injustices of the past. This, after all, is the main aim of the Constitution. The size of a community should be of little or no consequence when it comes to the rendering of amplified adhans that have not sought approval, or those that did but still do not comply with by-laws. However, I contend that it should make a difference whether a religious group is a minority or the majority when it comes to permitting the rendering of an unamplified adhan. If it is the majority, it should be allowed. However, this form of rendering may also be subject to restriction if found to be unreasonable.

In South Africa all religions are accorded equitable treatment under the final Constitution. The practices of all religions may therefore be considered to constitute a noise nuisance. By-laws aim to regulate the volume of all religious sounds and all religious symbols are subject to its provisions. The general implications of the *Ellaurie* case for religious tolerance and use of religious symbols may therefore be far-reaching. Singling out the adhan for attenuation (lessening volume) would be unlawful and amount to discrimination on the basis of religion. If, rather than loudspeakers or other forms of amplification, recourse should instead be had to readily available forms of "digital technologies", as suggested by some critics of an amplified adhan, then this implies that all religions, including Mr. Ellaurie's Hinduism, will have to resort to these modes.

Noise pollution in relation to religion is a sensitive issue and ultimately one that mediation (which proved inconclusive between Mr. Ellaurie and the Madrassa), by-laws or the Constitution may not resolve amicably.

Section 5 highlights some instances in the *Ellaurie* case where opposite conclusions can be derived from the discussion of reasonableness and that Mr. Ellaurie's noise nuisance complaint may not necessarily have been unreasonable. Nonetheless, I conclude that the Madrassa's appeal, if it continues, should meet with success. Judge Mngadi ignored precedent, set a poor precedent by ignoring property law, and misapplied constitutional law. Given, too, his failure to apply the law to the facts, questions of a fair trial (though not a mistrial) and bias also arise. Procedurally a mistrial cannot be declared after the trial has been finalized; at best, the appeals procedure is available. All of these lead me to believe that the *Ellaurie* case will be overturned on appeal. I further conclude that the *Ellaurie* case may not withstand constitutional challenge should the Madrassa opt for that further route if its current appeal fails.

Notions of transformative constitutionalism and the spirit of "ubuntu" (an African concept that has been translated as "the essence of being human"[170]) characterize South Africa's constitutional democracy. If need be, it is hoped that the *Ellaurie* case proceeds all the way to the Constitutional Court so that a guiding national precedent can be set to deal with complaints against contestable adhans whether rendered through human voice or over loudspeakers.

Even if, as proposed for the City of Cape Town, by-laws were to exempt religious activity from its ambit, ultimately, unamplified, unduly amplified (unauthorized) and duly amplified (authorized) adhans may all yet be found to constitute a noise nuisance in South Africa and restricted, if challenged and found to be unreasonable. Support for this is found in the similar provisions of by-laws and the limitation clause of the Constitution. If compliant with municipal guidelines, both forms of the adhan should be tolerated and not unduly challenged.

As Justice Sachs stated in the *Fourie* case pertaining to same-sex relations but which, as a precedent setting case, remains relevant:

> "[W]hat is at stake is not simply a question of removing an injustice experienced by a particular section of the community. At issue is a need to affirm the very character of our society as one based on tolerance and mutual respect. The test of tolerance is not how one finds space for people with whom, and practices with

which, one feels comfortable, but how one accommodates the expression of what is discomfiting."[171]

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Notes

1 The meaning of the Arabic word "adhan" (literally "announcement") emphasises its audible nature. For purposes of this article the Arabic spelling "adhan" is used unless otherwise referred to in references.
2 [Case Number] (3848/2019) [2020] ZAKZDHC [The High Court of South Africa Kwazulu-Natal Local Division, Durban] 32 (21 August 2020).
3 This article uses the Merriam-Webster Dictionary spelling "madrassa" when referring to the "Madrasah Taleemuddeen" for the sake of convenience, unless otherwise indicated in references. The Dictionary also defines a madrassa as "a Muslim school, college, or university that is often part of a mosque". See (Merriam-Webster 2021, Definition of *madrassa*).
4 As extracted from the cover page of the copy of this notice in the possession of the author.
5 (Lutchman 2021).
6 (De Vos and Freedman 2021, p. 928).
7 The names of the mosques in Cape Town were: Masjidus Saligeen; Zeenatul Islam (Muir Street) Mosque, Nural Huda Masjid and Jamia Masjid. In Tshwane the name of the mosque was the Raslouw Jamaat Khana.
8 (Moosa 1996, p. 162).
9 The Noise Control Regulations (G.N. R. 154 of 1992) in terms of Section 25 of the Environment Conservation Act 73 of 1989 (updated to 18 September 2009) allow provinces and municipalities to formulate their own noise control by-laws.
10 See Open By-laws South Africa.
11 For details see (Sahih al-Bukhari, vol. 1, p. 355 (Book 10: The book of Adhan. chp. 1, Hadith 603–604) and chp. 2, Hadith 605–606)).
12 (Khan 2011, pp. 571–94, see especially pp. 572–74, 592).
13 See (Lee 1999, p. 97, n 7).
14 (Moosa 2011, pp. 8–10).
15 (Moosa 2011, p. 26).
16 See Q.9:3; Q.4:103; Q.5:58 and Q.62:9. The Qur'anic references are given between parenthesis. The first number is the number of the chapter. The number following the separating colon indicates the verse.
17 (Hitchcock 2005).
18 Q.20:130.
19 See (Zeidan n.d., Encyclopaedia Britannica, Adhān).
20 (Moosa and Dangor 2019a, Preface [ix]; Moosa and Dangor 2019b, chp. 1, p. 2).
21 For the original order in Dutch see (Van Diemen 1642, pp. 474–75).
22 (Moosa 2009, p. 283).
23 (Dangor 1996, p. 2).
24 (Mahida 1993, p. 27).
25 See (Statistics South Africa 2020).
26 See (Statistics South Africa 2015).
27 For details see (Statistics South Africa 2015).
28 For details see (Masjids/Islamic Centres in South Africa 2021).
29 (Majiet 2020). Mr. Majiet is the author of a soon to be published book on the establishment of this mosque.
30 (Chambers 2019).
31 (Mahida 1993, p. 12).
32 For details see (Davids 1980, pp. 93–100).

[33] See (Davids 1980, p 93).
[34] See (VOC News 2020).
[35] South African Human Rights Commission (SAHRC) Mediation Report 2005. The, author would like to thank Mr. Aslam Mayat, the instructing attorney for the Madrassa in the High Court case, for supplying her with a copy of the report and for clarifying its content through personal communication on several occasions in December 2020. (See Mayat 2020).
[36] Para. 8.
[37] Founding Affidavit of CG Ellaurie, 14 May 2019, pp. 4–47 at p. 10. The author would like to thank Mr. Mayat for supplying her with a copy. The pages are numbered and contains paragraphs.
[38] This date is provided in the Founding Affidavit of CG Ellaurie, 14 May 2019, p. 10 at Para. 18.
[39] See text to footnote 49 for the recommendation pertaining to the Madrassa. For a summary of the remaining recommendations see footnote 160.
[40] See Para. 14.
[41] South African Human Rights Commission (SAHRC) Mediation Report 2005, pp. 2–3.
[42] Para. 3.
[43] Para. 14.
[44] See (Al-Haadi Website of Madrasah Taleemuddeen 2020b).
[45] Para. 3.
[46] Para. 1.
[47] Para. 21 (1). Emphasis added.
[48] Para. 8 (1).
[49] Para. 8, point 6. The grammatical errors in this quotation are quoted verbatim. For a summary of the remaining recommendations see footnote 160.
[50] Para. 8.
[51] Para. 8. The SAHRC and the CRL Rights Commission are both organisations established in terms of Chapter 9 of the 1996 Constitution to safeguard democracy.
[52] Para. 3.
[53] See Applicant's Heads of Argument, 29 July 2020, p. 3. The author would like to thank Mr. Ellaurie for supplying her with a copy.
[54] Founding Affidavit of CG Ellaurie, 14 May 2019, p. 5 at Paras. 1–2.
[55] For details see (South Durban Basin 2020, pp. 1–18).
[56] Para. 5.
[57] For details see (Al-Haadi Website of Madrasah Taleemuddeen 2020a. Madrasah Courses).
[58] (Ellaurie 2021).
[59] See Applicant's Evidence of Call to Prayer at the Madrasah property: http://mlnr.org/C2P/DurbanHighCourt.Case3848of2019.C2PVideo.mp4, accessed on 7 March 2021, available in Applicant's Heads of Argument, 2020, pp. 5, 13.
[60] Para. 2.
[61] Para. 10.
[62] Para. 5.
[63] Para. 1. Emphasis added.
[64] Para. 21 (2).
[65] *Ellaurie* case, Para. 10.
[66] See eThekwini, South Africa: Nuisances and Behaviour in Public Places By-law 2015.
[67] (Van Coller 2020). Emphasis added.
[68] Para. 2.
[69] See (VOC News 2020).
[70] For details see (Mandela 2019). See also (Mohamed 2020a) and (Scharnick-Udemans 2019).
[71] (Bantom 2020).
[72] See (VOC News 2020).
[73] See (Muslim Judicial Council (SA)).
[74] Published on 28 September 2007, this is the latest version of this by-law.
[75] See (VOC News 2020).
[76] See (Charles 2020).

77 (Mohamed 2020b).
78 See (VOC News 2020).
79 (Bantom 2020).
80 (Ishmail 2020).
81 See (VOC News 2020).
82 See (VOC News 2020).
83 According to information in the 2011 census, the majority (56.9%) of the inhabitants in the Bo-Kaap still recorded Islam as their religion as opposed to the 4,9% who identified with Christianity. For details see (Kotze 2013, pp. 128–29).
84 For details see (Mitchley 2020).
85 (Lutchman and Somduth 2020).
86 (Lutchman and Somduth 2020).
87 For details see (City of Tshwane Noise Pollution).
88 For details see (City of Tshwane Noise Management Policy).
89 For a detailed account see ((Weiner 2014, Introduction (pp. 1, 13–14) and chp. 6, pp. 158–94)).
90 (Arab 2017, pp. 9, 12, 67–69).
91 (De Vos and Freedman 2021, pp. 430–31).
92 For a detailed explanation see see (De Vos and Freedman 2021, p. 436).
93 When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
94 Constitution of the Republic of South Africa, Act 200 of 1993.
95 *S v Lawrence; S v Negal; S v Solberg* (CCT38/96, CCT39/96, CCT40/96) [1997] (10) BCLR 1348 (CC) at Para. 92.
96 *R v Big M Drug Mart Ltd* (1985) 13 CRR 64 at 97.
97 See (Amien et al. 2018, p. 75, note 87).
98 *Christian Education South Africa v Minister of Education* (CCT4/00) [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000) at Paras. 18–19.
99 *Prince v President of the Law Society of the Cape of Good Hope* (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at Paras. 38–39.
100 See Paras. 110 and 112.
101 UN Commission on Human Rights, The Siracusa Principles, 28 September 1984.
102 Para. 14.
103 See *MEC for Education: Kwazulu-Natal and Others v Pillay* (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007) .
104 *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others* (CCT 36/08) [2009] ZACC 8; 2009 (4) SA 222 (CC); 2009 (2) SACR 130 (CC); 2009 (7) BCLR 637 (CC) (1 April 2009) at Para. 141.
105 (De Vos and Freedman 2021, p. 432). A discussion of each stage falls beyond the scope of this article. For further detail see (De Vos and Freedman 2021, pp. 438–75).
106 UN Human Rights Committee, CCPR General Comment No. 22, 30 July 1993.
107 (Renteln 2014, pp. 399–400).
108 Founding Affidavit of CG Ellaurie, 14 May 2019, p. 12–13 at Para. 36 and pp. 20–21 at Paras. 68 and 74–75.
109 Schirrmacher (2015, p. 8).
110 (Renteln 2014, p. 401).
111 See *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005) at Para. 89.
112 "The Madrasah, in its answering affidavit, states that the applicant's averments are liable to be struck out as vexatious and irrelevant … the Madrasah's averments in the answering affidavit in answer to the applicant's vexatious and irrelevant averments have not been included in this judgment" (Para. 9). See also Para. 11.
113 Using the Oxford Lexico definition, the Press Ombudsman defined "Islamophobia"as: "Dislike of or prejudice against Islam or Muslims … " For details see (Press Council South Africa 2020).
114 For details see (Press Council South Africa 2020).
115 Para. 4.
116 *De Lange v Presiding Bishop, Methodist Church of Southern Africa & another* 2015 (1) SA 106 (SCA) at Para. 39. See Para. 12 of the Ellauriecase.

117 *Prince v President of the Law Society of the Cape of Good Hope* (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002) at Para. 42. See Para. 13 of the *Ellaurie* case.
118 Paras. 12 and 13.
119 *Moulana Mufti Syed Md. Noorur Rehman Barkati & Ors. ... vs. State of West Bengal and Ors* AIR 1999 Cal 15 at Paras. 7, 8 and 27; *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* AIR 2000 SC 2773. The precedent setting *Church of God* case was recently upheld in *Afzal Ansari and 2 Others vs State of U.P. And 2 Others*. PUBLIC INTEREST LITIGATION (PIL) No. 570 of 2020 at Paras. 25, 38, 39 and 40.
120 (Weiner 2014, pp. 12–13). In books on the subject which discuss legal and practical issues of sounding the adhan in a diverse, Muslim-minority context.
121 (Arab 2017, pp. 78, 107).
122 Putusan PN MEDAN Nomor [Decision Number] 1612/Pid.B/2018/ PN Mdn. Tanggal [date] 4 June 2018—Meiliana (TERDAKWA) [Accused] (District Court); Putusan PT MEDAN Nomor [Decision Number] 784/ PID/ 2018/ PT MDN. Tanggal [date] 25 October 2018 (High Court) and Decision Number 322 K/PID/2019 (Supreme Court). The author would like to thank Professor Euis Nurlaelawati (UIN, Yogyakarta, Indonesia) for her assistance with securing the case numbers. See (Nurlaelawati 2020).
123 (Larkin 2014, pp. 989–1015).
124 The information pertaining to neighbour law, including relevant case law, used in this Sub-section has primarily been summarised from (Van der Walt and Pienaar 2016, pp. 99–103, 109–10). Reference is also made to (Pope and Du Plessis 2020, pp. 141–46).
125 Paras. 17 and 19.
126 (Van der Walt and Pienaar 2016, p. 109).
127 (Pope and Du Plessis 2020, pp. 142–43). Emphasis added.
128 (Pope and Du Plessis 2020, pp. 143–44).
129 (Pope and Du Plessis 2020).
130 *Garden Cities Incorporated Association Not For Gain v Northpine Islamic Society* 1999 (2) SA 268 (C) at p. 268.
131 *Garden Cities Incorporated Association Not For Gain v Northpine Islamic Society* 1999 (2) SA 268 (C) at p. 269.
132 (Van der Schyff 2002, pp. 379–80).
133 *Gien v Gien* 1979 2 SA 1113 (T) at pp. 1114–15.
134 (Van der Walt and Pienaar 2016, p. 100).
135 These are summarised from (Van der Walt and Pienaar 2016, p. 101).
136 Para. 20.
137 Para. 6. Emphasis added.
138 Applicant's Heads of Argument 2020, p. 6.
139 *Prinsloo v Shaw* 1938 AD 570.
140 (Van der Walt and Pienaar 2016, p. 101).
141 *Prinsloo v Shaw* 1938 AD 570 at 573.
142 See (Sunni Jamiatul Ulama South Africa (SJUSA)).
143 See (Jamiatul Ulama KwaZulu-Natal 2020).
144 See (Pillay 2020 and Swart 2020).
145 The spiral of silence theory was proposed by the German political scientist Noelle-Neumann in 1974. For details see (Petersen 2019).
146 Para. 10. Emphasis added.
147 Para. 7.
148 *Prinsloo v Shaw* 1938 AD 570 at 575. Emphasis added.
149 Para. 5 of the case.
150 Para. 3 of the case.
151 According to information provided in 2016 by the chairman of the Bo-Kaap Civic Association, Mr. Osman Shaboodien, about 15 percent of the 1100 [roughly 165] residences in the Bo-Kaap were owned by "outsiders". For details see (Onishi 2016).
152 Para. 20.
153 *Allaclas Investments (Pty) Ltd v Milnerton Golf Club (Stelzner and others Intervening)* 2007 (2) SA 40 (C).
154 Paras. 4 and 5.
155 At Para. 21.
156 Para. 14.

157 Para. 15.
158 See Paras. 17 and 19.
159 (Founding Affidavit 2019, p. 6).
160 Six recommendations are listed in Para. 8 and are summarised as follows. (1) The Isipingo Beach Mosque should not utilise a loudspeaker during the first (early morning) adhan; (2) an appropriate level of amplification for the remaining four adhans should be determined in consultation with the Municipality; (3) Once there is agreement as to this level of amplification, it should not be indiscriminately varied by the persons rendering the adhan; (4) Each adhan should not exceed three minutes in duration; (5) the persons rendering the adhan is trained to use the sound equipment. The details of point six has been elaborated in the text to footnote 49. It basically entails that while the Isipingo Beach Mosque is using a loudspeaker to render adhans, that the Madrassa's mosque desists from using its loudspeaker.
161 For detail, see (Moosa 2011, p. 152).
162 Recognising a "loudspeaker war between mosques in the same area vying to outdo each other", Indonesia set up a team to officially address the ensuing environmental issue. Acknowledging that this may be a difficult issue to address, it was suggested that the Indonesian Council of Ulema issue a fatwa (a formal legal opinion) on the matter. For details see (The Guardian 2015). As a direct consequence of the outcry and violence that ensued after the ruling of the District Court in the *Meiliana* case (referred to in section 5 (i)), "Indonesia's Ministry of Religious Affairs . . . issued a circular on "azan" with guidelines on when and how it ought to be broadcast by mosques . . . Titled 'The use of loudspeakers in mosques, langgar and musholla' [Indonesian terms for prayer houses], the circular . . . urges the religious institutions to follow the instructions of the director-general of Muslim guidance". For details on the Ministry's six-point instructions see (The Straits Times (Singapore)). In summary, the guidelines consist of six points and pertain to the maintenance of loudspeakers; muezzins and the quality of their voices; sound levels during prayers; the broadcasting of other noises; qualities of the adhan; and the appropriate timing of adhans.
163 Ulama in Pakistan anticipated that, once introduced, an amplified adhan may be perceived as "noise". Thus, although the 1965 Loudspeaker Ordinance regulating loudspeakers exempts amplified adhans, it does so subject to the proviso that it be rendered in a "moderate tone". See (Khan 2011, p. 582).
164 Following complaints received about the use of amplified adhans in Singapore where Muslims are a minority and "[af]ter discussions with the government, Islamic organizations agreed to (1) reduce the amplitude of loudspeakers in existing mosques, where they remain facing outside, (2) re-direct loudspeakers toward the interior of new mosques to be built in the future and (3) broadcast the call to prayer five times a day over the radio." (Lee 1999, p. 91).
165 Para. 17 of the *Ellaurie* case.
166 Q.4:36. The English translation is based on (Yusuf Ali 1946).
167 (Sahih Al-Bukhārī 1997, vol. 8, p. 234 (Book 81, chp. 3, Hadith 6416)).
168 See (South African Muslim Network (SAMNET)).
169 (Renteln 2014, pp. 389–90).
170 See (Mokgoro 1998, p. 2).
171 See *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005) at Para. 60. Emphasis added.

References

Primary Source

Afzal Ansari and 2 Others vs. State of U.P. And 2 Others PUBLIC INTEREST LITIGATION (PIL) No. 570 of 2020.
Ali, Abdullah Yusuf. 1946. *The Holy Qur'an (Text, Translation and Commentary)*. Jeddah: Islamic Education Centre.
Allaclas Investments (Pty) Ltd. v Milnerton Golf Club (Stelzner and others Intervening) 2007 (2) SA 40 (C).
Allaclas Investments (Pty) Ltd. & Another v Milnerton Golf Club & Others [2007] 167 SCA (RSA).
Applicant's Heads of Argument, 29 July 2020.
Applicant's Evidence of Call to Prayer at the Madrasah property: http://mlnr.org/C2P/DurbanHighCourt.Case3848of2019.C2PVideo.mp4, accessed on 7 March 2021, available in Applicant's Heads of Argument, 2020, pp. 5, 13.
Assagay Quarries (Pty) Ltd. v Hobbs 1960 (4) SA 237 (N).
Cape Town, South Africa: Streets, Public Places and the Prevention of Noise Nuisances By-law. 2007. Available online: https://openbylaws.org.za/za-cpt/act/by-law/2007/streets-public-places-noise-nuisances/eng/ (accessed on 18 March 2021).
Christian Education South Africa v Minister of Education (CCT4/00) [2000] ZACC 11; 2000 (4) SA 757; 2000 (10) BCLR 1051 (18 August 2000).
Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association AIR 2000 SC 2773.

City of Tshwane: Noise Pollution. 2020. Available online: http://www.tshwane.gov.za/sites/Departments/Health-Department/Pages/Noise-Management.aspx (accessed on 18 March 2021).
City of Tshwane: Noise Management Policy. 2020. Available online: http://www.tshwane.gov.za/sites/Departments/Agriculture-and-Environment-Managemental/Noise%20Management/NoiseAppendixA.pdf (accessed on 18 March 2021).
Constitution of the Republic of South Africa, Act 200 of 1993.
Constitution of the Republic of South Africa, 1996.
De Charmoy v Day Star Hatchery (Pty) Ltd. 1967 (4) SA 188 (D).
Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others (CCT 36/08) [2009] ZACC 8; 2009 (4) SA 222 (CC); 2009 (2) SACR 130 (CC); 2009 (7) BCLR 637 (CC) (1 April 2009).
Ellaurie v Madrasah Taleemuddeen Islamic Institute and Another [Case Number] (3848/2019) [2020] ZAKZDHC [The High Court of South Africa Kwazulu-Natal Local Division, Durban] 32 (21 August 2020). A transcript of the case is available at http://www.saflii.org/za/cases/ZAKZDHC/2020/32.html (accessed on 18 March 2021).
Environment Conservation Act 73 of 1989.
eThekwini, South Africa: Nuisances and Behaviour in Public Places By-law. 2015. Available online: https://openbylaws.org.za/za-eth/act/by-law/2015/nuisances-behaviour-public-places/eng/ (accessed on 18 March 2021).
First Respondents' [Patel, Mohammed Illyas] Opposing Affidavit, set down 29 August 2019.
Founding Affidavit of Chandra.G Ellaurie, 14 May 2019.
Garden Cities Incorporated Association Not For Gain v Northpine Islamic Society 1999 (2) SA 268 (C).
Gien v Gien 1979 2 SA 1113 (T).
Group Areas Act No.41 of 1950.
International Covenant on Civil and Political Rights (ICCPR) of 1966.
MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007).
Minister of Home Affairs and Another v Fourie and Another (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005).
Moulana Mufti Syed Md. Noorur... vs. State of West Bengal and Ors AIR 1999 Cal 15.
National Heritage Resources Act No.25 of 1999.
Noise Control Regulations (G.N. R. 154 of 1992).
Open By-laws South Africa, available at https://openbylaws.org.za/about.html (accessed on 18 March 2021).
Putusan PN MEDAN Nomor [Decision Number] 1612/Pid.B/2018/PN Mdn. Tanggal [date] 4 June 2018—Meiliana (TERDAKWA) [Accused] (District Court);
Putusan PT MEDAN Nomor [Decision Number] 784/PID/2018/PT MDN. Tanggal [date] 25 October 2018 (High Court); and Decision Number 322 K/PID/2019 (decision of Supreme Court).
Prince v President of the Law Society of the Cape of Good Hope (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002).
Prinsloo v Shaw 1938 AD 570.
S v Lawrence; S v Negal; S v Solberg (CCT38/96, CCT39/96, CCT40/96) [1997] (10) BCLR 1348 (CC).
Sahih Al-Bukhārī. 1997. The Translation of the Meanings of Sahih Al-Bukhari. (Edited by Khan, Muhammad Muhsin) (9 vols.) (Arabic-English), (vol. 8, p. 234 (Book 81: The book of Ar-Riqaq (Softening of the Hearts), chp. 3, Hadith 6416)) and (vol. 1, p. 355 (Book 10: The book of Adhan. chp. 1, Hadith 603–604) and chp. 2, Hadith 605–606)). Riyadh, Saudi Arabia: Darussalam.
South African Human Rights Commission (SAHRC) Mediation Report: "Complaint by Mr. Ellaurie regarding the calls to prayers by Mosques in Isipingo Beach", 1 March 2005.
Statutes of India (Code of Batavia), 1642.
UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, E/CN.4/1985/4.
UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4.
Van Diemen, Anthony. 1642. A. Godsdienst' in Van der Chijs, J.A. 1885. Nederlandsch-Indisch Plakaatboek, 1602–1811, Eerste Deel, 1602–1642, (Batavia:Landsdrukkerij) at pp. 474–75.

Secondary Source

Al-Haadi Website of Madrasah Taleemuddeen. 2020a. Madrasah Courses. Available online: http://alhaadi.org.za/madrasah-info/22-madrasah-courses.html (accessed on 18 March 2021).
Al-Haadi Website of Madrasah Taleemuddeen. 2020b. Available online: http://alhaadi.org.za/ (accessed on 18 March 2021).
Amien, Waheeda, Najma Moosa, and Christa Rautenbach. 2018. Religious, Personal and Family Law Systems in South Africa. In *Introduction to Legal Pluralism in South Africa*, 5th ed. Edited by Christa Rautenbach. Durban: LexisNexis South Africa, pp. 61–76.
Arab, Pooyan Tamimi. 2017. *Amplifying Islam in the European Soundscape: Religious Pluralism and Secularism in the Netherlands*. New York: Bloomsbury Academic.
Bantom, Kaylynne. 2020. Cries against prayer call. *People's Post*, September 1.

Chambers, Dave. 2019. Protected forever: Bo-Kaap wins heritage status after four-year fight. *Times Live*, March 28.
Charles, Marvin. 2020. Museum seeks to have District Six declared a National Heritage Site. *Cape Argus*, February 11.
Dangor, Suliman Essop. 1996. Muslim Society and Islamic Architecture. *KZ-NIA Journal* 22: 2–3.
Davids, Achmat. 1980. *The Mosques of the Bo-Kaap. A Social History of Islam at the Cape*. Cape Town: S.A. Institute of Arabic and Islamic Research.
De Vos, Pierre, and Warren Freedman, eds. 2021. *South African Constitutional Law in Context*, 2nd ed. Cape Town: Oxford University Press Southern Africa.
Ellaurie, Chandra G. 2021. Applicant in the *Ellaurie case*. Personal communication, March 5, 7 and 8.
Hitchcock, Jennifer. 2005. The 5 Pillars of Islam. *Verbum* 2: 9. Available online: http://fisherpub.sjfc.edu/verbum/vol2/iss2/9 (accessed on 3 May 2021).
Ishmail, Sukaina. 2020. People 'ignorant' of Bo-Kaap's practices say residents after call to prayer complaint. *Cape Argus*, August 25.
Jamiatul Ulama KwaZulu-Natal, South Africa Website. 2020. Jamiatul Ulama KZN Statement on the Judgement against the Islamic Call to Prayer (Azaan). Available online: https://jamiat.org.za/jamiatul-ulama-kzn-statement-on-the-judgement-against-the-islamic-call-to-prayer-azaan/ (accessed on 18 March 2021).
Khan, Naveeda. 2011. The Acoustics of Muslim Striving: Loudspeaker Use in Ritual Practice in Pakistan. *Comparative Studies in Society and History* 53: 571–94. [CrossRef]
Kotze, Nico. 2013. A community in trouble?: The impact of gentrification on the Bo-Kaap, Cape Town. *Urbani Izziv* 24: 124–32. [CrossRef]
Larkin, Brian. 2014. Techniques of Inattention: The Mediality of Loudspeakers in Nigeria. *Anthropological Quarterly* 87: 989–1015. [CrossRef]
Lee, Tong Song. 1999. Technology and the Production of Islamic Space: The Call to Prayer in Singapore. *Ethnomusicology* 43: 86–100. [CrossRef]
Lutchman, Chanelle, and Charlene Somduth. 2020. Azaan muffled again High court judgment echoes in Tshwane. *The Post*, September 9.
Lutchman, Chanelle. 2021. Judge dismisses Isipingo mosque's appeal; call for prayer should not be heard beyond the boundaries of the madrasa. *The Post*, April 26.
Mahida, Ebrahim Mahomed. 1993. *History of Muslims in South Africa: A Chronology*. Durban: Arabic Study Circle.
Majiet, Fuad. 2020. Author of forthcoming book on Zeenatul Islam (Muir Street) Mosque. Personal communication, December 30.
Mandela, Zwelivelile Mandla. 2019. How can you suggest that Muir Street Mosque's call to prayer is noise? *Cape Argus*, May 14.
Masjids/Islamic Centres in South Africa. 2021. Muslim Directory. Available online: https://www.muslim.co.za/masjids (accessed on 18 March 2021).
Mayat, Aslam. 2020. Instructing attorney for the Madrassa in the Ellaurie case (High Court). Personal communication, December 2.
Merriam-Webster. 2021. Definition of *madrassa*. Available online: https://www.merriam-webster.com/dictionary/madrassa (accessed on 18 March 2021).
Mitchley, Alex. 2020. City of Tshwane tells mosque to stop 'noise pollution' after complaints. *News24*, September 2.
Mohamed, Hussain. 2020a. District Six mosque turns 100. *Southern Suburbs Tatler*, April 9.
Mohamed, Hussain. 2020b. Trustee, Zeenatul Islam (Muir Street) Mosque. Personal communication, November 30.
Mokgoro, Yvonne. 1998. Ubuntu and the Law in South Africa. *Potchefstroom Electronic Law Journal* 1: 1–11. [CrossRef]
Moosa, Najma, and Suleman Dangor. 2019a. *Muslim Personal Law in South Africa: Evolution and Future Status*. Cape Town: Juta.
Moosa, Najma, and Suleman Dangor. 2019b. An Introduction to Muslim personal law in South Africa: Past to present. In *Muslim Personal Law in South Africa: Evolution and Future Status*. Edited by Najma Moosa and Suleman Dangor. Cape Town: Juta, chp. 1. pp. 1–25.
Moosa, Najma. 1996. An Analysis of the Human Rights and Gender Consequences of the New South African Constitution and Bill of Rights with Regard to the Recognition and Implementation of Muslim Personal Law (MPL). LL.D. (Legum Doctor) dissertation, University of the Western Cape, Bellville, South Africa. Unpublished.
Moosa, Najma. 2009. South Africa: Indian Law' in Katz, Stanley N (Editor-in-Chief). In *The Oxford International Encyclopedia of Legal History*. New York: Oxford University Press, vol. 5, pp. 283–84.
Moosa, Najma. 2011. *Unveiling the Mind: The Legal Position of Women in Islam—A South African Context*, 2nd ed. Cape Town: Juta.
Muhamad, Ebrahim. 2020. Mufti and current representative at the Taleemuddeen Madrassa. Personal communication, December 10.
Muslim Judicial Council (SA) Press Release. 2020. MJC: Amendments to City By-Laws Will Not Affect the Athaan. *The MJC Facebook Page*. May 14. Available online: https://mjc.org.za/wp-content/uploads/2020/05/1589537914127_Joint-Statement-MJC-CoCT-By-law-amendments-.pdf (accessed on 18 March 2021).
Nurlaelawati, Euis. 2020. UIN, Yogyakarta, Indonesia. Personal communication, November 27.
Onishi, Norimitsu. 2016. Muslim Enclave Forged in Apartheid Now Faces Gentrification. *The New York Times*, February 29.
Petersen, Thomas. 2019. Spiral of silence. *Encyclopedia Britannica*. January 2. Available online: https://www.britannica.com/topic/spiral-of-silence (accessed on 18 March 2021).
Pillay, Taschica. 2020. Prayer call ruling sparks petition. *Sunday Tribune*, September 6.
Pope, Anne, and Elmien Du Plessis, eds. 2020. *The Principles of The Law of Property in South Africa*, 2nd ed. Cape Town: Oxford University Press Southern Africa.

Press Council South Africa. 2020. Chandra G. Ellaurie vs. Sunday Times. September 30. Available online: https://www.presscouncil.org.za/Ruling/View/chandra-g-ellaurie-vs-sunday-times--4497 (accessed on 18 March 2021).
Renteln, Alison Dundes. 2014. The Tension between Religious Freedom and Noise Law—The Call to Prayer in a Multicultural Society. In *Religion and Human Rights Discourse*. Edited by Hanoch Dagan, Shahar Lifshitz and Yedidia Z. Stern. Jerusalem: The Israel Democracy Institute, pp. 375–411.
Scharnick-Udemans, Lee-Shae Salma. 2019. Mosque's call to prayer controversy show crack in rainbow nation myth. *Cape Argus*, May 17.
Schirrmacher, Thomas. 2015. The use of loudspeakers for the Islamic call to prayer—An infringement upon negative religious' freedom? *International Journal for Religious Freedom (IJRF)* 8: 7–14.
South African Muslim Network (SAMNET). 2020. *Religious Intolerance—Banning the Call to Prayer*. Durban: SAMNET, September 17.
South Durban Basin. 2020. Case Study: Urban Regeneration Initiatives in Isipingo. Available online: http://www.mile.org.za/Come_Learn/Knowledge_Management/Multimedia%20Library/ABM%20Experiences%20Book/Isipingo%20Case%20study-Publication.pdf (accessed on 18 March 2021).
Statistics South Africa. 2015. General Household Survey. 2015. In *Statistics South Africa, Statistical Release P0318*. Available online: https://www.statssa.gov.za/publications/P0318/P03182015.pdf (accessed on 18 March 2021).
Statistics South Africa. 2020. Mid-year population estimates. In *Statistics South Africa Media Release*; July 9. Available online: http://www.statssa.gov.za/?p=13453 (accessed on 18 March 2021).
Sunni Jamiatul Ulama South Africa (SJUSA). 2020. Objection to Silencing of the Adhaan. *Facebook Page*. August 25. Available online: https://www.facebook.com/864654886938955/posts/objection-to-silencing-of-the-adhaanthe-sunni-jamiatul-ulama-south-africa-voices/4302024036535339/ (accessed on 18 March 2021).
The Guardian. 2015. Indonesia bids to muffle noisy mosques. *The Guardian*, June 25.
The Straits Times (Singapore). 2018. Indonesia issues guidelines on call to prayer. *The Straits Times (Singapore)*, August 26.
Swart, Mia. 2020. 'Too loud': S Africa court bans call to prayer at Durban mosque. *Al Jazeera News*, August 28.
Van Coller, Helena. 2020. South African high court prohibits Muslim call to prayer. Why it got it wrong. *The Conversation*, October 12.
Van der Schyff, Gerhard. 2002. Limitation and Waiver of the Right to Freedom of Religion: Garden Cities Incorporated Association Not For Gain v Northpine Islamic Society. 1999 2 SA 268 (C). *Journal of South African Law* 2: 376–81.
Van der Walt, Andries Johannes, and Gerrit Pienaar. 2016. *Introduction to the Law of Property*, 7th ed. Cape Town: Juta and Company [Pty] Ltd.
VOC News. 2020. Bo Kaap athaan complaint prompts anger over city's by-laws. *VOC News*, August 26.
Weiner, Isaac. 2014. *Religion Out Loud: Religious Sound, Public Space, and American Pluralism*. New York: NYU Press.
Zeidan, Adam. n.d. Encyclopaedia Britannica, Adhān. Available online: https://www.britannica.com/topic/adhan (accessed on 18 March 2021).

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Article

The Issue of Rights of Religious Freedom in Some Domestic Violence Cases in Indonesia

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Abstract: Based on the National Commission for the Protection of the Rights of Women and Children of Indonesia's annual report, in 2020 there were 11,105 cases of domestic violence reported. Those domestic violence cases were caused by complex factors. One of the causes is the limitation of religious freedom in the family. In Indonesia, between 2010 and 2019, there were several cases of domestic violence caused by women choosing different religions from their parents or husband. Domestic violence involving limitation of the rights of religious freedom is sometimes resolved by divorcing or by completing it with coercive efforts. The rights of religious freedom in Indonesia, although protected by the Constitution and by the Act of Protection of Human Rights No. 39 of 1999, still face various challenges in implementation. The choice of religion in some families is highly influenced and determined by the authority in the family. This article analyzes the secondary data from online news, verdicts, and statistics from the Supreme Court Directory between 2010 and 2019. Findings are analyzed using the perspective of gender studies and anthropology of law.

Keywords: the rights of religious freedom; domestic violence against women; gender and law

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1. Introduction

The freedom to have religion is part of a person's rights as a human being. This right is inherent from the time the human is born. The Universal Declaration of Human Rights (UDHR) contains the recognition statement in Article 18 as follows:

"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 teaching, practice, worship, and observance".

The Universal Declaration of Human Rights article states that a person's rights not only include freedom of thought, conscience, and to have a religion or practice it, but also to change his or her religion or belief. As such, the UDHR recognizes a person's right to change one's faith in his or her spiritual journey.

The spirit of the UDHR in the Indonesian context is supported by the Constitution of the Republic of Indonesia; in particular, Article 28 E and Article 29. Article 28 E of the Amended Constitution of the Republic of Indonesia stipulates that Indonesian citizens have the right to embrace a religion and worship according to that religion. They also have the right to obtain education, citizenship, and a place to live in all regions of Indonesia, including upon changing their residence.

The recognition of rights from the perspective of citizens is guaranteed by the State in Article 29 Paragraph (2). In this article, it is stipulated that the State guarantees the freedom of every citizen to embrace a religion. The State also guarantees citizen's rights to worship according to that religion and belief.

The principle of freedom to embrace a religion, worship, and even to change one's belief, as recognized by the state, in practice cannot always be implemented. In some cases, someone's freedom to choose their religion, practice, or convert his/her religion will be met with rejection from the family and society. The issue of rejection from the family

could be in various forms, ranging from verbal violations to psychological abuse, and even physical violence. In situations where the individual who converts to another religion that is different from the family's religion is a woman or a child, violence often occurs. The National Commission on Violence Against Women notes that domestic violence could happen when women or children choose to convert their beliefs. In its annual notes, the National Commission on Violence Against Women even states that in 2020 there were 11,105 cases of domestic violence reported. Those domestic violence cases were caused by various factors. One of the causes is the issue of religious freedom in the family.

Changes in belief by one family member, especially women, often lead to domestic violence. To find the relation between a person's changing beliefs and the occurrence of domestic violence, in the Indonesian context, the relation between the convert and domestic violence can be found in some divorce cases at the courts. In divorce cases, both processed in the district and religious courts, we can find from the judge's decisions several clues or indicators of domestic violence that was caused by one party's conversion to another religion or belief. What indicators or keywords can be used to find the indications of domestic violence are described in the Methods section of this paper.

2. Research Problems

This paper tries to explain that restrictions on the right to freedom of religion with various ideological and cultural arguments have occurred in the family in the Indonesian context. Restrictions on religious freedom in the family are not easy to disclose to the public. However, in some judge's decisions related to divorce cases, this limitation can be disclosed, with the forms of domestic violence that accompany it.

Why is divorce carried out in a civil court in the Indonesian context more of an option to stop domestic violence experienced by one of the parties to a marriage (including restrictions or coercion to embrace a certain religion)? Because the Indonesian people, especially women, are reluctant to deal with processes in criminal law that are considered tiring and longer because they deal with multilevel examinations (Wulandari 2020). Bartky (2005) even stated that women in particular often feel afraid to face the law because the legal language is considered complicated and intimidating.

This paper describes how the practice of freedom of religion and worship in Indonesia, especially in the family, is influenced by the construction of power relations within the family. In some cases, found from online news and court decisions which are discussed in this article, the issues of power relations, gender construction, and religious rights issues are intertwined.

3. Methods

This article was written using secondary materials. Collection of these secondary materials was carried out in several ways and included several types. First, the author collected and analyzed laws and regulations. Second, the author analyzed online media news. The news that was selected was that containing the issue of domestic violence and differences and/or changes in belief. Third, the author also used data obtained from government and non-government institutions related to cases of domestic violence, divorce, and causes of divorce. Fourth, the author also analyzed the nine court verdicts on divorce cases.

Both online news and judges' decisions, as well as collected data from government agencies and NGOs, originated from the period 2010–2020. The time limitation for documents or news between 2010 and 2020 is intended not only to help focus the search but also to see developments related to the practice of freedom of religion and worship in the past 10 years in Indonesia, especially in the family sphere.

All these materials were selected by tracing them using three keywords. Those keywords were divorce, domestic violence, and apostasy. Selection of cases in the news media focused on cases of domestic violence that befell women and/or children due to

changes in beliefs held by women and/or children. The regulations, cases from online news, and court verdicts are from Indonesia.

Court decisions were selected from the Directory of Verdicts of the Republic of Indonesia's Supreme Court. These verdicts are court decisions in civil cases, particularly divorce cases. Six cases were selected. Three cases were decided by the religious court and the other three were decided by the district court. Cases that proceed by the religious court are divorce cases filed by the couple who register their marriage at the religious affairs office, especially for those who are married according to Islam. A divorce case that proceeds by the district court is a divorce case filed by a married couple who registered their marriage at the Civil and Population Registration Office. Marriages that are registered at the Civil and Population Registration Office are usually marriages that are not based on Islamic law.

The choice of three cases from religious court decisions and three other cases from district court decisions was made to map the variation in cases. These variations in the cases are:

- One of the parties filed a divorce suit because she/he experienced violence after changing her/his belief to a new religion.
- One of the parties filed a divorce suit because he/she was forced to follow the other's belief and experienced violence because he/she refused to convert.
- One of the parties returned to their original belief before marriage and became the perpetrator or victim of domestic violence because of this decision.

The material for this paper was obtained through several stages of research. First, online news searches about cases of domestic violence. To collect news about domestic violence caused by one party changing religion, several keywords were used as filters. Those keywords were violence against wife/husband/children, and change of religion/belief. Then, to prevent the use of one-sided news, for each case found to be related to domestic violence because one of the parties changed religion, two or more news stories from different media were selected.

The second step was analyzing the Supreme Court decision. The material for analysis in this paper is some of the judges' decisions. The judge's decision used was the judge's decision produced at the Supreme Court level. The decisions were selected using a series of keywords as filters. The keywords used in the searching process were civil law cases, divorce, domestic violence, change of religion/belief, and apostasy

The process of browsing the Directory of Supreme Court Decisions is not just a googling activity that is easily carried out. Knowledge is needed to understand what kind of decisions are needed to be analyzed. In filtering the desired decision, it took several keyword changes until finally a combination of civil, divorce, apostasy, conversion, and domestic violence was found. Approximately 86,039 decisions that were found to contain a combination of civil, divorce, and apostasy, then filtered again using the classification of occurrence of domestic violence. It turns out that not all decisions also had complete case files, and of course this made the analysis process difficult.

Of those 86,093 cases, after being screened, 107 cases fulfilled the criteria, containing elements of apostasy and domestic violence. However, out of 107 cases, only 80 had complete file attachments. From those 80 cases, after the researcher reading the case files one by one, only nine cases were clearly in the position of the case containing details about the domestic conditions of the parties, including the process of changing religions and the forms of violence that occurred. The other 71 cases told more of incompatibility but did not specify the form of incompatibility, and there was also no information about the forms of violence that occurred or the process of changing religions.

The researcher's use of some materials from online newspaper articles and court decisions as research material was caused by several considerations. First, the issue of a husband and wife's different religions is a sensitive and taboo subject to discuss with other people (except in trials in front of judges). To do so needs a long process of building trust if the researcher decides to continue this research by collecting empirical data. Divorce is not something that is generally discussed openly in public, except when it occurs among

artists or public figures in Indonesia. The reasons for divorce are often reluctant to be discussed by people, especially when related to one of the parties changing religion or apostasy (murtad).

Second, divorce cases and inheritance cases are court cases that often contain stories of domestic violence. In the judge's verdicts (not all judges' decisions), especially in the case position, traces of the story of violence are visible. Sometimes people who never read the verdicts from feminist legal perspectives or gender studies perspectives will question 'why do the victims of violence not bring their case to the criminal court through a report to the police?'. They are usually worried about the slow process of criminal justice and want to end the marriage relationship immediately.

Third, this research was conducted in 2020, when the pandemic period had just begun and it was difficult to research in the form of interviews with parties outside the researcher's domicile area, considering the travel ban imposed. Not all regions also have good internet facilities for conducting online meetings, especially for judge interviews. Not all courts, even those in the area closest to the researcher, are willing to provide document search or interview services. This happened because, in several courts, both court staff and judges were also affected by COVID-19, so that the courts where they worked were forced to temporarily not provide services to the public.

Fourth, tracing the court's decision is also not an easy job, even though it is carried out using a directory of judges' decisions. Not all of these decisions have a complete file archive. In fact, of the approximately 60 decisions obtained, only 15 decisions have a complete archive. Experience and knowledge related to strategies for reading court decisions are required. It may be added that this research is also not easy for a high school student to do.

Reza Banakar, a professor of socio-legal studies, used text reviews in his research on Ombudsman performance in Sweden. In this study, Banakar used analytical techniques for two documents, a letter of complaint, and a record of how the dispute was processed by the Ombudsman (Banakar 2005). According to Banakar, the analysis of this text provides empirical data related to the case. Departing from what Banakar did, the researchers analyzed the reality experienced by the parties involved in the divorce case because of the apostasy aspect, where the reality lies in the position of the case.

Bettina Lange (2005) in her article also made use of text analysis and behavioral observation as one of the methods in conducting research related to law in action. Lange analyzed documents related to the EU Directive on Integrated Pollution Prevention and Control and then compared them with the results of an analysis of conversational texts from his interviews with several related officials (Lange 2005, pp. 186–87). This paper is of course not as comprehensive as Lange's writing, but the method used by Lange is applied by comparing the facts about the family conditions of the parties narrated in the case position section with the perspectives of the judges narrated in the considerations and decisions section.

Data from the case position section in court decisions and online newspaper news reflect the realities of legal perception, legal anthropology, and gender studies. However, of course, the depth of this reality can still be debated, especially in anthropological studies, for example, which are very detailed in extracting and narrating data.

In the considerations and decisions of judges in court decision documents, analysis is carried out on the perspective used by judges (Irianto 2020). For example, related to the judge's perspective on the position of women (wife) and men (husband), the judge's perspective on religious freedom in the family, and whether the judge is sufficiently able to recognize the signs of domestic violence from the information presented.

This aspect of reality is also explored in online newspaper news. Of course, there will be questions, regarding the confirmation of the news, and how to avoid clickbait used by the media, or even hoaxes.

4. Results

The rights of religious freedom in Indonesia, although protected by the UDHR, The Constitution of The Republic of Indonesia, and by the Act of the Republic of Indonesia of Protection of Human Rights No. 39/1999, still face various challenges in implementation. The choice of religion in some families is highly influenced and determined by the authority in the family. The efforts of women or children in the family to exercise their right to freedom of religion often clash with the power relations and interests of the authorities in the family. Clashes between rights and restrictions imposed within the family often lead to forms of domestic violence.

Domestic violence is simply defined as a series of forms of the use of violence or threats of violence ranging from psychological, emotional, physical, sexual, and neglect. The purpose of this violence is to control spouses or children or other family members who live or are within the scope of the household (Wulandari 2020).

That definition of domestic violence is similar to the domestic violence definition based on the Act of The Republic of Indonesia No. 23/2004 of the Elimination of Domestic Violence, in Article 1 verse (1). That Article states that domestic violence is any act against someone, especially women, which causes suffering and grievances physically, sexually, psychologically, and/or financially, including threats to commit acts, coercion, or illegal deprivation of liberty within the scope of the household.

Why can domestic violence occur, even when the matter is related to issues of religiosity? In situations where there is an unbalanced power relationship in the family and the authorities feel the need to state their actions by using violence, then this violence is a way to strengthen the control of the authority holder over other family members. This control measure using violence also occurs when a family member is deemed to have deviated from the religious teachings of the family. The violence that is deemed necessary to be used to solve problems and deviations in the family, in the culture of society is often not seen as violence, but rather, as part of the way of education (Wulandari 2020, p. 217).

How violence is seen as a tool to discipline family members could be seen, for example, when researchers conducted interviews with several religious leaders and public officials in East Nusa Tenggara in the context of other research conducted between 2017 and 2019 (before the pandemic). In this study, one public official and one regional leader (both male) stated that "there is no violence against children and women in this area. If you beat your mother (wife) and child, you are disciplining the mother and child".

Two pastors in different interviews also complained that "It is very difficult to change perspectives regarding violence in the family is violence and not education". This statement was also reiterated by women who work as victims' companions in institutions that provide services for victims of violence.

The assumption that acts of violence are part of the education of family members applies to some community cultural practices. Thus, when violence occurs, people outside the family do not dare to intervene to assist victims who experience violence, because the community thinks that there is an effort to discipline the victim. Even society thinks that the victim commits the violation. Thus, the victim deserves to be punished as the way to be disciplined.

4.1. State Perspective on Religious Freedom (in Indonesia Context)

Before discussing some cases of domestic violence that can illustrate how religious freedom in the family is limited by the issue of power relations, it is important to look first at the State's perspective on religious freedom. In the Constitution of the Republic of Indonesia, freedom of religion is stipulated as a basic right, which is protected by the State. Two articles specifically mention the right to freedom of religion, namely Article 28 E and Article 29.

Article 28E Section (1) stipulates that every Indonesian person has the right to have a religion and practice belief according to the religion, to choose education and teaching,

to choose a job, to choose citizenship, to choose a place to live in the territory of the country and leave it, and still have the right to return.

Then, Article 29 states that every person in Indonesia has the right to have religion or belief and to practice the religion or belief. This Article specifically regulates religious life in Indonesia. Article 29 in Section (2) stipulates that the State guarantees the freedom of every resident to embrace his/her religion and to worship according to his/her religion and belief.

The state perspective contained in the constitution is related to the right to freedom of religion and worship, which is then also translated into legislation. One of the Acts that specifically regulates the protection of human rights is the Law of the Republic of Indonesia No. 39/1999 on Human Rights. In Article 4, it is stated that every Indonesian citizen has:

> " . . . the right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted based on the law which applies retroactively are human rights that cannot be reduced under any circumstances and by anyone . . . "

Based on the legislation, the rights to freedom of religion and worship of Indonesian citizens are protected. However, what about in practice, especially in the sphere of the family as the smallest unit in society?

4.2. Domestic Violence and Divorce Case Report: Something Hidden behind That Numbers

Based on the Annual Notes of the National Commission on the Elimination of Violence Against Women in 2020, it is known that there were 11,105 cases of domestic violence reported. These domestic violence cases are caused by complex factors. One of the causes is the limitation of religious freedom in the family. The practice of religious freedom in the family does not only have the potential to experience restrictions and violence if these restrictions are met with resistance from parties trying to access their freedom. However, efforts by either party to access the right to freedom of religion and the right to worship can open up opportunities for divorce.

One example that emphasizes the link between restrictions on religious freedom, domestic violence, and divorce as a solution is the data from the religious court on divorce because one party has changed beliefs. In the religious court in Semarang, the number of divorce cases based on the 'murtad' factor reached 40 cases in 2019 (Adi 2019).

During 2019–2020, LBH APIK Jakarta (Jakarta Women Legal Aid Organization) received 125 complaints of domestic violence cases (Denita 2018). Of these, most of the acts of domestic violence occurred because of economic problems or the presence of third parties. However, there were also cases of domestic violence that occurred because a family member had changed religions. LBH APIK Jakarta does not mention the exact number of cases[1], but they show the publication of one case of domestic violence against a young woman who had converted her faith (LBH APIK Jakarta 2019).

One domestic violence case was experienced by a woman who decided to convert her religion. The perpetrators of the violence were the woman's parents and relatives. The forms of violence that were carried out ranged from intimidation to physical violence. Women Legal Aid Organization called LBH APIK, which provided the legal aid for that woman in Jakarta (the capital of Indonesia), and also had to face a group of people brought by the victim's family because the legal aid provider was accused of hiding the victim. That group tried to break into the office of LBH APIK Jakarta (Danu 2020a). The local police even intervened (Danu 2020b).

Some media reported a divorce that occurred because of apostasy aspects. The concept of apostasy here is that one party (husband or wife) changes beliefs. The converting process of belief creates conflict between husband and wife. Then, one of the parties submits an application for divorce, either through the religious court or the local district court.

In the Indonesian context, the party filing for divorce through the religious court is a couple who is married based on the provisions of the Islamic religion and who registered

their marriage at the local Office of Religious Affairs. Meanwhile, those who registered their marriage at the Civil and Population Registry Office are those who are married according to the provisions of other religions outside of Islam. So, the court that has the authority to examine, hear, and decide civil cases related to the affairs of Muslims is the religious court. Meanwhile, the court which has the authority to examine, hear and decide cases related to the affairs of non-Muslims is the district court. It is also important to understand that criminal cases that occur against or are committed by Muslim and non-Muslim residents are fully under the authority of the district court to examine, hear, and decide the case.

This regulation regarding the authority of the court is regulated in Act no. 48 of 2009 concerning judicial power. Based on Article 25 (Act No 48 of 2009), the highest judicial power in Indonesia is under the Supreme Court. Then, under the Supreme Court is the High Court, which is located at the provincial level. Below the high court are general courts for general criminal and civil cases, as well as religious courts, military courts, and state administrative courts; all of these courts are at the district or city level. The religious court (Paragraphs 1 and 3) has the authority to examine, judge, decide, and settle cases between people who are Muslim under the provisions of the legislation.

For private law cases (marriage, divorce, inheritance), some Indonesian Muslims settle their private law cases at the religious court or 'Pengadilan Agama' at the district or city level. When the parties feel that the religious court's decision is not fair enough, they have the right to appeal to the High Religious Court. Those High Religious Courts are located in the capital of the province. If there are still problems, then the case will be raised to the cassation level, which is submitted to the Supreme Court.

Some Indonesians who are not Muslim go to the general court to settle their private law cases (marriage, divorce, inheritance). The first level general court in Indonesia is 'Pengadilan Negeri' or the district court at the district or city level. When the parties feel that the district court's verdict is not fair enough, they have the right to appeal to the High Court, which is located in the capital of the province. If there are still problems, then the case may be sent to the cassation level, which is submitted to the Supreme Court.

Why do Indonesian people need to go to a different court according to their religion to apply for a divorce? Apart from the fact that Law No. 48/2009 stipulates that the private affairs of Muslim Indonesian citizens are under the authority of the religious court to regulate it, also because of the rules that apply to marriage in Indonesia. Marriage in Indonesia is regulated in Law No. 1 of 1974 concerning marriage, especially in Article 2, which states that marriage is only declared valid and recognized by the State if it fulfills two conditions. First, the marriage must be carried out according to the religious law as regulated in Paragraph (1). Second, it must be registered according to applicable laws and regulations or according to State law as regulated in Paragraph (2) of this Article.

It is not stated that the couple who are getting married must have the same beliefs. However, the implementers of these regulations, starting from the village level up to the State and religious leaders, interpreted the regulations to mean that a marriage can only be said to be valid if it is carried out according to the laws of each religion. The parties who have the authority to legalize marriage according to the laws of each religion in effect in Indonesia have various meanings related to the permissibility of couples of different religions to marry. However, the widely used interpretation is that marriages conducted by couples of different religions are considered invalid or as far as possible are not carried out or not given permission by the authorities.

The arrangement of how this marriage should be carried out by taking into account the similarity of beliefs held by the husband and wife has several consequences. First, marriages in Indonesia are difficult to carry out between followers of different faiths. Second, in circumstances where a couple who have different religions from each other are still getting married, one of them will convert to the religion of the partner. It often happens that in societal cultures where patriarchal values are still very strong, religious conversion is carried out by women who follow the religion of their future husbands. Third, over the

course of the marriage itself, it is not impossible for parties who convert to return to their original religion. This will create conflict within the marriage.

In several religious courts in Indonesia, it was noted that the cause of divorce was due to a factor of religious conversion which eventually led to a dispute or conflict between husband and wife. For example, at the Semarang City Religious Court (Pengadilan Agama Kota Semarang), it was noted that there was an increase in the divorce rate due to the husband's conversion to religion in 2019. This was conveyed by the Junior Clerk of the Semarang City Religious Court. According to him, that number has doubled compared to 2018. The Semarang City Religious Court only accepted 19 cases of divorce due to apostasy in 2018. However, between January and December 2019 the Semarang City Religious Court received 38 divorce cases for apostasy (Hardianto 2020).

In September 2019, according to the Junior Clerk of the Semarang City Religious Court, there were eight divorce cases due to conversion. Based on the Court's records, this number is higher than in other months in the same year. The overall divorce rate alone in 2019 reached 3403 cases submitted to the Semarang City Religious Court (Chandra 2019).

The increase of divorce cases also occurred in the Madura and Blitar Religious Courts in 2019–2020. In 2019 the divorce cases filed in the Madura Religious Court were 3947 cases, which are 15 cases that occurred due to changes in the religious beliefs of one party. In the religious court of Blitar, the divorce case filed reached 4365. From those cases, 10 cases were caused by polygamy and converting of religion (Basri 2019; Erliana 2020).

Issues of divorce due to bickering and apostasy have also appeared in other district court statistics. For example, in the records of the Cibinong District Court, Bogor Regency, the total divorce rate in 2019 was 3880 cases. The main cause of divorce was economic factors. However, there were also five divorce cases where one party had converted or apostatized (Metropolitan 2019).

According to media reports, which were traced using the keywords: domestic violence, divorce, and religious differences, there were various factors causing divorce. The factors that cause divorce include economic factors, infidelity factors, and also domestic violence factors. In divorce cases based on the occurrence of domestic violence, one of the drivers of this domestic violence act is the issue of religious differences and changes in the beliefs of a husband and wife. It is interesting that in cases of divorce due to economic reasons, the party filing a divorce suit is a woman or wife (Permana 2020). On the other hand, in some divorce cases caused by the husband or wife convert to other religions, the claims were mostly filed by the men or husbands Adi 2019)

Both Wulandari (2020) and Nafi (2020) articles related to domestic violence and divorce do not mention the violence that occurs related to being forced to believe a certain religion. However, it turns out that in divorce cases submitted to the district court based on the court's statistics report, there are some divorce cases caused by apostasy. This is also confirmed by the court decisions examined in the next section.

The forms and types of domestic violence that were carried out varied, starting from verbal abuse, psychological violence, neglecting and financial violence, and the worst was physical violence. In some cases, husbands or parents impose strict controls and restrictions on the freedoms of those committing to convert to a religion. Perpetrators of the violence could be parents, husbands, siblings, and extended family. Forcing someone to embrace a certain religion is not included in the form of violence that is often carried out in the domestic sphere.

The act of forcing people to embrace a certain religion, even if it is their partner, is an act that is contrary to the principle of religious freedom which is regulated both in the Constitution and international principles on human rights. In some cases, the act of forcing people to embrace a certain religion is accompanied by psychological and even physical violence. For example, in the case handled by LBH APIK Jakarta, where the woman was subjected to violence and attempts to deprive her family of independence for changing religions.

In the next section of this paper, several cases of household violence experienced by someone because he changed his belief are described. These cases were extracted from media reports. The selection of these cases was based on the discovery of three main keywords, namely domestic violence, change of belief, and divorce.

4.3. Digging the Case of Domestic Violence from Online News to Discover the True Practice of Religious Freedom

In cases obtained through online news searches, forms of violence perpetrated by perpetrators of domestic violence against their victims are described. Then, the reasons for perpetrators of domestic violence, including reasons related to restrictions on freedom of religion and worship according to the victim's will. This is different from the content of court decisions which mostly only mention the words: conversion of faith, apostasy, causing disputes or incompatibility or quarrels between the parties, and being rude. Several decisions also did not mention the gender identities of the plaintiffs and defendants so that it was rather difficult for the author to analyze the power relation aspects of the case.

On the other hand, in case tracing through online news, information about the marital status of the parties (perpetrator and victim) is not always obtained, and whether they carried out a marriage according to certain religious laws. Then, online news often puts clickbait in the form of a bombastic title, even though the content is not as written in the title. Not only that, but several issues also need to be rechecked to obtain comprehensive news.

The first example of domestic violence that occurs because a person changes beliefs or chooses a different belief from his family is the case experienced by F, a celebrity. Initially, F divorced her husband. In this case, the celebrity from the Instagram platform was divorced by her husband because she was deemed not to have fulfilled the obligations regulated in religion according to her husband's perception. For example, not obeying the husband's orders, and resisting when her husband reminded her about something. It was a clue that the violence was verbal and psychological abuse by the (ex) husband (Muhammad 2019). After the divorce, however, there was a status post from the celebrity, who expressed relief. The woman later converted her religion after divorcing. This caused her father, who is a public figure in the community, to commit verbal violence against this woman. The woman then had isolated herself from the family, society, and media. However, there was then a rapprochement between the woman and her family (Muhammad 2019).

The second example is the domestic violence experienced by a young woman called D. In the case of D, which occurred in February 2020, the perpetrator of violence was her nuclear and extended families. The family objected to D having a relationship with a man of a different religion. D then ran to the city where her boyfriend lived, even converting her religion and making plans to marry her boyfriend.

D's family was very angry and tried to persecute D and her boyfriend/husband. Not only that, but D's family also intimidated D's husband's parents. D then cried for help. She contacted a legal aid agency to provide legal assistance. The legal aid office also sent her to the safe house.[2]

However, the family then broke into the office of the legal aid organization. It did not stop. D's family then reported the case to the police, alleging that D's girlfriend hid D with the help of the legal aid agency. As a result, several police officers then came to the office of the legal aid agency to conduct an investigation[3]. According to the local police, their presence at the legal aid agency's office was for the purpose of fulfilling the request of D's parents who were looking for their daughter who was hidden by her boyfriend. D was only willing to be met at the legal aid agency's office. However, D was not willing to be met by her parents. This caused the anger of D's parents, such that D's extended family came to the office. The police were trying to secure the situation at the office, according to the police.[4]

Thus, in D's case, there was violence perpetrated by D's parents, not only to D as an individual but also to other people. However, the violence was also carried out by D's parents to third parties who helped their daughter. D's family intimidated D's boyfriend/fiancée

and his parents. Then, they also used verbal and psychological violence, threats of physical violence, and broke into the office of the legal aid agency that protected D.

D experienced intimidation, verbal and psychological violence from her family. Her parents also limited D's access to her rights to choose her own belief, and to marry someone that she loves. D's choice in resolving the prolonged conflict between herself and the family was to involve a third party and enter legal channels. In this case, D initially chose to do adjudication (Patresia 2020).

At the beginning of the case, D tried to avoid the violence. However, over time, because the family had chosen to intimidate and carry out coercive action, then D chose to break off her relationship with her parents. Then, D chose the legal option. Unfortunately, state law cannot fully protect D's right to choose her belief, or even to be married to her boyfriend. Law enforcement officials are also very careful in handling cases related to religious conflicts because religious matters always are sensitive matters for most of the Indonesian people (Adam 2019).

The case experienced by D also happened to N. In N's case, her mother prohibited N from having a relationship with her boyfriend who had a different religion. Meanwhile, N and her boyfriend secretly had a relationship since 2018. However, then N's mother knew about her daughter's boyfriend. The climax of the conflict between N and her mother occurred when N secretly changed religions in November 2019. Threats, curses, even prayers for N to die were made by the mother. On several occasions, N's mother also threatened to divorce N's stepfather (Patresia 2020).

In this case, N experienced verbal and psychological abuse by the mother. Her mother demanded that N not only should obey her parents but also continue to embrace the same beliefs as N's mother's religion. Unlike the case with D, who sought help from a legal aid agency, N persisted in not reporting this case. She chose to avoid her mother to reduce the conflict (Patresia 2020).

The fourth case example is case R. The woman was a widow who had two children. R, after working with a man of a different religion, married and then converted. R had made a video stating that she had changed her faith because of her own will. As for R's extended family and residents of her village, they were very angry and tried to make R return to her original religion (Sodikin 2020). R refused. The family then took R's two children and forbade them to meet R.[5]

R experienced verbal and psychological violence against her. The family were also violent towards R's children. The extended family of R attempted to cut off the relationship between R and her two biological children. The family took R's children and took them back to the village (Armando 2019).

The fifth case was experienced by an Indonesian television film actress, with the initials M. This woman was dating and even later married a man of different beliefs. It is not certain whether this woman later changed her belief. However, the actress's family refused to allow the actress's husband to come to meet the family. Even when the actress's parents were interviewed, the parents issued a statement rejecting their son-in-law and did not recognize the man as a son-in-law.[6]

In M's case, although there was no change in belief in M, the parents refused to acknowledge the relationship between their child and the man of the different religions. The family even blacklisted the man. According to M's father, if the man dared to come to their house, he would face rejection from the family or be considered non-existent (Jonata 2014).

The sixth case involved a man with the initial S who converted. The S family is prominent in Indonesia. Initially, when they heard that S changed his faith, his family's reaction was to not believe him. Some of S's siblings then refused to meet S. Some were angry and said harsh words. However, S then still tried to meet his family, and re-establish good relations. Finally, the S family could accept S again (Husna et al. 2020).

S's experience in dealing with forms of verbal violence on the part of his family could then be handled properly. S could be accepted back by his family even though it was not

easy. It is interesting to see that in the previous five cases, the women who had changed their beliefs acquired forms of verbal and psychological domestic violence that might even be quite intense and difficult to stop. In the case of S, the change initially caused conflict but did not drag on. Is there a problem of constructing a viewpoint in society that is more pro-men than women in the 'right' to make decisions? Or perhaps was it the more open-ended value construction within the S family?

In the seventh case, a man experienced domestic violence in the form of psychological pressure exerted by his girlfriend's extended family. The psychological pressure even led the man to commit suicide in the end. A man named B reunited with his old lover named K. B and K then decided to get married secretly. However, when he was about to get married, K asked B to change his belief first. The conversion was a term from K's family so that B may marry K. B agreed because he was afraid that the residents would also accuse B and K of committing adultery. Before getting married, B then performed a ritual to convert his religion. However, on the night after the marriage, B then asked permission to go out from K's house (Chandra 2020).

B never returned home. In the morning, some people found B's body hanging from a tree by the side of the highway. K's family questioned the cause of B's death. However, in the end, B was declared by the local police office as having committed suicide.

In this case, B experienced a form of psychological violence on the part of K's extended family to marry and change religions. On the other hand, B also experienced pressure from his own family to continue to embrace his native religion. When this pressure could not be managed properly by B, he eventually committed suicide (Chandra 2020).

In the cases extracted from online media, it appears that the right to religion, in the Indonesian context, is not a human right that is entirely within one's authority to decide the use of that right. The choices of religion in Indonesia are ruled by the parents, extended family, or the community. The family uses various methods to strengthen its authority over individuals related to the exercise of the religious rights. Based on some cases from the media, parties who try to access their rights related to religious practices, especially in changing beliefs, tend to experience rejection from their families in the form of violence, ranging from verbal to physical violence.

In addition to investigating cases of domestic violence related to changes in religion or belief by a person, this article also investigates and analyzes several court decisions. The court decisions chosen are those related to divorce which was triggered by domestic violence, and there were indications of a change in belief or religion on the part of one of the parties.

4.4. Court Decisions, Judges Perceptions

This section describes the analysis of court decisions related to domestic violence cases that lead to divorce. The reasons for the occurrence of domestic violence, among others, were because one of the parties changed religions, or returned to the original religion that they had before they get married.

4.4.1. Religious Court of Pasuruan Verdict No. 970/Pdt.G/2009/PA

In this case, the plaintiff and defendant had been married for four years but had no children. At the beginning of the marriage, the plaintiff and defendant's family conditions were harmonious. They lived in one house.

Then, in 1998, in their fourth year of marriage, the plaintiff filed for divorce. The reason was that the defendant was found secretly entering one of the places of worship. The plaintiff suspected that the defendant had converted, and returned to his old belief before marriage. When asked by the plaintiff, the defendant did not admit that he entered the house of worship.

Initially, the plaintiff expressed their objection and quarrel with the defendant. However, then the defendant left the house where he and the plaintiff were living together. When the plaintiff came home from work, she found that the defendant was gone.

The address of the defendant was not known because he lived in different places. Finally, the defendant was found to have lived with his friend. Meanwhile, the plaintiff moved to the plaintiff's parents' house.

During the trial process, the defendant did not appear in court or send a representative. The panel of judges tried to advise the plaintiff and made mediation efforts. However, because the defendant did not know where he lived and was not present during the mediation process or at the trial, the mediation effort could not be carried out. The plaintiff and the witnesses also stated that the discrepancies and disputes could no longer be reconciled. Mainly for the reason that the defendant had apostatized by returning to his old belief before he married the plaintiff. Thus, the panel of judges granted the divorce suit filed by the plaintiff.

4.4.2. The Religious Court of Wates Verdict No. 57/Pdt.G/2014/PA.Wt

In this case, the plaintiff, who was 29 years old, and the defendant, who was 30 years old, had been married for two years but were not blessed with children. The right of the petitioner was to file a request for divorce to the religious court because the respondent was considered to have committed an apostate act.

The defendant returned to his/her origin religion. When they married, the defendant had agreed to follow the plaintiff's religion. The plaintiff and the witnesses then explained to the panel of judges in the trial that efforts had been made to persuade the defendant to convert to the same religion as his/her partner. However, the defendant refused. The defendant then left the house without permission and returned to the defendant's parents' house.

The panel of judges then decided to grant the divorce petition on the basis that first, the defendant had apostatized or left their religion when they were married. Second, there had been a dispute that could not be reconciled, as stated by the plaintiff. Third, the defendant had left the house where he lived with his/her partner without the partner's permission. The defendant was not ever-present at the trial, even though the court had sent a summons to him/her several times.

4.4.3. The Religious Court of Muara Bulian Verdict No. 256/Pdt.G/2012/PA.Mbl

In this case, the plaintiff is the wife, and the defendant is the husband. The plaintiff and defendant had legally married at the local Office of Religious Affairs. The age difference between the defendant and plaintiff was quite large; the plaintiff was only 33 years old, while the defendant was 62 years old. At the start of their marriage, things went well. However, after the age of marriage reached its second year and produced one child, quarrels began to occur.

The cause of the dispute was partly because the defendant often beat the plaintiff. The plaintiff was also upset because the defendant was often caught teasing other women. The defendant was also not happy that the plaintiff was carrying out his religious obligations.

The plaintiff also found that the defendant did not perform worship according to their religion when they were married. However, the defendant returned to his old religion. According to the plaintiff, this was the cause of the dispute, besides the defendant's habit of physically abusing his wife. The defendant's attitude and actions caused the plaintiff to no longer be able to live with the defendant. Thus, the plaintiff filed a divorce application.

The judge then granted the plaintiff's request for divorce. The consideration of the panel of judges in deciding the divorce was because the defendant had apostatized and then committed violence against the plaintiff. Finally, the decision for divorce was also handed down by the panel of judges because the defendant could not be heard, because he was never present at the trial.

4.4.4. The District Court of Purwodadi Decision No. 5/Pdt.G/2018/PN Pwd

This case was resolved at the Purwodadi District Court because the divorced parties married according to the Christian religious procedure. They married in 2007. Throughout the marriage, they were blessed with two children.

In 2009, the plaintiff then decided to return to their original religion. The defendant, who was the wife's party, was invited to change religions. However, the defendant refused to move and remained in her original religion.

Since the plaintiff decided to change religion, there were frequent quarrels and arguments between plaintiff and defendant. According to the plaintiff, this was because the defendant did not want to embrace the same religion as the plaintiff. However, in the defendant's answer and witness testimony, it was found that the plaintiff had committed violence and there were suspicions of infidelity.

The witnesses stated that the plaintiff initially had a different religion from the defendant. However, when the plaintiff was married, they decided to embrace the same religion as the defendant. After two years of marriage, the plaintiff finally returned to his original religion. Although the defendant was not willing to embrace the same religion as the plaintiff, she allowed her two children to be educated according to the plaintiff's religion. The defendant also stated that he had no problem with the change in religion. However, it was the plaintiff who was looking for ways to divorce.

This case was resolved in the district court and not in the religious court because even though the plaintiff was of a certain religion, he had married the defendant according to Christian religious procedures; thus, the divorce case was submitted to the district court, not to the religious court.

The panel of judges then granted the divorce request. The judge considered that both plaintiff and defendant could not be reconciled even though the defendant did not wish to divorce. According to the panel of judges, the incompatibility between the plaintiff and defendant could not be resolved. With the consideration of breaking the chain of violence and dispute, the plaintiff's request for divorce was granted by the panel of judges.

4.4.5. The District Court of Medan Verdict No. 102/Pdt.G/2020/PN Mdn

In this divorce case, the plaintiff and defendant had the same religious background. These two married in 1998 in the church based on Christian values. However, in 2010, the defendant started joining the Charismatic sect. This caused a quarrel between plaintiff and defendant. Finally, they slept in separate beds.

In 2011, when the plaintiff's brother died, the plaintiff and defendant made peace at the request of the defendant. The plaintiff's family provided a condition that defendant must leave the Charismatic sect and return to worship as at the beginning of the plaintiff and defendant's marriage. The defendant agreed. Then, the plaintiff and defendant returned to live together.

It turned out that the defendant was again carrying out worship with the Charismatic sect ritual. This raised the conflict again with the plaintiff. Then, in seeking peace, the plaintiff decided to embrace another religion that was different from the plaintiff's original religion. There was an urge to divorce the defendant because of the ongoing dispute.

The defendant gave different information. According to the defendant, even though they worshiped following the rituals of the Charismatic sect, the defendant still served the plaintiff well. When they did not live in the same house, it was because the plaintiff had not repaired their house and the house was dangerous for the children. The defendant also explained that since the plaintiff did not live with the defendant, he neglected the children, and even experienced economic violence in the form of not providing support for the family.

The panel of judges then decided to grant the divorce application submitted by the plaintiff. The reason for the judges was that there had been ongoing and irreconcilable disputes between plaintiff and defendant. Then, the plaintiff had also changed beliefs,

so that it was impossible for the marriage to continue according to the perspective of the plaintiff's belief.

4.4.6. The Religious Court of Binjai Verdict No. 21/Pdt.G/2019/PA Bnj

In this divorce case submitted to the Binjai District Court, the plaintiff and defendant were married based on Christian values in the church. The plaintiff, when she got married, was a maiden. However, the defendant was a widower with two teenage children. The plaintiff and defendant's marriage happened in 2010.

While bound in marriage, the plaintiff and defendant were blessed with two children. However, the plaintiff was often rude and violent towards his children. The defendant and plaintiff also often quarreled and fought. The defendant also committed acts of violence against the plaintiff. The violence was carried out because the plaintiff decided to return to her original religion before she was married. Her parents-in-law also made threats to shoot the plaintiff. Based on the consideration that both the defendant and his family had committed acts of violence, the plaintiff filed a divorce application.

Apart from reasons of violence committed by the defendant, the plaintiff also filed a divorce application because she had returned to her religion, which was different from the defendant's religion. According to the plaintiff's argument, in her religion, it is prohibited to marry men of different religions. Violation of that rule would be considered sinful. On the other hand, according to the defendant's religious values, interfaith marriage is also prohibited, according to plaintiff's statement. Strangely, this argument that the prohibition of marriage with different religions did not come from the values of the defendant's religion, but was based on the plaintiff's interpretation of Article 2 of the Act of Marriage No.1 of 1974.

Article 2 Paragraph (1) of Law Number 1 Year 1974 concerning marriage, states: "Marriage is legal if it is carried out according to the law of each religion and belief". The elucidation of this Article includes a statement "that there is no marriage outside the law of his religion and belief". Thus, the sentence "there is no marriage outside the law of their religion and belief" is interpreted by the plaintiff as: "individuals who have different religions and beliefs cannot possibly marry" even though the legislators intend that marriage between two people of different religions is possible but it still has to be carried out in the corridor of religious law and beliefs.

However, in this case, the legal product produced by the panel of judges used the term stipulation or order, because the situation faced by the plaintiff and the defendant was deemed irreversible. After all, the plaintiff was a woman who embraced a certain religion, and by her religious teachings it was strictly forbidden to marry a man who had a different religion (according to the interpretation of a particular sect in that religion). If the marriage is still maintained, the woman will sin. Thus, the panel of judges did not want to take the risk of taking part in putting someone as sinful. So, based on the judge's perspectives: nothing should be reconsidered.

In this decision, the panel of judges included several considerations:

a. Marriage must be based voluntarily to achieve happiness, so if the parties are constantly arguing and cannot be reconciled then divorce is the last solution.
b. Marriage between women and men who embrace different religions is not possible. Moreover, in the religious teachings of the plaintiff before marriage, it was said that marriage to a man of different religions would cause sin for the woman. Thus, the marriage cannot be continued.
c. Marriage of the plaintiff and defendant is carried out with or according to the ordinances of the Christian Church, thus the authority to adjudicate cases rests in the hands of the district court and not in the jurisdiction of the religious courts under the regulations regarding the jurisdiction of court institutions according to Law No. 48/2009 concerning judicial power. Based on these considerations, the plaintiff's request for divorce was granted by the panel of judges.

4.4.7. The Religious Court of Wates Verdict No. 302/Pdt.G/2014/PA.Wt

In this verdict, especially in the case position, it is narrated that a male civil servant was married to a female civil servant. They both had different religions. However, before marrying the woman, the man converted to the woman's religion, as required by the family of the woman.

However, in the process of marriage, there were forms of violence between the husband and wife. The husband then filed for divorce from his wife.

In the trial process, it was revealed that the husband as the applicant turned out to have returned to the practice of his native religion, causing a dispute between the husband and wife. The judge, considering the case based on the Marriage Law and the Principles in the Compilation of Islamic Law, then granted the divorce but on the grounds of apostasy.

4.4.8. The Religious Court of Central Jakarta Verdict No. 96/Pdt.G/2013/PA.JP

In this decision, the plaintiff applied for divorce because the plaintiff returned to her original religion before marriage. The plaintiff also knew that the defendant had another wife. Based on the condition of the plaintiff returning to his original religion, the defendant often commits violence against the plaintiff. Another reason for the divorce was that the defendant did not provide financial support for the plaintiff. Based on the Act on the Elimination of Domestic Violence in Indonesia, economic or financial neglect is also part of domestic violence. However, it is interesting that the judge decided this case by granting the plaintiff's request not based on economic violence. However, because the defendant is considered an apostate.

4.4.9. The Religious Court of Kaimana Verdict No. 7/Pdt.G/2021/PA.Kmn

In this decision, the applicant (the husband) filed a divorce suit with the religious court because the wife had turned back to her old belief. At the time of marriage, the wife had agreed to embrace the same religion as her husband. However, the wife turned out to still practice the teachings of her old religion.

Unfortunately, this decision does not contain complete file attachments. Only a summary of the decision is related to the names of the parties, the panel of judges, briefly the case, and the divorce decision.

In the decisions of the judges of the Supreme Court described in this section, it can be found that in the divorce cases that were submitted to the court, when the judges dug deeper, there were several reasons.

First, there was domestic violence in various forms, starting from economic neglect, neglect, verbal violence, and physical violence.

Second, the parties stated that there were restrictions on religious freedom. It is good to choose the same religion in their marriage, because of the interpretation of Law No. 1 of 1974 concerning marriage, that marriage must refer to the law of their respective religion and state law. This rule then has been interpreted by the authorities to mean that the couple should have the same religion. This restriction on religious freedom can be a reason for domestic violence and divorce in the examples of cases presented in this section.

Based on those decisions, which also described that if the party who changes religion or belief is the husband, then the wife can file for divorce without any record of domestic violence in the judge's consideration. The wife's reason for filing for divorce is because the husband is an apostate, so they can no longer live as husband and wife legally according to religious law (and this is also approved by the judge in his consideration).

However, if the wife was guilty of the apostasy (changing belief or returning back to the old religion), then in the divorce lawsuit there must be a complaint that there has been an act of violence (economic neglect, harsh words from the husband to the act of hitting or molesting the wife). This shows that in the cultural construction, women as wives are under the authority of their husbands, and wives must submit to their husbands. To subdue the wife, the husband uses various ways.

This cultural construction where the husband acts as the full authority over his wife and children and has some privilege (including hitting) is a construction of a patriarchal culture. In the context of patriarchal culture, men are the holders of power. Women are implementers (Wadud 2005; Nurbayanti 2020). So, as the holder of authority, men are considered by society with a patriarchal culture as having the privilege to regulate, direct, and control their family members (who are considered subordinates) to obey the rules made by the authority holder. It includes the authority to exercise control over the rights of religious freedom of family members.

5. Discussion

Based on the results of online news searches and court decisions, it is found that the position of women in the family is still influenced by patriarchal values. Often, women are also seen as not having the authority to make decisions, even those concerning themselves. This includes embracing a belief or religion that is different from her family or choosing a spouse. In the cases faced by F, D, M, N, and R, because they are all women, the possibility of making decisions becomes more challenging because of cultural construction issues, especially if the cultural construction is still strongly influenced by patriarchal values.

However, then, is the domestic violence that occurs, triggered by a change in one's belief, only happening to women because of power relation issues between genders? Hence, the problem of changing religion in the family is quite complex because it is influenced by several things. First, the dominant religious factor in the family. Second, the construction of relations between genders in the family—including whether or not patriarchal values are dominant in the family. Third, the pattern of communication between the authorities in the family and other family members. Fourth, the condition of the individual who decides to change the belief themself.

The condition of society also affects how a case is about limiting religious freedom in the family. In a society where social cohesion is still strong, the family will certainly try to prevent family members who have the intention to change religions to do so, or if this happens, efforts will be made to return the person to his original faith. Feeling worried that what people say will be wrong one reason is also why parents or other authorities in the family commit violence against other family members who decide to change religions or embrace a different religion.

This aspect of social cohesion is also one of the challenges faced by law enforcement officials, ranging from police to judges, especially when these law enforcement officials are dealing with cases of domestic violence in which there are issues of restricting religious freedom. The issue of religion and belief has always been a sensitive matter in Indonesian society.

The issue of domestic violence is also not something that can be discussed openly, let alone brought to the realm of law because it is considered to be still in the private sphere. In addition, there is an issue of freedom of religion, which is limited by the family itself. So, you can imagine how big the obstacles and challenges faced by law enforcers are when they handle cases of domestic violence related to the issue of restricting religious freedom.

In the case from Binjai District Court, the panel of judges uses the term 'order', or in the Indonesian language known as 'Penetapan', not the decision or 'Putusan' in the Indonesian language. In the context of the courts in Indonesia, the use of the term ruling for a product of the court has the consequence that this case at the first and last level has been decided and that an appeal cannot be made. This is certainly interesting because it means that the verdict is final, and the defendant cannot then submit other forms of legal remedies (Harahap 2016). The use of the word stipulation in a divorce case is usually used when the husband has given the divorce proceedings three times to the wife. Thus, the act of reconciliation cannot be taken, and a legal divorce occurs. The panel of judges only acts to strengthen what has happened or just to make it official. Thus, it is called determination.

There is a special note related to how these divorce cases, which include the issue of domestic violence and the issue of limiting the right to religion and worship, are described

in court decisions. The general courts always put the names of the parties on the verdict. However, the religious court does not. The general courts also revealed aspects of disputes and the occurrence of violence in the form of physical, psychological, and economic neglect. In this aspect of economic neglect, the general courts said in their verdicts as "not providing a living". Meanwhile, in the decision of the religious court, the forms of violence were not disclosed in detail, only referred to as "disagreement", or "irresistible mismatch". Meanwhile, economic neglect is defined as not providing a living or not paying attention to children.

It is interesting to then compare Olsen's writings (Olsen 1995) on state intervention in the private spheres of the family. Particularly, on how the state constructs hierarchies within the family and the 'ideal' model of the family. In the consideration of the panel of judges in court decisions related to divorce cases due to apostasy, the judge always postulated that the family was no longer harmonious because one of the parties changed religion. Thus, the divorce suit was granted.

The state through the courts (and judges) intervened (Olsen 1995) on this religious issue through considerations and decisions that strengthened the perception that a family must adhere to the same religion, even though religion and family are both in the private sphere. The judges give considerations and decisions that strengthen the 'coercion' carried out by one party against the other by using the basis of the interpretation of Article 2 of the Marriage Law and also the principles in the Compilation of Islamic Law.

In the Indonesian context, where religious matters are a sensitive issue and can lead to situations where family conflicts can escalate into horizontal conflicts within society, judges are not willing to take the risk. In addition, judges decisions on cases are based on what they believe, namely the law (which is interpreted), as well as related religious rules (even though judges are representatives of state law).

6. Closing Remarks

The right to freedom of religion is a part of human rights. However, in the implementation, this right is not always easily accessible. Religion or belief is indeed part of a person's identity. However, as stated by Steph Lawler (2008), it is significant to remember that identity is constructed not only by the individual but also by his family, environment, or community. A person's identity throughout his life continuously goes through a process of formation, changing both internally and externally, said Lawler. In Indonesian society, religion or belief is strongly attached to a person's identity as the result of the construction of his family and society. The decision to embrace a certain religion or belief cannot be easily taken by individuals, because of the significant role of the family and the society.

Religion or belief is the part of the identity that is closely attached to an individual. Identities are constructing by the person, family, community, and state. However, the decision to change religion and to worship is not easy for Indonesian people.

The challenge in the effort to exercise the right to freedom of religion is clearly reflected in the family. In the family, there is an unwritten rule that family members must follow the beliefs held by the authority in the family, namely the father or husband. Based on the divorce cases analyzed in this paper, it is found that the exercise of this authority can then be wrapped up in acts of domestic violence, and can even lead to divorce. It is interesting that the judges, as representatives of the state, are able to recognize this through several considerations in the decisions of these cases. However, the judge cannot take any action related to the violation of religious freedom because the case submitted was an application for divorce.

Thus, the challenge to accessing religious freedom actually does not only come from the public sphere, such as the prohibition on building houses of worship or the prohibition to carry out worship for minority religious groups. Rather, the biggest challenges related to the protection of religious freedom are in the yards and living rooms of our own homes.

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Notes

1 https://www.lbhapik.org/2019/12/siaran-pers-lbh-apik-jakarta-laporan.html (accessed on 10 December 2020).

2 https://magdalene.co/story/jerat-orang-tua-toksik-dan-sulitnya-anak-menentukan-nasib-sendiri (accessed on 30 December 2020).

3 https://news.detik.com/berita/d-4909514/lbh-pembela-perempuan-disambangi-polisi-dan-preman-apa-yang-happened/2 (accessed on 30 December 2020).

4 https://news.detik.com/berita/d-4909558/polisi-tak-ada-penggeledahan-paksa-ke-lbh-apik (accessed on 14 December 2020).

5 https://www.tagar.id/kasus-aceh-cut-fitri-islam-ke-kristen-kenapa-marah (accessed on 14 December 2020).

6 https://www.tribunnews.com/seleb/2014/01/28/asmirandah-dikabarkan-pindah-agama-orangtua-blacklist-jonas-rivanno (accessed on 14 December 2020).

References

Primary Sources

International Declaration, National Regulations and Verdicts.
The Universal Declaration of Human Rights.
Republic of Indonesia. Constitution with Amandement.
Republic of Indonesia. The Act No. 1/1974 of Marriage.
Republic of Indonesia. The Act No. 39/1999 of Human Rights.
Republic of Indonesia. The Act No. 23/2004 of the Elimination of Domestic Violence.
Republic of Indonesia. The Act No. 48 of 2009 of the Judicial Power.
District Court of Binjai Verdict No. 21/Pdt.G/2019/PN Bnj.
District Court of Purwodadi Verdict No. 5/Pdt.G/2018/PN Pwd.
District Court of Medan Verdict No. 102/Pdt.G/2020/PN Mdn.
Religious Court of Pasuruan Verdict No. 970/Pdt.G/2009/PA.
Religious Court of Wates Verdict No. 57/Pdt.G/2014/PA.Wt.
Religious Court of Muara Bulian Verdict No. 256/Pdt.G/2012/PA.Mbl.
The Religious Court of Wates Verdict No. 302/Pdt.G/2014/PA.Wt.
The Religious Court of Central Jakarta Verdict No. 96/Pdt.G/2013/PA.JP.
The Religious Court of Kaimana Verdict No. 7/Pdt.G/2021/PA.Km.

Secondary Sources

Adam, Aulia. 2019. Berita Pindah Agama Cenderung Menyudutkan Penganut Agama Minoritas. Available online: https://tirto.id/berita-pindah-agama-cenderung-menyudutkan-penganut-agama-minoritas-efVZ (accessed on 14 December 2020).

Adi. 2019. Perceraian karena Murtad di Semarang Tahun 2019 Naik 100 Persen. Available online: https://www.kaskus.co.id/thread/5e34508bf0bdb209443f945d/perceraian-karena-murtad-di-semarang-tahun-2019-naik-100persen/ (accessed on 14 December 2020).

Armando, Ade. 2019. Kasus Aceh: Cut Fitri Islam ke Kristen, Kenapa Marah. Available online: https://www.tagar.id/kasus-aceh-cut-fitri-islam-ke-kristen-kenapa-marah (accessed on 14 December 2020).

Banakar, Reza. 2005. Studying Cases Empirically: A Sociological Method for Studying Discrimination Cases in Sweden. In *Reza Banakar and Max Travers, Theory and Method in Socio-Legal Research*. Portland: Hart Publishing and Onati I.I.S.L.

Bartky, Sandra. 2005. Battered Women, Intimidation, and the Law. In *Marilyn Friedman, Women and Citizenship*. New York: Oxford Press.

Basri, Abdul, ed. 2019. 15 Perceraian karena Murtad Setahun PA Terima 3.947 Perkara. November, Available online: https://radarmadura.jawapos.com/read/2019/11/23/167182/15-perceraian-karena-murtad-setahun-pa-terima-3947-perkara (accessed on 14 December 2020).

Chandra, Iswinarno. 2019. Tren Cerai karena Suami Pindah Agama Meningkat Tajam di PA Kota Semarang. Available online: https://jateng.suara.com/read/2019/12/30/134449/tren-cerai-karena-suami-pindah-agama-meningkat-tajam-di-pa-kota-semarang (accessed on 14 December 2020).
Chandra, Iswinarno Senin. 2020. Pindah Agama dan Menikah Diam-diam Diduga Jadi Alasan Pengantin Bunuh Diri? Available online: https://kaltim.suara.com/read/2020/11/02/132345/pindah-agama-dan-menikah-diam-diam-diduga-jadi-alasan-pengantin-bunuh-diri (accessed on 14 December 2020).
Danu, Damarjati. 2020a. LBH Pembela Perempuan Disambangi Polisi dan Preman, Apa yang Terjadi? Available online: https://news.detik.com/berita/d-4909514/lbh-pembela-perempuan-disambangi-polisi-dan-preman-apa-yang-terjadi/2 (accessed on 14 December 2020).
Danu, Damarjati. 2020b. Polisi: Tak Ada Penggeledahan Paksa ke LBH Apik. Available online: https://news.detik.com/berita/d-4909558/polisi-tak-ada-penggeledahan-paksa-ke-lbh-apik (accessed on 14 December 2020).
Denita, Br Matondang. 2018. LBH APIK Terima Aduan 308 KDRT Selama 2017. Available online: https://news.detik.com/berita/d-3867106/lbh-apik-terima-aduan-308-kdrt-selama-2017 (accessed on 14 December 2020).
Erliana, Riady. 2020. Murtad dan Poligami Kini Jadi Tren Penyebab Perceraian di Blitar. Available online: https://news.detik.com/berita-jawa-timur/d-4846907/murtad-dan-poligami-kini-jadi-tren-penyebab-perceraian-di-blitar (accessed on 14 December 2020).
Harahap, Yahya. 2016. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*. Jakarta: Sinar Grafika.
Hardianto, Fariz. 2020. Gara-gara Pindah Agama Puluhan Suami di Semarang Ceraikan Isterinya. Available online: https://www.idntimes.com/news/indonesia/fariz-fardianto/gara-gara-pindah-agama-puluhan-suami-di-semarang-ceraikan-istrinya-nasional/2 (accessed on 14 December 2020).
Husna, Rahmayunita, Dea Dezellynda, and Madya Ratri Senin. 2020. Sempat Menentang, Respons Alyssa Soebandono Tahu Kakaknya Pindah Agama. Available online: https://kalbar.suara.com/read/2020/12/14/155959/sempat-menentang-respons-alyssa-soebandono-tahu-kakaknya-pindah-agama (accessed on 14 December 2020).
Irianto, Sulistyowati. 2020. Teori Hukum Feminis. In *Perempuan dan Anak dalam Hukum dan Persidangan*. Edited by Sulistyowati Irianto and Lidwina Inge Nurtjahyo. Jakarta: Yayasan Obor Indonesia.
Jonata, Willem. 2014. Asmirandah Dikabarkan Pindah Agama, Orangtua Blacklist Jonas Rivanno. Available online: https://www.tribunnews.com/seleb/2014/01/28/asmirandah-dikabarkan-pindah-agama-orangtua-blacklist-jonas-rivanno (accessed on 14 December 2020).
Lange, Bettina. 2005. Researching Discourse and Behaviour as Elements of Law in Action. In *Reza Banakar and Max Travers, Theory and Method in Socio-Legal Research*. Portland: Hart Publishing and Onati I.I.S.L.
Lawler, Steph. 2008. *Identity: Sociological Perspectives*. Cambridge: Polity Press.
LBH APIK Jakarta. 2019. Siaran Pers LBH APIK Jakarta. Available online: https://www.lbhapik.org/2019/12/siaran-pers-lbh-apik-jakarta-laporan.html (accessed on 14 December 2020).
Metropolitan. 2019. 2.504 Istri Gugat Cerai Suami Kere. Available online: https://www.metropolitan.id/2019/10/2-504-istri-gugat-cerai-suami-kere/ (accessed on 14 December 2020).
Muhammad, Ridho. 2019. VIDEO Pengakuan Salmafina Sunan Pindah Agama, Taqy Malik Bongkar Alasan Ceraikan Anak Sunan Kalijaga. Available online: https://pekanbaru.tribunnews.com/2019/07/15/video-pengakuan-salmafina-sunan-pindah-agama-taqy-malik-bongkar-alasan-ceraikan-anak-sunan-kalijaga?page=4 (accessed on 14 December 2020).
Nafi, Tien Handayani. 2020. Perempuan dan Anak dalam Perceraian. In *Perempuan Dan Anak Dalam Hukum Dan Persidangan*. Edited by Sulistyowati Irianto and Lidwina Inge Nurtjahyo. Jakarta: Yayasan Obor Indonesia.
Nurbayanti, Herni Sri. 2020. Konsep-konsep Dasar tentang Gender. In *Perempuan dan Anak Dalam Hukum dan Persidangan*. Edited by Sulistyowati Irianto and Lidwina Inge Nurtjahyo. Jakarta: Yayasan Obor Indonesia.
Olsen, Frances E. 1995. The Myth of State Intervention in The Family. In *Feminist Legal Theory Volume II*. New York: New York University Press.
Patresia, Kirnandita. 2020. Jerat Orang Tua Toksik dan Sulitnya Anak Menentukan Nasib Sendiri. Available online: https://magdalene.co/story/jerat-orang-tua-toksik-dan-sulitnya-anak-menentukan-nasib-sendiri (accessed on 14 December 2020).
Permana, Fuji E. 2020. Banyak Orang Bercerai Saat Pandemi COVID-1. September. Available online: https://republika.co.id/berita/qgkyhn282/banyak-orang-bercerai-saat-pandemi-covid19 (accessed on 14 December 2020).
Sodikin. 2020. Janda 2 Anak di Aceh Pindah Agama, Ini Pengakuan Sang Kakak. Available online: https://www.islampos.com/janda-2-anak-di-aceh-pindah-agama-ini-pengakuan-sang-kakak-193964/ (accessed on 14 December 2020).
Wadud, Amina. 2005. Citizenship and Faith. In *Marilyn Friedman, Women and Citizenship*. New York: Oxford Press.
Wulandari, Widati. 2020. Kekerasan dalam Rumah Tangga. In *Perempuan Dan Anak Dalam Hukum Dan Persidangan*. Edited by Sulistyowati Irianto and Lidwina Inge Nurtjahyo. Jakarta: Yayasan Obor Indonesia.

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Article

Is Gabola a Decolonial Church or Another Trajectory of Freedom of Religion in Post-Colonial South Africa? Rethinking Ethical Issues in Religious Praxis

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Abstract: In this paper, I interrogated the Gabola church in terms of its origins, purpose and its distinctiveness as a postcolonial manifestation of freedom of religion in South Africa. I answered two questions, is Gabola church a representation of a decolonial church and could it be a manifestation of trajectories of the postcolonial ill-defined freedom of religion? In responding to these questions, I used decoloniality, a theory whose agenda among many others is geared to usher a future free from oppression, where all can participate in modernity and in postmodernity. Data was generated through participatory action research. The approach enabled us to unearth the theology of Gabola, philosophy and the gap they seek to fill in the religious space. Ten Gabola church members and five church members from a mainline Christian movement participated in this research. The findings indicated that Gabola church presents a new religious movement that is socially inclusive, that seeks to promote social justice and social transformation. On the other hand, the research revealed that the lack of a regulating body for religious movement is the reason for the rise of questionable movements such as Gabola, a serious threat in the praxis of the Christian faith. To this end, I concluded that while freedom of religion is a good idea in line with the decolonial move, there is a need for participative and collaborative regulation of religious movement to eliminate criminal elements that overshadowed the beauty of religion manifested through 'unthinkable' ethical irregularities.

Keywords: Gabola Church; Decolonial Church; Conventional church; ethics and education

1. Introduction

Despite various philosophies, with others stipulating that religion will soon disappear from public life (Brittain 2012, p. 208), religion continues to be a force to be reckoned with. In fact, religion has not disappeared from public life in postcolonial South Africa, but continues to be a powerful source of good, evil (Dreyer 2007), and unending controversy. The controversy arises as some emerging religious movements are characterised by exhortation, violation of human rights, and the promotion of patriarchal tendencies among many (Dube and Nkoane 2018). To develop this argument of controversy, for the purpose of this article, I focus on Gabola 'church'. Before unpacking it in detail, it should be noted that South Africa in its Bill of Rights, gives space for the freedom of religion. The constitution of the Republic of South Africa (1998) states that, "everyone has the right to freedom of conscience, religion, thought, belief, and opinion". In addition, Section 31(1) (a) states,

> Persons belonging to a cultural, religious, or linguistic community may not be denied the right ...
>
> (a) To enjoy their culture, practise their religion, and use their language.

However, its implementation is without controversy and, to some extent, leads to loss of human lives and the promotion of unethical practices in cases such as of the Seven Angels Ministry (Dube 2019).

Describing in detail, Kenny (2017) argues that the South African religious landscape is characterised by unconventional churches and colourful preachers who employ all kinds of outlandish or bizarre rituals to attract parishioners. To this end, a new religious movement has emerged, the Gabola church. The rise of the Gabola church has been received with mixed feelings from the Christin community and, at the same time, more questions have been raised, especially on religious ethical issues, as will be discussed. Thus, for the sake of this article, I frame the debate and unfolding of the paper cognisant of two questions. Is Gabola is a decolonial church or another trajectory of postcolonial practice of religion? Thus, these questions form the centre of this article and were used to glean data from the participants.

2. Definition of Terms

In this section, I define various terms that are used in this paper. The term postcolonial is traced as early as 1961, with the works of Frantz Fanon who provided the work that initiated what has become the present postcolonial theory amongst academics by his publication *The Wretched of the Earth*, which was a sequel to his book *Black Skin, White Masks*, published in 1952 (Adamo 2011). The terms also referred to the decolonisation of the future by destabilising the way of thinking of the developed world in order to create space for the subaltern or marginalised groups to speak and produce alternatives to dominant discourse (Adamo 2011). For the sake of this paper, postcolonial refers to the post-1994 period, where a new dawn emerged in the political landscape of South Africa (South Africa gained political independence in 1994) and ushered in a new constitution in 1996 that recognised the need to respect various religious practices. The word religion is used very loosely in this paper; in many cases, it refers to the Christian faith, cult, or group of believers or adherents characterised by a claim that they believe in a divine being and their existence to push God's agenda. Conversational churches of theologies as used in this article refer to bible-based churches, which were formed by missionaries whether from the Global North or Global South. In some cases, these churches are also referred to as mainline churches, characterised by believing in the priesthood of all believers, maintaining a good lifestyle exemplified by maintaining standards of purity, love for all and forbidding followers to take alcohol.

3. Background of Gabola Church

The Gabola church came to the religious landscape of South African in 2017 under the custodianship of Bishop Tsietsi Makiti, 52. He is the founder of the church and the brains behind the idea (Kwalimva 2017). The Gabola is a Sotho term meaning drinking or "have a sip" (Makhethwa 2017). The church is characterised by worship in taverns, which are used as sites for worship. The church members eventually become patrons. The church is predominately in cities attracting followers especially among the youths and beer lovers. The church has drawn attention to many because of their philosophy towards drinking of beer. The church, unlike other 'churches', invented new ways of baptism, which was never thought of before, which is, using beer as a form of baptism, at least by conventional churches. Kwalimva (2017), commenting on the Gabola baptism, says, "A church in South Africa has introduced an unorthodox way of baptizing its faithful—your favourite alcoholic drink replaces water". The church theology and praxis is centred on drinking all sorts of alcoholic beers, basing drinking during church service in John chapter 2. Unlike the Roman Catholic that allows its members to drink beer in private spaces, Gabola believes that drinking should take place during the church service. Thus, as argued by Kwalimva (2017), congregants at the Gabola church have also been given the go-ahead to drink alcohol during church services. As such, the church does not follow a prescribed order of doing church as advocated by conventional churches.

The paper follows two paths, which are informed by the above questions. One suggested by Jared (2017) is that the Gabola church has rewritten and redefined what a 'standard church' ought to look, behave, and preach like in a postcolonial space. Apart from redefining the order of worship and doing church, Mathape (2018) says Gabola church's form of Christian religious expression is probably the first of its kind in the world. The other path indicates that the Gabola church has diverted from what

has been considered 'ordinarily' accepted by conventional religious followers. Describing the second path, the South African Council of Churches has described Gabola church as "[a] cult and disgrace to Christianity", a representation of "the end of times" (Mathape 2018) and deviant social organisation masquerading as religion, and an opposite of legitimate religion (Chidester 2003, p. xx). Given these two paths, I agree with Beyers (2014, p. 1), that the issue of religion and its praxis needs to be put on the table again for debate, and Mpofu (2017) is of the view that putting it on the table is an urgent business especially with questionable postcolonial praxis of religion.

4. Theoretical Framing: Decoloniality

In interrogating the Gabola church, I used decoloniality theory. Decoloniality allows a new way of thinking, doing and imagining a better future (Ndlovu-Gatsheni 2015, p. 46), and as such it fits into interrogating the Gabola church to see if it offers a new thinking for a better religious praxis. Through decoloniality, the attempt is remaking the world of the enslaved, colonised, and exploited peoples to regain their ontological density, voice, land, history, knowledge, and power (Ndlovu-Gatsheni 2015, p. 23). The theory rejects modernity, which is located in the oppressed and exploited side of the "colonial difference", and rather argues "towards a decolonial liberation struggle to a world beyond eurocentered modernity" (Ramón 2011, p. 12). This modernity is evident in the organisation of power, of identity or humanity and humanism and in the structures of knowledge (Zondi 2016, p. 20), as is highly reflected with postcolonial religious movements in South Africa. Thus, decoloniality is the thinking and practices from peoples and parts of the world that have experienced even the enlightenment itself as a darkening of the world and have endured modernity as dehumanisation (Mpofu 2017). To this end, and in the context of oppression and dehumanisation, decoloniality as a theory seeks to address injustice (Mpofu 2017). By the same token, it can be argued that decoloniality, then, means working toward a vision of human life that is not dependent upon or structured by the forced imposition of one ideal of society over those that differ (Mignolo 2007). In the context of this study, decoloniality is pertinent as I interrogate Gabola church practices in the context of social justice with the need for church members to participate in the modernity and postmodernity that is free from the coloniality of power, knowledge, and being as manifested in some of the postcolonial religious movements. Decoloniality allows us to interrogate Gabola as an emerging church, which when it exhibits decolonial tendencies, it must be given space in the contested religious space, or on the other hand, challenge any processes that exhibit dehumanisation and those that promote dehumanisation. With this ambivalence, it is then difficult to identify whether the church fits within the broader spectrum of the Christian faith, cult, or some new movement that will be categorised with time.

5. Methodology: Participatory Action Research

I have chosen participatory action research (PAR) because this approach to Gabola church research allows an "investigation of actual practices and not abstract practices and learning about the real, material, concrete, and particular practices of particular people in particular places" (Kemmis and McTaggart 2007, p. 277). PAR involves "identifying the rights of those concerned by the research, and empowering people to set their own schemas for research and development, thereby giving them tenure over the process" (Cornwall and Jewkes 1995, p. 1674). Lopez (2015, p. 229) indicates that the PAR approach directly challenges the traditional ways of doing research, and that its focus is on benefitting the community in which the research is taking place. PAR responds to a reality that states that conditions of injustice are not natural, but are produced and can therefore be challenged (Loewenson et al. 2014, p. 14). Tshelane (2013, p. 417) argues that PAR involves a "collaborative effort to address specific systems. It is a cyclical and reflective research design that focuses on problem solving and improving work practices". In addition, PAR groups "aspects of popular education, community-oriented research, and action for social change to promote marginalized communities, where the quest is to unearth the causes of social inequality and consequently the solution to alleviate

the identified problems" (Williams and Brydon-Miller 2004, p. 245). In line with PAR, I attended several of the Gabola church services with some of the participants of the study. This was essential to gain access to information from the church members. I also engaged other participants from mainline churches to voice their views on the new church and highlight their feeling on the new church. During the last meeting, I managed to have a focal discussion with some members of Gabola and the mainline church to discuss their views on the new movement.

6. Data Analysis

The data collected were analysed through the model suggested by Laws et al. (2003), which provides seven steps:

Step 1: Reading and rereading all the collected data: The data from the interviews and focus group discussion were read and reread to get the essence on the Gabola church and their beliefs.

Step 2: Drawing up a preliminary list of themes arising from the data: Major issues and themes were identified and arranged according to the research question of the study.

Step 3: Rereading the data: By rereading the data, I checked if the themes I had identified corresponded with what the participants said and with the research questions.

Step 4: Linking the themes to quotations and notes: The themes emerging from the data were linked to various scholarly views.

Step 5: Perusing the categories of themes to interpret them: During interpretation of the data, I remained cognisant of the research question.

Step 6: Designing a tool to help discern patterns in the data: Through this, I was able to determine the patterns during data analysis.

Step 7: Interpreting the data and deriving meaning: I identified themes that then became the subheadings.

7. Ethical Issues

This paper is part of a bigger project of capstone research and was ethically cleared by the University of the Free State, UFS-HSD2017/0998. Thus, the study adhered to ethical practices such as protection of the participants, given the sensitiveness of religious issues. I also ensured that pseudonyms were assigned to participants. I also ensured the participants that the data obtained would only be used for academic purposes, which is to enhance the praxis of religion for sustainable development. To ensure reliability of the analysed data, I used a member-checking process (Birt et al. 2016, p. 1802; Bygstad and Munkvold 2007, p. 1; Gunawan 2015, p. 10) to ensure that my findings reflect what the participants gave during the participatory action research.

8. Findings and Discussion

8.1. Decolonial Apsect of the Gabola Church

Accepts Outcast from Other Churches

From the research it emerged that the Gabola church represents a decolonial church through its non-segregative policy. The participants revealed that Gabola gave them an opportunity to drink beer that would not be permitted under conventional circumstances. They also indicated that some of the churches have too many expectations, which in some cases becomes a burden, but with Gabola, the church has no policing or too many expectations, making the worship and participation in church activities engaging and rewarding. Mandlovu commenting on this noted that, "*Gabola is a good church, we are free here, we are not judged. We do all we want and such freedom is not there in other churches*". Jared (2017) confirms the observation by Mandlovu and notes that Gabola church is open to all people regardless of their past and present conditions, especially in relation to the consumption of alcohol. Makiti stated that the church accommodates people who are not welcome at other churches

(Jared 2017). However, despite this stance, people, especially from conventional theology, generally dismiss and do not tolerate the Gabola approach. Despite the dismissiveness towards Gabola, at least according to the adherents, Gabola offers a philosophy behind the church that creates an environment where consumers of alcohol—who are condemned by mainstream churches—can find a home (Tau 2017). Accommodating all, regardless of their standing in society, speaks a lot in terms of inclusivity and promotes the agenda of decoloniality where all need to partake in modernity as people of equal value with those who exclude them. To this end, Gabola has become like a city of refugees where people in Biblical times could run for safety. In other ways, Gabola church has filled a gap created by conversational churches through acts of excommunication and dismembering seemingly wayward behaviours.

8.2. Eradication of the Tithing System

The Gabola church has arguably brought a sigh of relief to people who have viewed some churches as money mongers, which are described by Epondo (2015) as churches that are run like insurance companies owning sanctimonious spiritual powers, playing on the hopes and fears of their followers, in exchange for generous tithes. Gabola church does not require its members to contribute tithing, describing the practice as an exploitation of the poor. During the visit at the church, there was no giving time but members were free to use their money to buy beer. When asked about the rationale behind such an approach to the order of service, participants were quick to praise the new church on its approach to giving. One member was jubilant and noted that, "*with Gabola church our monies are very safe, we use it to buy beer unlike in many churches where money is given and only the pastor benefits from. Here with or without money, we worship God*". Makhethwa (2017) confirms this observation by indicating that Gabola does not take tithes from congregants. The money we use in church is just buying their own drinks while we conduct our services. In support, Molobi (2017) argues that Gabola does not ask people to give us money, our members use their money to buy booze, and sometimes people give away their money to churches even though they are poor. To some, this is seen as a decolonial approach to doing church. It is common knowledge that some new religious churches are known for extortionist tendencies, where the poor give all they have to please the few especially religious leaders. Confirming this, The *Commission* for the Protection of the *Rights* of Cultural, Religious and Linguistic Communities (2015) (henceforth (CRL 2015)) noted that some religious movements refuse to share financial statements, signatories to the bank accounts, deeds or leases of the land. To this end, tithing becomes a thorny issue in many churches, thus to some Gabola church brings relief to the masses, especially the poor who have suffered from mafia prophets. However, this does not correlate with the mainline theology of conducting service since tithes are generally in the order of service. Thus, no-payment of the titles seemed to place Gabola church at a decolonial space and perhaps confirm the teaching of the New Testament where tithes are arguably not part of the teaching of the gospel writers and apostles.

9. Community Empowerment

For the church to be relevant, it should, among many other things, empower its people and ultimately find ways to contribute to social transformation and development. To this end, the Gabola church seeks to fulfil the role by empowering youths. One Mzondiwa noted that, "*as a church we are in the process of starting projects that will benefits youth, here it's not about church only but how we should survive after church*". In addition, Zwelani argued, "*that conducting churches in taverns is a strategic move to locate youths for life skills projects. Youths are many and because of unemployment they are always in taverns thus skill building it taken to where youths are*". Adding to this notion, Jared (2017) noted that the church is not about alcohol only; we have programmes that empower the youth. We started soccer teams and a studio for artists and photographers. The other pipeline projects included poultry and building. To this end, this can be seen as a decolonial move where adherents are emancipated out of poverty through various life skills projects.

9.1. Ordination Processes

The Gabola presents a new phenomenon in the praxis of faith. It is common knowledge that among the mainline churches, pastors or bishops undergo theological training in order to qualify for the service of the ministry. However, with Gabola church the criterion is that the owner of the tavern automatically becomes the pastor of the church. While the process appears more economical to cover accommodation costs, it does not address the capabilities and moral uprightness expected from the religious leaders opening a serious challenge to the polity of the Christian faith. This, according to the participants, is a move aimed to secure venues for church service at no cost. Ndozi, commenting on this said, "*at Gabola the bar is not high like other churches that require lot of training for pastors, here own a tavern and you become a pastor. I believe it makes life easy for leaders since there are not costs for training and it addresses vacuum in church polity*". While Gabola members may appreciate the practice, it presents various trajectories especially in the professionalisation of religious occupation. It exposes the church to being hijacked by criminals who can use the fluidity and flexibility of the church to acquire a position and use it to commit various atrocities.

9.2. Champions' Social Justice

The rise of the Gabola is also associated with the need for churches to be socially inclusive. According to the church members who participated in this research, the church has brought a new hope for the masses that have been rejected systematically or by design from the mainstream churches. As such, according to the Gabola members, this speaks of social justice. As used in this research, social justice is based on the idea of a society that ensures fair treatment and a just share of the benefits of society for individuals and groups (Monychenda 2008, p. 19). Speaking of his role in the spiritual dimension, Bishop Tsietsi Makiti argues that people must remember that I am sent by God to be the voice of the voiceless (Molobi 2017), implying that he is the defender of justice. In defending the voiceless, the church seeks to use the gospel to eliminate various injustices such as sexual abuses, money laundering, and child abuse among many others (Dayiman and Ntshobane 2018). This approach will help adherents who, through abuse, are left with no voice and no will (Freire 2000, p. 144). Thus, regarding the stance to champion social justice by Bishop Makiti and Gabola structures, Alvesson and Willmott (1992, p. 432) are right to argue that some "individuals and groups become freed from suppressive social and ideological situations, particularly those that place socially unnecessary precincts upon development and enunciation of human consciousness". By being the defender of the poor, as claimed by Gabola, it places them in the space of being decolonial, which can contribute significantly to the transformation of the South African society that is characterised by various injustices.

In line with social justice aspect, the church gives its members a laissez-faire approach to conducting church. It then does not put stringent laws among its church members. Some churches are notorious for enacting stringent laws that then become a burden to the followers such as compulsory attendance, tithing, and total obedience to a leader or leaders, or even in some cases do what Chidester (2003) refers to as strategic distancing from the rest of the members of community to allow each control. But with Gabola, arguably we see a decolonial church through adopting liberal approaches to Christian faith.

10. Questionable Practices Negating Decolonial Church

Apart from the church playing a pivotal role to decolonise postcolonial religion in South Africa, the Gabola church has exhibited some of the questionable practices, which, in the eyes of conventional religious movements, they are deemed ungodly and likely to bring the name of God into disrepute. Thus, there is a need informed by United Nations Educational Scientific and Cultural Organization (UNESCO 2011, p. 17) to interrogate and problematise some practices since some aspects of religious systems and knowledge impinge on national and global mind-sets, and the development of critical

and democratic citizens. Cognisant of this, in the following section, I highlight some of the findings that make certain people argue that the church is one of the examples of an ill-defined freedom of religion and more a trajectory of postcolonial praxis of Christian faith.

10.1. Re-Writing of the Bible

In an endeavour to contextualise the Christian faith to the African identity and representation, the Gabola church argues for the rewriting of the Bible. While the idea may seem noble, the suggestion has made the Gabola church unpopular and could be labelled anti-God. The foregoing argument is cemented by Bradley (2012, p. 1), who argues that some churches and their leaders deploy negative portrayals of the church, characterising them as "failing", "in crisis", or otherwise failing to live up to Christian standards. The participants, while appreciating the Gabola church, were not comfortable with the need to rewrite the bible. Thus, the need to rewrite the bible has placed the church as one of the trajectories of postcolonial religion as the bible has been deemed a sacred book, which must be followed, at least from a conventional theological orientation. Rewriting can raise more problems where criminal elements can hijack the project and insert controversial issues that might compromise the ethical standard of the Bible, which are generally appreciated and accepted. The need to rewrite the Bible can overshadow the beauty that the church wishes to offer in an effort to transform the South African society through religion.

10.2. Segregation of Women

While the church boasts being democratic and accommodative of the members, which are not allowed in other churches, the challenge is that the Gabola church has not structured itself to welcome women in the context of church and boozing at the same time. During this research, various women could be seen milling around taverns with only few of them inside the church. According to the participants, the women that take part in the service are regular customers, while those milling outside are aspirant adherents because of the fear of what people could say about the unconventional methods of worship or because of the unclear structure for the inclusion of women. According to the Bishop, as cited by Jared (2017), women are not allowed because drunk men may start troubling these women. Given this context, it becomes difficult for one to qualify the church as a decolonial church given the lack of structures that allow women to be part of the church. In fact, it can be argued that it promotes patriarchal tendencies, where men still occupy predominant positions, which is of course against the provisions to create and champion democracy through Christian theology. It also presents challenges of destroying family ties, which in most cases are championed by religious institutes (Damaris and van Klinken 2018), especially with mainstream religious movements. Thus, Gabola church needs a clear theology on the inclusion of women in all structures. Through this, women are brought into the ontological being space, which can contribute to reduced abuse of women and more so their marginalisation in social structures.

10.3. Love of Power and Recognition

Some have seen the Gabola church as one of the gimmicks used by power-seeking people and religion to offer an easy access to power and recognition at least in the lens of conventional church. Thus, the sentiments by some participants in this research are concurred by Dreyer (2007), who eludes that religion in a modern, secular, postcolonial Africa also provides opportunities for religion to be exploited in power struggles. This is based on religion, class, race, gender and all the other boundaries that are continually being revived by those in power or those seeking power. Zwane, commenting on Gabola church, said, "*this is just a project of being popular. This guy wants to be known and he might want to get a political office*". Cognisant of this observation, some people have used religion to ensure access to different offices and privileges. While being ambitious is ideal for progress society, it must be done in respect of other people and cognisant of the need to promote human rights and dignity.

11. The Way Forward to Religion in Global South

Either the Gabola church is decolonial or another example of a trajectory of postcolonial religion, it is becoming unavoidable that freedom of religion is examined carefully and thoroughly without infringing upon any rights of people. While religious rights are or should be observed, it is important that the argument of freedom of religion be examined in light of human rights, respect for human dignity, and, at the same time, in obedience of a deity. Again, there is a need for better ways to theorise religion, of critiquing and taking religious struggles for the liberation from hegemonic forces forward in contemporary religious conjecture (Ndlovu-Gatsheni 2015, p. 23). Religious practices, underpinned in a decoloniality lens, offer an opportunity for reframing freedom of religion in the milieu of human rights. The time has come for a decolonial turn, in order to transform and rethink the religious narrative (Zondi 2016, p. 20). In response to Zondi's observation, I argue that,

> [I]n the long run, society should find ways to protect people, religion-related abuse and help religion evolve in the direction of better treatment of people. (Bottoms et al. 1995, p. 109)

In this regard, in response to Bottoms et al. (1995, p. 109), I propose the following: regulation of religion, reintroduction of religion and training of religious leaders on human rights.

11.1. Regulation of Religion

The regulation of religion in South Africa is now a topical issue, which is becoming desirable yet cognisant for the need to respect the constitution, especially on freedom of worship (Dube et al. 2017). Thus, it is not always true that when governments relax restrictions on religion and treat all groups equally, greater societal tolerance and civility ensue (Hertzke 2012), for example, the Seven Angel Ministry case (Dayiman and Ntshobane 2018). Relaxing of religious practices can be dangerous, especially when some religions are exhibiting some questionable and unethical practices that, at least in the lens of decoloniality, need to be exorcised or challenged for the good of all. Thus, a regulation seems inevitable, as Lunn (2009, p. 939) argues that some religious practices have become "[an] impediment to economic advancement, and irrelevant for modern societies". While regulation of religion is doable and desirable, it should, however, be increasingly consultative so that no religious group or leader may feel that the regulations of religion are targeted on him or her. A consultative process has the impetus to establish a framework of human rights and enact ethical issues given the church stance on alcohol and use of taverns as religious sites. In support of this, Reginald (2017) argues that religious leaders need to enter into dialogue with all like-minded people to combat the evil influences. Furthermore, issues of safety of the religious followers, especially women and children, should be regulated given the context of taverns and behaviours of other patrons when under the influence of alcohol. In this way, and in particular in the lens of decoloniality, praxis of religions in a regulated format in respect of human rights is repositioned as national spiritual capital, as critical assets in reimaging social reconstruction and transformation (Kaunda and Kaunda 2018).

However, regulation of religion may present various trajectories, especially on the freedom of religion and religion itself. In some countries, the regulation has become a source of unending conflict between religious adherents and the state or among religious adherents (Donald and Howard 2015). This implies that while trying to solve the problem of abusive religion, it may be an avenue where new and challenging problems may emerge. Cognisant of this and in light of the above recommendation, I suggest a collective approach among all stakeholders to spell out how far the government can regulate religion without infringing upon freedom of religion, while protecting its citizens from thuggery hidden in religious practices.

11.2. Reintroduction of Religion in Schools

The curriculum in basic education has underplayed the role of religious education (Dube and Hlalele 2017). Religion no longer occupies a central place in the curriculum, which, to our view, presents challenges. Among many challenges is that the curriculum produces learners that are not

critical when it comes to religious issues. As such, it becomes easy for individuals to manipulate religious issues cognisant that the general populace or religious adherents have inadequate religious knowledge. Our argument is that new forms of religions can easily be problematised if schools afforded learners an opportunity to interrogate religions within an academic space. Again, if schools taught religion, learners were going to engage effectively with religious movements such as Gabola church, to an extent that learners or religious people can join the church based on critical examination. The classroom will allow a space for critical religious engagement as the only safe way that society can escape from religious criminals.

11.3. Training of Religious Leaders on Human Rights

Apart from the regulation of religion in South Africa, I am of the view that there is a need for training of religious leaders on issues of human rights, democracy, and the basics of governance. If possible, these should be a prerequisite for leading or starting a religious movement. Again, apart from calling to ministry, there is a need for professionalisation of pastoral calling, so that while one is responding to the call, one is cognisant of ethical and professional standards that must be adhered to when leading people. I advocate this because various religious movements have been on record for promoting practices that are questionable, making religion a much-contested phenomenon in South Africa. Professionalisation of the calling can go a long way to address other challenges that made religion a headache rather than a solution to the South African problem.

12. Conclusions

In conclusion, through this article I ignite the need for religious members prone to social justice, equity, and equality to be always vigilant and never to adopt a complacent view towards the persistence of global imperial designs underpinning asymmetrical global power relations (Dastile and Ndlovu-Gatsheni 2013), especially when they are sugarcoated through religious narratives. While there are mixed feeling on Gabola church, I am of the view that it is high time that religion be regulated through a thorough consultative manner to avoid infringement of the constitutional right of freedom of religion, while, at the same time, there is a need for the governments to protect citizens. Bringing back religion in schools will enable learners to interrogate new movements such as Gabola church in academic space with the intention of evoking and creating religions that will contribute to the promotion of human rights, sustainable development, and the emancipation of the people of South Africa.

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References

Adamo, David T. 2011. Christianity and the African traditional religion(s): The postcolonial round of engagement. *Verbum et Ecclesia* 32: 285. [CrossRef]

Alvesson, Mats, and Hugh Willmott. 1992. On the idea of emancipation, management and organization studies. *Academic of Management Review* 17: 432–54. [CrossRef]

Beyers, Joco. 2014. The church and the secular: The effect of post-secular on Christianity. *HTS Teologiese Studies/Theological Studies* 70: 1–12. [CrossRef]

Birt, Linda, Suzanne Scott, Debbie Cavers, Christine Campbell, and Fiona Walter. 2016. Member checking: A tool to enhance trustworthiness or merely a nod to validation. *Qualitative Health Research* 26: 1802–11. [CrossRef] [PubMed]

Bottoms, Bette L., Michael Nielsen, Rebecca Murray, and Henrietta Filipas. 1995. Religion-related child physical abuse: Characteristics and psychological outcomes. *Journal of Aggression, Maltreatment, and Trauma* 8: 1–11. [CrossRef]

Bradley, Wright. 2012. Bad news about the good news. The construction of Christian-failure narrative. *Journal of Religion and Society* 14: 1–19.

Brittain, Christopher C. 2012. The Frankfurt school of religion. *Religion Compress* 6: 204–12. [CrossRef]

Bygstad, Bendik, and Bjorn Erick Munkvold. 2007. The Significance of Member Checking Validation in Qualitative Sanalysis: Experiences from a Longitudinal Case Study. Available online: https://core.ac.uk/download/pdf/52058218.pdf (accessed on 31 March 2018).

Chidester, David. 2003. *Salvation and Suicide. Jim Jones: The Peoples' Temple and Jonestown*. Indiana: Indiana University Press.

Cornwall, Andrea, and Rachel Jewkes. 1995. What is participatory action research? *Social Science and Medicine* 41: 1666–76. [CrossRef]

CRL. 2015. CRL Rights Commission's Preliminary Report of the Hearings on Commercialisation of Religion and Abuse of People's Belief Systems. Available online: http://www.crlcommission.org.za/docs/Preliminary%20Report%20of%20the%20hearings%20on%20Commercialization%20of%20Religion.pdf (accessed on 20 March 2018).

Damaris, Parsitau, and Adriaan van Klinken. 2018. Pentecostal intimacies: Women and intimate citizenship in the ministry of repentance and holiness in Kenya. *Citizenship Studies* 22: 586–602.

Dastile, Nontyatyambo Pearl, and Sabelo Jeremiah Ndlovu-Gatsheni. 2013. Power, knowledge, and being decolonial combative discursive as a survival kit for Pan-Africanists in the 21th century. *Alternation* 20: 105–34.

Dayiman, Malibongwe, and Sikho Ntshobane. 2018. We Didn't Know, Say Ngcobo Church Followers, *SowetanLive*. Available online: www.sowetanlive.co.za/news/southafrica/2018-02-26-we-didnt-know-say-church-followers/ (accessed on 13 March 2018).

Donald, Alice, and Erica Howard. 2015. The Right to Freedom or Belief and Its Intersection with Other Rights. Available online: www.ilga-europe.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights__0.pdf (accessed on 13 March 2018).

Dreyer, Jaco. 2007. *Religion and State in the Post Colonial Africa: Challenges and Opportunities*. Pretoria: University of South Africa.

Dube, Bekithemba. 2019. Conundrum of religious mafia and legislation in South Africa. When does religion become a national threat? Reference to the Seven Angels Ministry. *Verbum et Ecclesia* 40: 1–10. [CrossRef]

Dube, Bekithemba, and Dipane Hlalele. 2017. Reconceptualising the interface of religion and school violence towards construction of sustainable learning ecologies in South Africa. *Theologia* 41: 1–22.

Dube, Bekithemba, and Molebatsi Milton Nkoane. 2018. The interface of politics and religion in Zimbabwean politics: Rethinking religious leaders as agents of consecration and repudiation. *Alternation Special Edition* 23: 224–43. [CrossRef]

Dube, Bekithemba, Nkoane Molebatsi Milton, and Hlalele Dipane. 2017. The ambivalence of freedom of religion and unearthing the unlearnt lessons of religious freedom from the Jonestown Incident: A decolonial approach. *Journal of the Study of Religion* 30: 330–49. [CrossRef]

Epondo, Peter. 2015. "Con" Pastors Thrive as Africans Become Increasingly Desperate for Miracles. *Mail and Guardian Voices of Africa*. Available online: http://voicesofafrica.co.za/con-pastors-thrive-africans-become-increasingly-desperate-miracles/ (accessed on 23 July 2018).

Freire, Paulo. 2000. *Historical Conditioning and Levels of Consciousness. The Politics of Education, Culture of Silence*. London: Bergi and Garvey.

Gunawan, Joko. 2015. Ensuring trustworthiness in qualitative research. *Nursing Journal* 1: 10–11. [CrossRef]

Hertzke, Allen. 2012. Religious Freedom in the World Today: Paradox and Promise. *Acta* 17: 1–12.

Jared, Too. 2017. The Church of Gabola Where Booze Flows Freely. Available online: www.sde.co.ke/article/2001259113/the-church-of-gabola-where-booze-flows-freely (accessed on 12 October 2018).

Kaunda, Chammah, and Mutale Kaunda. 2018. Mobilising religious assets for social transformations: A theology of decolonial reconstruction perspective on the ministry of national guidance and religious affairs (MNGRA) in Zambia. *Religions* 9: 176. [CrossRef]

Kemmis, Stephens, and Robin McTaggart. 2007. Communicative action and public sphere. In *The SAGE Handbook of Qualitative Research*. Thousand Oaks: Sage, pp. 559–603.

Kenny, Ruth. 2017. South African Church of God Where God Worship and Alcohol Go Hand in Hand. Available online: www.odditycentral.com/news/south-africans-church-of-drinking-where-god-worship-and-alcohol-go-hand-in-hand (accessed on 22 October 2018).

Kwalimva, David. 2017. Welcome to Gabola Church Where you Are Baptised by Your Favourite Beer. Available online: www.nairobinews.co.ke.national/life/welcome-gabola-church-where-you-are-baptised-by-your-favourite-beer (accessed on 22 October 2018).

Laws, Sofie, Caroline Harper, and Rachel Marcus. 2003. *Research for Development*. London: Sage.

Loewenson, Rene, Asa C. Laurell, Christer Hogstedt, Lucia D'Ambruoso, and Zubin Shroff. 2014. *Participatory Action Research in Health Systems: A Methods Reader*. Harare: International Development Research Centre.

Lopez, Lori Kido. 2015. A media campaign for ourselves: Building organisational capacity through participatory action research. *Journal of Media Practice* 16: 228–24. [CrossRef]

Lunn, Jenny. 2009. The role of religion, spirituality and faith in devil. A critique theory approach. *Third World Quarterly* 30: 937–51. [CrossRef]

Makhethwa, Tankiso. 2017. Gabola Church Founder Is Army Nurse. Available online: www.sowetanlive.co.za/news/south-africa/2017-12-18-gabola-church-founder-is-army-nurse (accessed on 12 October 2018).

Mathape, Gosebo. 2018. Boozing Gabola Church Bishop to Be Ordained as Pope of Africa. Available online: www.citizens.co.za/news/news-eish/1869900/boozing-gabola-church-to-be-ordained-as-a-pope-of-africa (accessed on 12 October 2018).

Mignolo, Walter. 2007. Delinking. *Cultural Studies* 21: 449–514. [CrossRef]

Molobi, Stephens. 2017. Gabola Church Founder under Fire. Available online: www.dailysun.co.za/news/national/gabola-church-founder-under-fire-20171122 (accessed on 12 October 2018).

Monychenda, Heng. 2008. *Social Justice in Inter-Religious Perspectives*. Cambodia: Konrad Adenauer Foundation.

Mpofu, William. 2017. Decoloniality as a Travelling or What Decoloniality is Not. Available online: www.wiser.wits.ac.za/systems/files/seminar/mpofu2017/pdf (accessed on 20 April 2018).

Ndlovu-Gatsheni, Sabelo Jeremian. 2015. Decoloniality in Africa. A continuing search for a new world order. *Australian Review of African Studies* 36: 22–50.

Ramón, Grosfoguel. 2011. Decolonizing Post-Colonial Studies and Paradigms of Political Economy. Transmodernity, decolonial thinking and global coloniality. *TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World* 1: 1–38.

Reginald, Alva. 2017. The catholic church perspective of human dignity as the basis of challenges with the secular world. *Stellenbosch Theological Journal* 3: 221–41.

Republic of South Africa. 1998. Constitution of the Republic of South Africa. Available online: www.justice.gov.za/legislation/constitution/SAConstitution-web-eng-02.pdf (accessed on 20 April 2018).

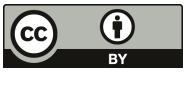
Tau, Poloko. 2017. Drink for God. Available online: www.news24.com/southafrica/news/drink-for-god-20171031 (accessed on 23 October 2018).

Tshelane, Maloudi David. 2013. Participatory action research and construction of academic identity among postgraduate research students. *The Journal of Transdisciplinary Research in South Africa* 9: 413–29. [CrossRef]

UNESCO. 2011. *Making Textbook Content Inclusive: A Focus on Religion, Gender and Culture*. Fontenoy: United Nation Educational Scientific and Cultural Organization (UNESCO).

Williams, Bronwyn T., and Mary Brydon-Miller. 2004. Changing directions: Participatory action research, agency, and representation. In *Ethnography Unbound: From Theory Shock to Critical Praxis*. Albany: State University of New York Press, pp. 241–57.

Zondi, Siphamandla. 2016. A decolonial turn in diplomatic theory: Unmasking epistemic injustice. *Journal of Contemporary History* 4: 18–37. [CrossRef]



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