

Basic Rights in Collision: On the Boundary Between Religious Freedom and Gender Equality

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Abstract. Traditionally, human freedom and equality have encompassed a range of fields, and the intersection of human rights in different subfields has brought about potential conflicts and contradictions. Specifically, what this article discusses is the collision and conflict between the two fundamental rights of religious freedom and gender equality. This article first introduces its background framework, analyzes and discusses the conflicts in legal guarantees generally followed by different countries and regions as well as the international community. In this regard, this article specifically compares the relevant precedents of the European Court of Human Rights and the Supreme Court of the United States, elaborating on their similarities and differences to illustrate the cultural environment comparison of different countries and regions across regions. Based on these analyses, this paper holds that presetting the hierarchy of rights or simply transplanting a certain model cannot effectively resolve conflicts. Therefore, it advocates a contextualized trade-off framework and accordingly puts forward the relevant arguments and conclusions of this paper.

Keywords: Religious Freedom, Gender Equality, Rights Conflict, Proportionality Principle

1. Introduction

In an era of continuous expansion of cultural/religious diversity, the conflict between religious freedom and gender equality is a representative issue of the practice and judiciary of religious freedom and gender equality. In terms of legal theory, any right exists. However, when religious beliefs touch upon certain gender distinctions, the conflict between the two will trigger disputes, ranging from traditional religious clothing, the practice of marriage law, medical practice, to the current employment situation, etc. This requires people to clearly understand abstract concepts such as the limit of tolerance and the connotation of equality as references for their practical operations.

The study acknowledges the complex legal and philosophical tensions between the right to freedom of religion or belief and the right to gender equality. It mainly deals with not the rights themselves, but the frictional zones where rights intersect. The problem is that both are highly respected values, such as religious freedom guaranteeing "autonomy of conscience" and "communal identity". Gender equality respects concepts such as "individual dignity" and anti-discrimination. However, when they are in opposition to each other, is it a zero-sum game? In this regard, the legal systems of most countries and regions around the world find it difficult to determine whether one

right should inherently prevail over another. Research tends to suggest that people need a more detailed, context-dependent balancing.

Therefore, the research centers on the following core issue: How should the legal system effectively and legally define and reconcile the conflict between religious freedom and gender equality? This issue can be further broken down into several sub-topics, including the legal basis for the state to restrict religious expression to promote gender equality, the reasonable scope for the state to adjust anti-discrimination policies to accommodate religious practices, the analytical tools that courts should adopt when adjudicating such disputes to avoid arbitrary favoritism, and the specific trade-offs of different legal traditions in such rights conflicts. In response to the above issues, the research adopts comparison and analysis as its methodology, arguing that any absolute rights-based approach is hard to hold. A balanced approach guided by proportionality and contextuality is the most promising path. This research, by observing the international legal framework and the judicial practice situations and the theoretical basis of rights reconciliation in different countries/regions, aims to construct a robust framework to provide a detailed explanation of this topic [1].

In conclusion, the research holds that resolving the conflict between religious freedom and gender equality cannot rely on a preset hierarchy of rights, but must resort to a contextualized, proportional-based, and procedural justice balanced approach. The subsequent analysis will first reveal the inherent tension of the international law framework itself, and then, by comparing the typical cases and practices of the three major legal domains of China, the United States, and the European Union in dealing with this conflict, analyze the gains and losses of different balance models.

2. International and regional legal frameworks: guarantees and conflicts

The tension between religious freedom and gender equality is rooted in the structure of international human rights law itself. Two cornerstone treaties provide strong protection for both rights simultaneously. When they intersect, this ambiguity may intensify rather than resolve conflicts.

Article 18 of the International Covenant on Civil and Political Rights (ICCPR) clearly guarantees the right to freedom of thought, conscience and religion, including the freedom to express one's religion or belief in an individual or collective, public or private manner. However, the third paragraph of this article also stipulates that this right may be subject to the restrictions prescribed by law, and such restrictions must be necessary for specific purposes, mainly including maintaining public safety, order, hygiene or morality, as well as protecting the basic rights and freedoms of others [2].

This clause is of vital importance. It acknowledges that the absolute exercise of religious freedom is not automatically acquired and can be restricted for the protection of competing public interests, including the rights of others. The treaty body responsible for supervising ICCPR - the UN Human Rights Committee (HRC) - emphasizes that any restrictions must be strictly necessary and proportionate. And it cannot be applied in a way that undermines the very essence of the right [2].

2.1. CEDAW: the uncompromising mandate for gender equality

In contrast, CEDAW has adopted a more confident and prescriptive (assertive and prescriptive) approach to gender equality. Its first article broadly defines discrimination against women as "any distinction, exclusion or restriction based on gender, whose effect or purpose is sufficient to impede or deny women... The recognition, enjoyment or exercise of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other aspect. Unlike ICCPR which

allows restrictions, CEDAW imposes positive obligations on contracting states. Article 2 stipulates that States parties must "take all appropriate measures without delay to implement policies to eliminate discrimination against women", including through legislative measures and by amending discriminatory laws, customs and practices (discriminatory laws, customs and practices). Article 5 further requires contracting states to modify social and cultural patterns and eliminate gender discrimination. The convention aims at gender equality and requires state intervention in social issues, even in religious or private domain behaviors [3].

2.2. Normative conflict and interpretive divergence

The core tension stems from the different natures of these legal obligations. Among them, religious freedom under ICCPR is a powerful but qualifiable right. Its exercise may be restricted to protect the rights of others, including the right to equality of women. CEDAW is a transformative instrument designed to challenge and transform power structures as well as deeply rooted norms, including religious norms, that have long given rise to gender discrimination. It usually leaves little room for exceptions based on religious reasons.

This has led to significant interpretive divergence among international institutions. The UN Human Rights Committee is responsible for supervising the HRC of ICCPR when conflicts arise between religious freedom and gender equality, especially when it believes that inherently discriminates against women in practice, there is often a tendency to make restrictive interpretations of religious freedom. It tends to view the core equality rights under CEDAW and other instruments as part of "the fundamental rights and freedoms of others". Thus, it is justified to restrict religious performance under section 18 of ICCPR. The European Court of Human Rights (ECtHR) interpreting the European Convention on Human Rights (ECHR) The "margin of appreciation" doctrine is often adopted in these sensitive cases. This judicial principle grants national authorities a certain degree of discretion to determine how to balance competing rights, acknowledging that they are usually better at assessing local contexts, cultural sensitivities, and the specific necessity of a democratic society. Therefore, rulings on similar issues may vary among member states, reflecting the lack of a unified European standard and sometimes leading to normative ambiguity [4].

2.3. Exacerbating tension through a lack of clear hierarchy

To safeguard a wide range of fundamental rights, international human rights law deliberately avoids hierarchical classification of fundamental rights and their protection, instead emphasizing the inseparability among all fundamental rights and placing them in a guiding position to ensure that all fundamental rights of all people are equal to each other. However, the various fundamental rights lack a definite hierarchy and sequence at the international law level, which means that no legal rule can automatically prioritize religious freedom or gender equality. The conflicts among them and among more fundamental rights constitute a vacuum area in legal rules.

As mentioned earlier, various differences in interpretation have brought about more practical differences. On the one hand, the HRC tends to restrict religious freedom to ensure the basic right of gender equality. On the other hand, the ECtHR, relying on judicial discretion, tends to focus on religious rights. There exists a potential conflict between universalism and pluralism between the two, and it is also influenced by the differences in cultural environments and political views among different countries and regions.

3. Case analysis

The normative tension of international law is most vividly demonstrated in specific cases. Judicial institutions have become a key arena for mediating conflicts between religious freedom and gender equality. Their judgments not only resolve individual disputes but also reflect profound legal traditions and cultural values. This section selects two landmark cases, namely *S.A.S. v. France* of the European Court of Human Rights and *Burwell v. Hobby Lobby Store* of the United States Supreme Court, for in-depth analysis. The reason for choosing them is that they represent two very typical balance paths and nascent models: the former embodies the restriction of religious freedom under the pretext of collective order and social integration (often claiming it to be for gender equality), while the latter shows the formal priority of religious freedom (often actually undermining gender equality). By comparing the background, legal principles and impacts of these two cases, this chapter aims to reveal the complexity of rights conflicts and lay the foundation for the next chapter to distill different models from a broader perspective of the three major legal domains of China, the United States and Europe.

3.1. Public order and "living together"

This case questions the French law of 2010 that prohibits covering the face in public places, which mainly affects Muslim women wearing niqab or burqa. The applicant, a French Muslim woman who goes by the pseudonym *S.A.S.*, believes that the law violates the rights granted to her under Article 8 (Respect for Private Life) and Article 9 (Freedom of Religion) of the European Convention on Human Rights (ECHR). In its 2014 judgment, ECtHR upheld the validity of French law. It accepted the argument of the French government that the ban was necessary for the "minimum requirements of social life" or "vivre ensemble, living together". The court granted France extensive "margin of appreciation" - a principle that allows countries to exercise discretion in how to apply human rights standards based on their national conditions. The court held that the ban pursued public safety and respect for the minimum requirements of life in a democratic society. The legitimate goal of society. Critics argue that the ruling gives priority to majoritarian societal preferences and state-centric vision of secularism. Rather than personal religious expressions, it has had a disproportionate impact on Muslim women. This decision is regarded as allowing restrictions on religious freedom based on abstract social values rather than concrete harms, which may undermine gender equality by restricting women's autonomy in choosing their dress [5].

3.2. Corporate religious freedom and healthcare access

Both buttons reveal the conflict between the fundamental right of religious freedom and other fundamental rights, reflecting the blurred boundaries and even more direct conflicts that women's rights face in the protection of religious freedom. Both courts adopted a "compliance" strategy - the European Court of Human Rights complied with the social policy judgments of the state, while the people Supreme Court complied with the religious claims of enterprises. Ultimately, the verdicts of both cases were severely criticized for their potential negative impact on women's rights.

The difference is that the two cases represent two opposite paradigms of judicial balance. In the *S.A.S.* case, what was restricted was the individual's religious expression. The reason for this was to safeguard a certain collective social interest and a "gender equality" defined by the state. In the *Hobby Lobby* case, what is exempted is the religious practice of enterprises, and the cost is the loss of equal rights and health protection borne by individual employees (especially women). The former

uses public power to actively restrict one right to protect another value, while the latter passively allows one right to erode another through judicial immunity [6].

In conclusion, these two cases clearly demonstrate that judicial balance lacking meticulous analytical tools is highly prone to sliding into two extremes: either overly restricting religious freedom in the name of equality or order as defined by the majority or the state or improperly infringing upon basic rights such as gender equality in the name of religious freedom. All of them expose the limitations of conducting rights trade-offs in isolation and abstraction, thereby raising a deeper question: Is there a more superior and conceptualized model to systematically address this conflict? This will guide people in the next chapter to go beyond individual cases and distill and examine different balance models from the macro practical level of the three major legal jurisdictions of China, the United States, and Europe [6].

3.3. Comparative analysis: key similarities and differences

The specific judicial practices of different cases in various contexts reflect the direct influence of the cultural background, religious atmosphere, legal traditions and administrative system of different countries and regions around the world. Based on the analysis of existing cases, this section needs to compare the judicial practices of China, the United States and the European Union, analyze their practical measures in handling the conflicts between religious freedom and gender equality, the two fundamental rights, and compare the similarities and differences in their models.

In China's judicial practice, the state mediates conflicts among different fundamental rights and holds the leading position. The main stance and core consideration of its mediation are social stability and national unity. In this regard, China's relevant policies and regulations reflect a protection path under a state-based model. Take the "Regulations on the Protection of Women's Rights and Interests in Xinjiang Uygur Autonomous Region" as an example. It combines the protection of women's rights and interests with the fight against religious extremism, balancing different basic rights from the perspective of maintaining social order. However, it also implies restrictions on certain religious practices of women.

This model has a strong execution efficiency, can promptly respond to certain social issues recognized by the state as urgent, and to a certain extent, strongly promote a certain collective concept of equality. However, its drawbacks are also quite significant: the realization of rights highly depends on administrative definition rather than judicial weighing, the religious expression space of individuals or minority groups is prone to give way to the collective interests defined by the state, and there is a lack of transparent and independent procedures to identify whether specific religious practices truly constitute "extremism" or "oppression". This makes the process of balancing rights largely a political decision rather than a legal argument, and the diverse voices of disadvantaged groups are difficult to be fully reflected in the decision-making process.

In sharp contrast to China's state-oriented approach, the judicial system in the United States, supported by legislation such as the RFRA, demonstrates a strong judicial activism and a formalistic priority over religious freedom. From the Hobby Lobby case to a series of recent cases, the Supreme Court has gradually established a set of judicial rules that make religious immunity claims easier to establish, namely strict review standards. Under this standard, the government's "urgent interests" and "minimum means of restriction" requirements are extremely difficult to meet.

The core concept of this model is to prevent the government from imposing a "substantial burden" on the freedom of conscience and to provide extremely strong protection for religious freedom in form. However, the social consequence is that the cost of rights conflicts is transferred to individuals, such as female employees and sexual minorities, whose equal rights and dignity are

undermined by the religious claims of others. Obviously, such damage to women's rights and infringement upon the basic rights of gender equality are in fact closely related to religious freedom. The conflict between the two reveals the inherent contradiction among the protection of different basic human rights.

Compared with the cultural atmosphere and social ethical norms in religious practice in China and the United States, the situation in Europe in this regard is more diverse. Based on this, the European Union and its member states have demonstrated a complex mixed balance model in judicial practice. They not only attempt to strike a balance between the normative constraints of the European Court of Human Rights and the sovereignty and discretion of each country, but also strive to transform the case law of the European Court of Human Rights and the European Court of Human Rights into one that is more suitable for the actual situations of different countries and regions. A system model that can provide extensive and universal norms in sensitive social policies. The cultural and historical traditions of different countries and regions vary significantly. The continuous expansion of the European Union itself has also affected the diversity of cultural and ethnic identities among EU countries. Therefore, it is more necessary to maintain flexibility and fully respect pluralism. However, this also means that the EU lacks strong enforcement measures and clear institutional norms, making it more prone to transforming into a relativist view of human rights protection standards. The protection of the basic rights of vulnerable groups depends on conditions such as their country of residence, and the overall management capacity of the EU is greatly limited.

4. Contextual balancing and the proportionality test

Based on the above analysis, it can be seen that in the judicial practices of different countries and regions, there are various examinations and considerations regarding the collisions among basic rights, and the actual handling measures also vary greatly. However, every model has its own flaws, either lacking the protection of individual rights or the ability to maintain social order. No model can perfectly resolve such conflicts of basic human rights. Based on this, this paper attempts to explore a contextualized trade-off framework for the comprehensive substantive proportionality principal analysis of architecture and enhanced procedural justice. It not only involves contextualized balance to adapt to the specific facts of a particular case, but also requires proportionalism to ensure that the multiple parties involved in the case can achieve practical balance under specific rights dynamics and social consequences. Its procedural justice, on the other hand, needs to listen more to the actual demands of marginalized groups in society, thereby addressing complex conflicts of fundamental rights [7].

4.1. Moving beyond absolutism: the necessity of contextual balancing

In different countries and regions, various judicial practices cannot establish a strict hierarchical system, stating that under any conditions, the two fundamental rights of religious freedom and gender balance cannot take absolute priority. Therefore, the conflict is a widely existing complex fact, and the absolutist approach is difficult to effectively deal with such problems.

Contextual balancing is a more specific perspective, which requires judicial practice to pay more attention to the specific circumstances in cases, analyze the power dynamics jointly constituted by different participants, thereby protecting the relatively disadvantaged, and fully consider the social consequences of relevant judgments. In contrast, when individuals or specific minority groups in cases face oppression based on factors such as religion, their religious freedom requires more

protection. However, when religious practices lead to discrimination against female groups, it affects the priority consideration of the basic right of gender equality. The conflicts and contradictions between the two are often intertwined with more environmental factors and economic issues, which require more adaptive control methods [7].

Recent cases involving QLB+ rights and religious differences have shown that a balance must be struck between abstract principles and concrete harms. When healthcare providers refuse to offer gender-affirming care, or when company owners refuse to provide services to same-sex couples, it is necessary to strike a balance between the sincerity of religious claims and the material and dignitary harm they cause to vulnerable groups. This contextualized analysis avoids the tendency of religious freedom to veto other rights and protects pluralism.

In conflicts and contradictions that are more adaptable to specific situations, although significant conflicts occur when different fundamental rights collide with each other, the adjustment and correction of their relationships rely on more balanced other factors. If effective interference in other elements of the environment can accordingly improve this basic human rights conflict, the corresponding judgment is more inclined to adjust it by improving external factors to avoid direct damage to religious freedom or gender equality.

4.2. The proportionality principle as a core analytical tool

The proportionality principle has become the most sophisticated judicial tool for implementing contextualized balance in conflicts of rights. First of all, it requires that the authorities from the perspective of judicial management can prove that any restrictions they impose on rights serve a legitimate purpose, have a reasonable connection with this purpose, are necessary rather than having a less restrictive alternative, and are commensurate. Here, proportionality refers to the fact that the overall social benefits it brings are commensurate with the corresponding judicial expenditures, enforcement costs, social impacts and other extensive consequences.

In the European context, the analysis of proportionality requires the French perspective in the aforementioned case to pay more attention to security issues, avoid using the vague reason of "cohabitation" to support a comprehensive ban, and consider more whether it constitutes the least restrictive means to reach the legal goal. In the context of the United States, although the Supreme Court applied strict scrutiny, its analysis of the "least restrictive means" failed to give full attention to the urgent interest of the government in ensuring that female employees have access to comprehensive health insurance. The proportionality approach would require a deeper examination of whether the government's interests in gender equality and health access outweigh the religious claims of enterprises, especially considering the existence of alternative mechanisms. These mechanisms could have relieved employers of complicity concerns while retaining employee benefits [8].

The Chinese approach, although not adopting the proportionality in the sense of Western judiciary, has incorporated elements of balance through its legislative process. The regulations on the protection of women's rights and interests in Xinjiang attempt to balance the benefits of restricting religious practices with the goals of gender equality and social stability. However, the lack of proportionality in transparent judicial application remains largely political rather than judicial, and there is a lack of assessment characterizing proportionality analysis in rights-based jurisdictions.

Proportionality can be regarded as the antidote to cultural relativism. It retains the space for differences in legitimacy and allows different cultural systems to apply different legal systems. It provides an optional, more widely applicable universal analytical framework that allows context-

specific results, enabling courts to recognize cultural differences without waiving the obligation to protect fundamental rights. For instance, the proportionality analysis acknowledges that the regulation prohibiting religious clothing in security-sensitive departments is justified but refuses to extend it to all public Spaces [8].

4.3. Enhancing procedural justice: listening to the voices of marginalized groups

When weighing different rights, one should not merely focus on whether the outcome is reasonable, but also enhance the fairness of the decision-making process to ensure that those marginalized groups most affected can truly be heard. Often, the viewpoints of those most affected by power conflicts, especially those of women in religious communities, are frequently excluded from legal discussions and policymaking.

The case people analyzed has exposed such procedural problems. For instance, in the controversy over the veil in France, the main discussions took place between the government and religious leaders, while the diverse views of Muslim women themselves received little attention. Some women believe that the ban liberates them from male-dominated pressure, while others feel that it deprives them of their religious beliefs and autonomy. Similarly, in the case of a certain company in the United States, the female employees whose medical security was affected also lacked the opportunity to explain how the company's religious stance actually impacted their lives and dignity [9].

To achieve meaningful participation, it is necessary to establish effective mechanisms, not only to "hear" but also to "amplify" these marginalized voices. Specifically, it may include: requiring an assessment of the possible impact of religious exemption policies on gender equality; In relevant legal procedures, appoint independent representatives to speak up for marginalized groups; And establish a consultation mechanism to ensure that affected communities can participate in and influence policymaking related to their own rights.

Recommendation No. 35 of the United Nations Committee on the Elimination of Discrimination against Women emphasizes the importance of a participatory approach, stating that policies related to women's equality must involve the personal participation of women. This procedural requirement recognizes that women within religious communities do not have completely consistent ideas - they may have complex and diverse connections with religious traditions and gender equality propositions. Some people may wish to eliminate discriminatory practices while maintaining their religious beliefs. Some people may be more inclined to leave restrictive communities; Some people may completely reject this either-or choice and be committed to transforming religious traditions from within or the external social framework.

Strengthening procedural safeguards can also help address the issue of power inequality within religious groups. If a state directly endorses the opinions of certain religious authorities without ensuring its internal democratic participation, it may inadvertently strengthen a male-dominated structure. Mandating consultation with diverse members within the group, especially women and LGBTQ+ individuals, helps prevent "religious freedom" from being exploited by conservative forces to suppress the rights of other members within the group.

Furthermore, procedural fairness also means that the decision-making process needs to be open and transparent. Courts and legislative bodies should explain to the public how they weigh different interests, consider evidence and assess the impact on vulnerable groups. This makes meaningful public supervision possible and also prompts decisions to be more based on rational judgment rather than implicit biases or the simple preferences of the majority [10].

5. Conclusion

In conclusion, this article, by collating the framework of international law and judicial practices in different countries and regions, has accordingly sorted out and analyzed the basic human rights conflicts of religious freedom and gender equality demonstrated in typical cases, and further analyzed the comparison of balance models among different countries and regions. This correspondingly demonstrates that the conflict between religious freedom and gender equality relies more on a contextualized and structured trade-off procedure. Combining the rational analysis required when weighing rights with enhanced procedural safeguards offers the most promising path to reconciling religious freedom with gender equality. This approach recognizes that power conflicts cannot be resolved simply by stipulating who takes priority or applying universal rules, but rather require a careful balance in specific situations, and this process must be shaped by the real experiences of those most affected. Although different legal systems implement this concept through different institutions, its core principle, namely the rationality of decision-making and extensive participation in consultation, can serve as a common framework that spans different legal traditions.

References

- [1] Aftab, A. (2019) Religious Freedom and Gender Equality: The Sharia Debates and Gendered Institutions in Australia and Britain. *Australian Journal of Human Rights*, 25, 281–298.
- [2] Shachar, A. (2016) Squaring the Circle of Multiculturalism? Religious Freedom and Gender Equality in Canada. *The Law & Ethics of Human Rights*, 10, 31–69.
- [3] Di Vaio, A., Hassan, R. and Palladino, R. (2023) Blockchain Technology and Gender Equality: A Systematic Literature Review. *International Journal of Information Management*, 68, 102517.
- [4] Leal Filho, W., Kovaleva, M., Tsani, S., Țîrcă, D.M., Shiel, C., Dinis, M.A.P. and Tripathi, S. (2022) Promoting Gender Equality across the Sustainable Development Goals. *Environment, Development and Sustainability*, 1.
- [5] Acheampong, A.O., Opoku, E.E.O., Amankwaa, A. and Dzator, J. (2024) Energy Poverty and Gender Equality in Education: Unpacking the Transmission Channels. *Technological Forecasting and Social Change*, 202, 123274.
- [6] Foley, M. and Cooper, R. (2021) Workplace Gender Equality in the Post-Pandemic Era: Where to Next? *Journal of Industrial Relations*, 63, 463–476.
- [7] Nguyen, C.P. (2021) Gender Equality and Economic Complexity. *Economic Systems*, 45, 100921.
- [8] Cortis, N., Foley, M. and Williamson, S. (2022) Change Agents or Defending the Status Quo? How Senior Leaders Frame Workplace Gender Equality. *Gender, Work & Organization*, 29, 205–221.
- [9] Clavero, S. and Galligan, Y. (2021) Delivering Gender Justice in Academia through Gender Equality Plans? Normative and Practical Challenges. *Gender, Work & Organization*, 28, 1115–1132.
- [10] Nanni, G. (2023) Gender Equality, Equity, and Equal Opportunities. *Measuring Gender Equality*, 87, 1–30.