

**THE ROLE OF RELIGION IN THE REALISATION AND PROTECTION OF HUMAN  
RIGHTS**

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By

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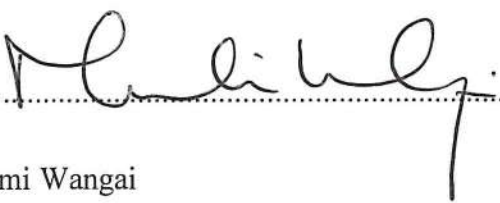
**DECLARATION**

I, KIPKORIR WINNIE KANDIE, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

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This dissertation has been submitted for examination with my approval as University Supervisor.

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Ms; Mukami Wangai

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## **LIST OF ABBREVIATIONS**

<b>UDHR</b>	Universal Declaration of Human Rights
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ECtHR</b>	European Court of Human Rights
<b>UN</b>	United Nations

## **LIST OF CASES**

*Hassan and Chaush v Bulgaria*, ECtHR judgement of 26 October 2000.

*Ewelda and others v the United Kingdom*, ECtHR judgement of 27 May 2013.

*Kulac v Turkey*, ECtHR judgement of 1 July 199.

*Dahlab v Switzerland*, ECtHR judgement of 15 February 2001.

*Leyla Sahin v Turkey*, ECtHR judgement of 10 November 2005

*Dogru v France*, ECtHR judgement of 4 December 2008.

*X v Sydney Children's Hospitals Networks* (2013) NSWCA 320.

*Zeheer-ud-din v State*, 1993 SCMR 1718.

*Employment Division v Smith*, 494 U.S. 872(1990).

*Corporation of Presiding Bishop v Amos*, 483 U.S 327(1987).

*Board of education v Allen*, 392, U.S. 236 (1968)

## **LIST OF LEGISLATION**

UNGA, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, UN A/Res/36/55 (25 November 1981)

UNGA, *Universal Declaration of Human Rights*, GA res 217 A (iii) of 10 December 1948

ICCPR, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171

## **ABSTRACT**

World over, religion has been used as a tool for the violation of guaranteed rights and freedoms. As a result of this, emphasis has been made on the negative consequences brought about by the right to freedom of religion. The aim of this paper is to establish the place of religion in the protection and implementation of human rights. The paper argues from the point of view of natural law by asserting that human rights and religion are indispensable to human beings. It further argues that, without religion the government plays an exaggerated role in ensuring that human rights are protected and respected.

The paper establishes that religion and human rights are interdependent and that there is need to get rid of the vices being witnessed in different religious communities. This can be done through religious leaders who are able to educate the people at the local level on human rights and the need to respect the rights and freedom of others. Further, any religious commandment that requires the killing of another human being is inconsistent with natural law and therefore in need of internal transformation. Emphasis is made on the need to find a middle ground between the different religious doctrines by relying on ethical principles that are inherent in every human being.

## CHAPTER 1: INTRODUCTION

### 1.1 Background

Article 18 of the Universal Declaration of Human Rights (UDHR) and the International Convention on Civil and Political (ICCPR) provide for the right to freedom of religion or belief for every human being. It is a right that is universal to all human beings regardless of who they are, where they live, their age, gender, race, and ethnicity.<sup>1</sup> Human rights developed as a protective concept to defend the rights of individual citizens against threats coming from sovereigns that would overextend their power into the realm of the private citizen.<sup>2</sup> However, sovereigns are not the only guilty parties, individuals are also using their rights to violate the rights of others.

The right to freedom of religion is being violated as a right in itself and is used as a sword against other human rights. All religious faiths are victims of persecution somewhere.<sup>3</sup> According to a report by Minority Rights Group International, the targeting of religious minorities is increasingly becoming a bigger problem than racial discrimination.<sup>4</sup> In the House of Lords debate on the freedom of religion or belief, Lord Alton stated that the Article 18 is being honored daily in its breach.<sup>5</sup>

From the murder of two politicians who questioned the blasphemy laws in Pakistan to the aggressive form of secularism in France, the violations are numerous. Raif Badawi, a Saudi Arabian atheist and blogger, was sentenced to 1,000 public lashes for publicly expressing his atheism. The use of the term “religion” also includes support for the right to non-religious beliefs, such as atheism.<sup>6</sup> What is evident is that with the increase of religious intolerance

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<sup>1</sup> <http://www.osce.org/odihr/124839?download=true> on 25 January 2017.

<sup>2</sup> ‘Bas De Gay Fortman: Religion and Human Rights; A Dialectical Relationship’ *E-International relations*, 5 December 2011 <http://www.e-ir.info/2011/12/05/religion-and-human-rights-a-dialectical-relationship/> on 14 November 2016.

<sup>3</sup> ‘Doug Bandow: Religious Persecution on the Rise: Minorities Under Threat in the Middle East’ <http://www.huffingtonpost.com/doug-bandow/religious-persecution-on-b-7870614.html> on 25 January 2017.

<sup>4</sup> Doug Bandow: Religious Persecution on the Rise: Minorities Under Threat in the Middle East’ <http://www.huffingtonpost.com/doug-bandow/religious-persecution-on-b-7870614.html> on 25 January 2017.

<sup>5</sup> House of Lords debate, the freedom of religion and belief.

<sup>6</sup> <http://hrlibrary.umn.edu/edumat/studyguides/religion.html> on 20 January 2017.

countries suffer more and more with human rights.<sup>7</sup> It is therefore not surprising that the All-party Group on International Freedom of Religion or belief described article 18 as an orphaned right.

Religious intolerance has been the cause of many cruel human rights violations around the world. Many of the human rights challenges facing the world today are closely linked with religion. Religious intolerance can be defined as the act of refusing to recognize and support the rights of individuals to have their own beliefs and related legitimate practices.<sup>8</sup>

### **1.2 Statement of the problem**

Based on the background presented above, this paper aims to examine the role that religion should play in upholding human rights.

### **1.3 Justifications for the study**

Religion has often been the basis for the infringement of human rights. This has caused the achievement of human rights to be a challenge. The study will give an in-depth explanation of the relationship between human rights and religion thereby eliminating the existing contradictions presented by the different scholars. It will show that freedom of religion plays a vital role in upholding and respecting human rights. Further, it will show that there is need to balance individual religious freedom with that of the society so as to achieve an efficient human rights system. This is because the achievement of human rights requires more than just a legal framework.

### **1.4 Research questions**

What is the relationship between religion and human rights and what role does religion play in the implementation and realisation of human rights?

Do human rights represent a secular or religious morality?

Does freedom of religion enhance or suppress human rights achievement?

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<sup>7</sup> ' Vexen Crabtree: Human Rights and Secular Morals: Ethics without Religion or Faith' [http://www.humanreligions.info/secular\\_morals.html](http://www.humanreligions.info/secular_morals.html) on 17 November 2017.

<sup>8</sup> <http://www.apologeticsindex.org/2821-religious-freedom-tolerance-and-intolerance> on 20th January 2017.

## **1.5 Objectives of the study**

The overall objective of this research is to investigate the place of religion in the human rights framework. In doing this, the paper seeks to investigate the role played by members of the society who ascribe to religious beliefs, in the achievement of human rights. The paper will determine whether the freedom of religion is the real problem or whether the problem lies in the personal entitlements that come with the different religious beliefs.

## **1.6 Hypothesis**

Religion is deeply connected to the dignity of the person in that it gives a sense of identity and belonging while human rights are directly related to the protection of the dignity of the human person. Religion and human rights are therefore interconnected and to deny the existence of one is to undermine the other.

## **1.7 Research design and methodology**

In attempting to answer the questions posed, the method used to collect information will mainly be desktop research. Books will be used especially in the formulation of the theoretical framework. The research will also use the comparative study method. It will specifically focus on Pakistan and France while emphasizing that similar situations occur in other jurisdictions.

The paper will also rely on primary and secondary sources of data. The primary sources will include case law and statutes. The secondary sources will include journals, reports, articles and books.

## **1.8 Chapter breakdown**

### ***Chapter 1: introduction***

This chapter will give a brief background into the research problem.

### ***Chapter 2: theoretical framework***

This chapter will discuss the theoretical framework that appraises this research. These are the natural law and social contract theories. The framework will seek to establish the relationship between religion and human rights.

### ***Chapter 3: the relationship between human rights and religion***

This chapter will analyse the relationship between religion and human rights. In doing this it will shed more light on the role played by religion in the human rights discourse. Further, this chapter will seek to establish whether human rights represent a secular or a religious morality.

### ***Chapter 4: The viability of freedom of religion in the human rights discourse***

This chapter will provide a legal framework for the international right to freedom of religion or belief. It will provide arguments in support of religion by arguing that religious leaders are vital in the use of religion as a tool for protecting human rights.

### ***Chapter 5: Conclusion and recommendations***

This chapter will provide a way forward and possible recommendations based on the analysis of the previous chapters.

## CHAPTER 2: THEORETICAL FRAMEWORK

This chapter relies on the natural law and the social contract theory to provide a justification for the role of religion in advancing human right. The natural law theory provides a justification for the existence of human rights and as a result, argues that religion and human rights should stand in service of each other. The social contract theory shows the role that the government should play in reconciling the freedom of religion with other human rights thereby enabling the enjoyment of human rights.

### 2.1 Natural law theory

David Novak defines natural law as those norms of conduct that are universally valid and discernible by all rational persons. These norms of conduct, according to Archbishop Rino Fisichella, are ethical concepts which man recognizes in an intrinsic way without mediation and provides guidelines to abide by in order to live according to who he is.<sup>9</sup> Aristotle states that human beings should employ practical reason in order to behave in a way that is consistent with a virtuous life.<sup>10</sup> He also defines justice as a state of mind which encourages men to perform lawful, fair and virtuous actions. It is this understanding of justice that this research will employ. natural law theory seeks to help all people understand what they morally ought to do or ought not to do.<sup>11</sup>

Thomas Jefferson defined natural rights as those rights that are vital for man to fulfill his potential on Earth.<sup>12</sup> These natural rights should, therefore, be respected and enforced so that man can lead life in a dignified manner. Thomas Aquinas asserts that what is naturally right could be verified by human beings using their reasoning capacity.<sup>13</sup> According to Aquinas natural law principles are not only ascertainable but also self-evident in that they require no

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<sup>9</sup> 'Archbishop Rino Fisichella: Human Rights and Natural Law' *homiletic & pastoral review*, 15 June 2012 <http://www.hprweb.com/2012/06/human-rights-and-natural-law/> on 15 September 2017.

<sup>10</sup> <https://www.termpaperwarehouse.com/essay-on/Aristotles-Teaching-on-Natural-Law/457166> on 17th July 2017.

<sup>11</sup> <https://plato.stanford.edu/entries/natural-law-ethics/> on 16<sup>th</sup> July 2017.

<sup>12</sup> <http://eyler.freesevers.com/JeffPers/jefpco08.htm> on 25 January 2017.

<sup>13</sup> 'Shashank Chaturvedi: Human Rights, Gender and Environment' <http://vle.du.ac.in/mod/book/print.php?id=13397> on 26<sup>th</sup> January 2017.

proof.<sup>14</sup>The question that is posed to the reasonable person is: would reasonable people agree to this or that duty? In arriving at an answer, a person should also consider whether the agreement of the people would be unanimous.<sup>15</sup>

He further goes on to state that the principles guiding human conduct are governed by practical reason and that these principles tell us how we ought to live, what we should value, the goods we should seek and how we ought to order our lives.<sup>16</sup> Therefore, man has the capacity to do what is right and to direct his actions in a manner that upholds the dignity of other persons.

Each person owes a duty of self-preservation to God.<sup>17</sup>In order to successfully discharge this duty of self-preservation each individual should be free from threats to life and liberty, whilst also requiring what Locke presented as the basic, positive means for self-preservation: personal property.<sup>18</sup> Our duty of self-preservation to God entails the necessary existence of basic natural rights to life, liberty, and property.

The concept of human rights owes its existence to natural law theories. The natural law theory proposes that all human beings possess human rights by virtue of their existence and these rights cannot be taken away from them.<sup>19</sup>The human dignity approach, for example, has found endorsement in the U.N Charter and numerous human rights treaties, covenants, declarations and conventions.<sup>20</sup> Even where there are limitations on the enjoyment of the various Human Rights, the dignity of the human person must be respected because it forms part of the substance of any human right. Persecution on the basis of religion or religious beliefs violates the human dignity of a person because the human person is not respected and valued.

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<sup>14</sup> 'Theories of law: Natural law, Legal Positivism, The Morality of Law, Dworkin's "Third Theory of Law" | Legal Realism and Critical Legal Studies' *Thomas Aquinas and Natural Law*.

<sup>15</sup> <http://www.thefreelibrary.com/the+social+contract+and+human+rights.-a059021331> on 25<sup>th</sup> July 2017.

<sup>16</sup> <http://www.thefreelibrary.com/the+social+contract+and+human+rights.-a059021331> on 25<sup>th</sup> July 2017.

<sup>17</sup> <http://www.iep.utm.edu/hum-rts/> on 25<sup>th</sup> July 2017.

<sup>18</sup> <http://www.iep.utm.edu/hum-rts/> on 25<sup>th</sup> July 2017.

<sup>19</sup> Andrew Heard: Human Rights: Chimeras in Sheep's Clothing?' <https://www.sfu.ca/~aheard/intro.html> on 25 January 2017.

<sup>20</sup> Nirmal B, 'Natural law, human rights and justice, Some Reflections on Finnis' Theory of Natural Law'

Dr. Fried Mann has rightly stated that the history of natural law is a tale of the search of mankind for absolute justice and its failure.<sup>21</sup> In the search for absolute justice and its failures, there is need to strike a balance in the guaranteeing of human rights. John Finnis opines that human rights are subject to or limited by each other. This, therefore, implies that the enjoyment of one right should not be to the detriment of another human right. In the natural law school, the universality of human rights is based on rational objectivity.<sup>22</sup> Human rights aim to identify the prerequisites for leading a basic good life.<sup>23</sup>

Public authorities, both national and international, are identified as typically best placed to secure the conditions for leading a good life and so, the doctrine of human rights has become, for many, the first port of moral call for determining the basic moral guarantees that all human beings have. The guarantees include a right to expect not only from one another but also from those national and international institutions capable of directly affecting our most important interests.<sup>24</sup> Therefore, doing the right thing is not determined by acting in pursuit of one's own interests, but acting in accordance with a precept which all rational individuals are bound to accept. Kant terms this the categorical imperative, which he formulates in the following terms, 'act only on that maxim through which you can at the same time will that it should become a universal law.'<sup>25</sup>

Finnis argues that human rights are justifiable on the grounds of their instrumental value for securing the necessary conditions of human well-being. He identifies seven fundamental interests, or what he terms 'basic forms of human good', as providing the basis for human rights. These are life and its capacity for development; the acquisition of knowledge, as an end; play, as the capacity for recreation; aesthetic expression; sociability and friendship; practical reasonableness, the capacity for intelligent and reasonable thought processes; and finally, religion, or the capacity for spiritual experience. According to Finnis, these are the essential prerequisites for human well-being and, as such, serve to justify our claims to the corresponding rights, whether they be of the claim right or liberty right variety.

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<sup>21</sup> Prabhakar D, 'The revival of natural law and value-oriented Jurisprudence' LLM thesis, G.R. College of Law.

<sup>22</sup> 'Jerome shestack: The Philosophic Foundation of Human Rights' *human rights quarterly*, May 1998.

<sup>23</sup> <http://www.iep.utm.edu/hum-rts/> on 25<sup>th</sup> July 2017.

<sup>24</sup> <http://www.iep.utm.edu/hum-rts/> on 16<sup>th</sup> July 2017.

<sup>25</sup> <https://plato.stanford.edu/entries/kant-moral/> on 25<sup>th</sup> July 2017.

At the center of all religious beliefs is the recognition of the equality of the human person before God.<sup>26</sup> With this recognition of equality, there is an implication that all human beings deserve an elemental level of respect and dignity regardless of which religion they are affiliated with.

## 2.2 Social contract theory

The main proponents of this theory are John Locke, Thomas Hobbes, and Jean Jacques Rousseau. The social contract theory is the view that persons in a society are bound by an agreement among them to form a society in which they live in.<sup>27</sup> Hobbes opines that man in a state of nature is exclusively self-interested and he, therefore, pursues what they consider to be in their own interest<sup>28</sup> even if that means destroying the life of another.<sup>29</sup> To avoid war, man must enter into an agreement with other persons, agreeing not to harm one another. This agreement alone is however not sufficient to maintain peace and there is a need for a higher power to guide the actions of man.<sup>30</sup> Hobbes believes this higher power is a coercive power which can only be provided by a powerful sovereign.<sup>31</sup>

Hobbes further states that the success of the social contract is dependent on the institution of a sovereign upon whom individuals have surrendered all liberty, and who is able to ensure obedience both to natural law and whichever commands he delivers. Therefore, the state is tasked with ensuring the protection of human rights. This includes legislating on the rights, institutional frameworks and systems of checks and balances. The government should, therefore, ensure that the freedom to enjoy a certain right does not infringe on the freedom to enjoy another right. In this case, the freedom of religion should not be an obstacle to the enjoyment of other rights. The duty to obey laws derives from authority and the mutual consent among the members of the community.<sup>32</sup>

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<sup>26</sup> <https://ing.org/first-principles-religion-h-uman-dignity-freedom-expression-freedom-religion/> on 25<sup>th</sup> July 2017.

<sup>27</sup> <http://www.iep.utm.edu/soc-cont/> on 25<sup>th</sup> July 2017.

<sup>28</sup> <http://www.iep.utm.edu/soc-cont/> on 25<sup>th</sup> July 2017.

<sup>29</sup> Thomas Mouritz, 'comparing the social contracts of Hobbes and Locke' *the western Australian Jurist* (2010).

<sup>30</sup> Thomas Mouritz, 'comparing the social contracts of Hobbes and Locke' *the western Australian Jurist* (2010).

<sup>31</sup> Thomas Mouritz, 'comparing the social contracts of Hobbes and Locke' *the western Australian Jurist* (2010).

<sup>32</sup> <http://izquotes.com/quote/91192> on 24<sup>th</sup> July 2017.

The question that arises is how obedience to the law can be enforced. Grant Robert argues that to yield to the strong is an act of prudence, not an act of respect for the law.<sup>33</sup> Acceptance of the duty to obey becomes an ethical act when submission to the authority is learned and accepted as a deliberate choice. This, therefore, means that every human being has the capacity to make rational decisions when it comes to the enjoyment of freedom of religion. An individual's right ends where the right of another human being begins.

Samuel Johnson observed that life couldn't subsist in society without reciprocal concessions hence the need for the social contract. John Rawls describes the ideal social contract as that in which the rules burden and benefit each person equally. A human right is a contractual right flowing from the social contract imposing upon all the duty to act or to refrain from acting in a certain way.<sup>34</sup> Grant Roberts argues that these human rights are the flip side of the natural duty to the social contract. Governments, therefore, perform the duties flowing from the social contract when they enforce the basic natural duties and individuals perform their duties when they freely affirm obedience to these basic duties as a personal obligation.

### **2.3 conclusion**

The natural law theory is important for the research as it is used to show the role of religion in human rights and the relationship that they should enjoy. Religion and human rights should not be mutually exclusive because religion is central to the life of a human being by virtue of natural law.

The social contract theory is relied upon in this research to show that the state is the central actor in resolving the human rights and religious rights dispute. Governments perform their obligations under the social contract theory when they ensure that all human rights are afforded equal protections even though there may be limitations on some human rights.

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<sup>33</sup> <http://www.thefreelibrary.com/the+social+contract+and+human+rights.-a059021331> on 12<sup>th</sup> July 2017.

<sup>34</sup> <http://www.thefreelibrary.com/the+social+contract+and+human+rights.-a059021331> on 12<sup>th</sup> July 2017.

### **CHAPTER 3: THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND RELIGION**

Religion is a powerful tool in validating and advocating for human rights despite the gross violations that it has caused. The chapter begins by providing a historical perspective of human rights. It then gives an argument for the foundational underpinnings of human rights by looking at the religious and secularist arguments. Based on the arguments presented, the chapter concludes by affirming the interdependence and synergy between human rights and religion.

#### **3.1 A historical perspective of human rights**

To gain an understanding of the relationship between human rights and religion it is important to begin with the origin of human rights.<sup>35</sup> The Cyrus Cylinder, a clay tablet containing the statements of Cyrus the Great is considered to be the first human rights declarations.<sup>36</sup> Cyrus the Great declared that people should choose their own religion. It is from this document by Cyrus the Great that the idea of human rights rapidly spread to India, Greece, and Rome.

However, the documents that are of profound impact to the idea of human rights are: The Magna Carta which was founded in 1215, The Petition of Rights of 1628, the US Constitution of 1787, the French Declaration of the Right of Man and of the Citizen of 1789 and the US Bill of Rights of 1791.<sup>37</sup> These documents are the forerunners to many of today's human rights documents. The US declaration of human rights was a great step in trying to protect human rights in the US. However, it did not provide for the equal rights and freedoms of all human beings because it preserved the institution of slavery.<sup>38</sup>

The 20<sup>th</sup> century saw the adoption of the Universal Declaration of Human Rights(UDHR) formulated in 1948. The document was the result of the experience of the Second World War. The international community vowed to never allow the commission of atrocities like those

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<sup>35</sup> 'A Short History of Human Rights' <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm> on 19 September 2017.

<sup>36</sup> 'A Look at the Background of Human Rights' <http://www.youthforhumanrights.org/what-are-human-rights/background-of-human-rights.html> on 20 September 2017.

<sup>37</sup> 'A Brief History of Human Rights' <http://www.humanrights.com/what-are-human-rights/brief-history/> on 19 September 2017.

<sup>38</sup> 'Moira Rayner: history of universal human rights' <http://www.universalrights.net/main/histof.htm> on 22 September 2017.

witnessed during the war.<sup>39</sup> It was time to protect the four freedoms which included the freedom of speech, freedom of religion, freedom from want and freedom from fear. The post-World War II development of human rights reveals them as a value system meant to unify mankind into a single moral community.<sup>40</sup>

The Universal Declaration of Human Rights(UDHR) guarantees human rights to all human beings without distinction of any kind such as race, colour sex, language, religion or national origin.<sup>41</sup> It is against this expression of the universality of human rights that this chapter provides an argument for religion in the human rights discourse.

### **3.2 Human rights: secular or religious morality?**

The international bill of rights includes the Universal Declaration of human rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.<sup>42</sup> These documents emphasise the inherent dignity of the human person and consequently the equal and inalienable rights of all human beings. While the inherence of human rights is not disputed, the foundational underpinnings of the UDHR are a bone of contention.

Many theories have been expressed to be the foundational underpinnings of human rights. Because of this, there has been no consensus on whether human rights are religious or secular. The French philosopher, Jacques Maritain said that human beings agree on the rights, but on condition that no one asks them why.<sup>43</sup> His statement is evidence of the fact that there are conflicting opinions on the foundational underpinnings of human rights. Carrie Gustafson and Peter H. Juviler argue that all human beings hope for a consensus that they all have equal rights but there is little consensus as to whether Thomas Jefferson was right when he claimed that human beings have inalienable rights endowed by a divine creator.<sup>44</sup>

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<sup>39</sup> 'History of the Second World War' <http://www.un.org/en/sections/universal-declaration/history-document/index.html> on 22 September 2017.

<sup>40</sup> 'Henri F: Human Rights and Faith: 'A world-wide Secular Religion'? *ethics and global politics*, (2014), 181-200.

<sup>41</sup> Article 2, *Universal Declaration of Human Rights*, 10 December 1948.

<sup>42</sup> <https://www.commonwealmagazine.org/morality-human-rights> on 20 November 2017.

<sup>43</sup> 'Henri F: Human Rights and Faith: 'A world-wide Secular Religion'? *ethics and global politics*, (2014), 181-200.

<sup>44</sup> Gustafson C and Peter J, *Religion and human rights: competing claims?* ME Sharpe, New York, 1999, ix.

Despite the numerous arguments that human rights are meant to represent a secular morality, there are surprising parallels to be drawn with religion.<sup>45</sup> The idea of human rights, argues Zachary Calo, particularly the basic idea of human dignity, is filled with the reflections of the of the sacred.<sup>46</sup> Archbishop Rowan William argues that there is no guarantee that a universal account of human dignity would ever have seemed plausible without emphasis from the Abrahamic faiths.<sup>47</sup>

The Archbishop of Canterbury stated that religion contributes a doctrinal core to the underlying principles of the universality of human rights: it articulates why human rights are universal in that the nature of humanity created in God's image requires both equality and a general view of rights.<sup>48</sup> For example, the abolition of slavery was inspired by the biblical idea of all men being created in the image of God.<sup>49</sup> Therefore, religion can be a powerful force for and against human rights because of its ability to resonate in the human heart, mind and soul.<sup>50</sup> Further, without religion, many rights are cut from their roots. This is because religion also forms part of the right to freedom of expression, the right to associate with others, the freedom of opinion, freedom of conscience and the freedom of peaceful assembly.

The question of the possible conflict between human rights principles and religions has been at the center of human rights theory from the start.<sup>51</sup> Although the behavior of believers is not always motivated by total fidelity to the faith that they hold, religious beliefs are too important to

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<sup>45</sup> 'Henri F: Human Rights and Faith: 'A world-wide Secular Religion'?' *ethics and global politics*, (2014), 181-200.

<sup>46</sup> Calo Z, 'Religion, human rights and post-secular legal rights theory' *St John's law review* (2011).

<sup>47</sup> Calo Z, 'Religion, human rights and post-secular legal rights theory' *St John's law review* (2011).

<sup>48</sup> Rowan Williams: 'Human Rights and Religion'

[rowanwilliams.archbishopofcanterbury.org/articles.php/2370/human-rights-and-religious-faith](http://rowanwilliams.archbishopofcanterbury.org/articles.php/2370/human-rights-and-religious-faith) on 3 January 2017.

<sup>49</sup> <http://www.upf.org/resources/speeches-and-articles/1308-zoehrer-the-role-of-religion-in-protecting-human-rights-and-dignity> on 20 January 2018.

<sup>50</sup> Gustafson C and Peter J, *Religion and human rights: competing claims?* ME Sharpe, New York, 1999, 3.

<sup>51</sup> Institute De Drets Humans de Catalunya, *religion and human rights: towards a culture of co-existence*, 2010.

be dismissed as problematic to the upholding of human rights.<sup>52</sup> David Kuo found out that there is overwhelming evidence that faith is not only important, but it may also be a factor in determining whether a person will turn his life around. Hence, religion can shape the kind of life that an individual chooses to live and can also cause him to abandon actions that are contrary to the law.

In order to respect and uphold human rights, human beings need a value system. Many individuals derive their moral values from religion. This is because religious teachings determine the values of the human person<sup>53</sup> and instills values on the person with which he views the entire world. While religion remains an important source of morality for believers, secularism is also an important source of morality for non-believers. According to Anat Biletzki, there is a difference in the way that the religious and the secular approach the source of authority for human rights. The source of authority for the secular person is her claim of reason, emotion and capacity for compassion whereas the authority for the religious person is God's commandment.<sup>54</sup> However, reason is inherent in every human being and the desire to associate with a higher being is also part of natural law. It can therefore be argued that God's commandment must conform to reason and that any command to the contrary is against the very nature of human beings.

Juan Jose argues that religious institutions subordinate human rights or contrast them with divine rights. In cases where the two rights conflicts, the absolute rights of God generally predominate over the limited rights of mankind, the Truth of God over people, the Word of God over science, reason and human logic.<sup>55</sup> He further states that human beings have come to understand religion as being a fundamental dimension in the human rights discourse which shapes the cultural identity of communities.

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<sup>52</sup> 'P Zoehrer: The Role of Religion in Protecting Human Rights and Dignity' <http://www.upf.org/resources/speeches-and-articles/1308-zoehrer-the-role-of-religion-in-protecting-human-rights-and-dignity> on 22 September 2017.

<sup>53</sup> 'Elisabeth Gerle: Clash between Religion and Human Rights' on 18 September 2017.

<sup>54</sup> 'Rabbi Alana Suskin: Why Religion is Better than Secular Ethics for Human Rights' [http://www.huffingtonpost.com/rabbi-alana-suskin/rabbis-for-human-rights-r\\_b\\_906351.html](http://www.huffingtonpost.com/rabbi-alana-suskin/rabbis-for-human-rights-r_b_906351.html) on 22 December 2016.

<sup>55</sup> Institute De Drets Humans de Catalunya, *religion and human rights: towards a culture of co-existence*, 2010.

All major religions of the world, despite their differences, contradictions and susceptibility in conflicting interpretation share a universal interest in addressing the integrity and dignity of all persons.<sup>56</sup> However, the various religious texts often incorporate ideas that are incompatible with human rights. Some human rights norms such as the right claimed by homosexuals' conflict with religious beliefs.<sup>57</sup> Many Muslims believe that sharia law is divine and that all human beings should abide by it. However, sharia law is discriminatory against women and non-Muslims and to this extent it conflicts with certain human rights norms.

Elisabeth Gere argues that the problem with religion is that religion focuses on duties and obligations rather than freedom and rights.<sup>58</sup> David Novak, professor in modern Jewish studies bases the idea of human rights in the relationships between the commandments on the one hand and the obligations on the other hand. He argues that classic Hebrew lacks an equivalent to the idea of rights although there is a word for "right" both in biblical and prayer Hebrew.<sup>59</sup> He further states that the Jewish system of duties is understood in the context of God's absolute right as the Creator and therefore individual freedom is understood within a framework of God as the absolute who sets the limits.<sup>60</sup>

To solve this problem, Abdullahi Naim states that secularism is needed to encourage and enable internal change within religious traditions in order to overcome the religious-based reservations and objections toward human rights. Secularism is a term that has come to mean 'non-religious' or 'religiously neutral' because of its original sense of representing the customs that belong to an age that is beyond the truths held by religious traditions.<sup>61</sup> Accordingly, to claim that human

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<sup>57</sup> Institute De Drets Humans de Catalunya, *religion and human rights: towards a culture of co-existence*, 2010.

<sup>58</sup> 'Elisabeth Gerle: Clash between Religion and Human Rights' on 18 September 2017.

<sup>59</sup> 'Elisabeth Gerle: Clash between Religion and Human Rights' on 18 September 2017.

<sup>60</sup> Joseph Runzo, Nancy M Martin, Arvind Sharma, *Human rights and responsibilities in the world religions*, one world publication, 2003, 15.

<sup>61</sup> 'Henri Feron: 'Human Rights and Faith; A World-Wide Secular Religion'

<http://www.ethicsandglobalpolitics.net/index.php/egp/article/view/26262> on 14 November 2017.

rights are secular makes little sense with regards to the existence of mankind. The most serious objection to secularism as the foundation of universal human rights is its inability to motivate believers, who are the vast majority of the world population. As can be seen in human history at large, religion has been more influential than secularism as a foundation of political and social institutions.<sup>62</sup>

Secularism is beneficial in advancing human rights by providing a forum for minorities to air their grievances and thereby enabling them to receive acceptance in society based on their own merits.<sup>63</sup> Religious groups such as atheists do not have to suppress their grievances because they disagree with the prevailing view in the society. However, the forum created must be conducive to overcome or be reconciled to any objections held by the religious. Since human rights are universal, every human being has a right to voice their concerns whether they hold religious beliefs or not.<sup>64</sup>

Secularism is important for maintaining the equal human dignity and rights of believers and non-believers alike.<sup>65</sup> The assertion that human rights have a secular foundation and that secularism is an absolute value for human rights may lead to conflict sooner or later with other values such as religion. This is because secularism is insufficient to support the universality of human rights without reference to another source of moral foundation.<sup>66</sup>

### 3.3 Conclusion

The religious and secular dimensions of human rights foundations provide a cogent argument for the foundational underpinnings of human rights. Different foundations of human rights are important, and they should be interdependent and mutually supportive and not contradictory to

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<sup>62</sup> ‘Abdullahi Naim: The Synergy and Interdependence of Human Rights, Religion and Secularism’ <https://them.polylog.org/3/faa-en.htm> on 19 September 2017.

<sup>63</sup> ‘Abdullahi Naim: The Synergy and Interdependence of Human Rights, Religion and Secularism’ <https://them.polylog.org/3/faa-en.htm> on 19 September 2017.

<sup>64</sup> ‘Abdullahi Naim: The Synergy and Interdependence of Human Rights, Religion and Secularism’ <https://them.polylog.org/3/faa-en.htm> on 19 September 2017.

<sup>65</sup> ‘Abdullahi Naim: The Synergy and Interdependence of Human Rights, Religion and Secularism’ <https://them.polylog.org/3/faa-en.htm> on 19 September 2017.

<sup>66</sup> Abdullahi Naim, Human rights and responsibilities in the world religions,

each other. Religion plays a significant role in the protection and realization of human rights and it is integral to human rights advocacy around the world.<sup>67</sup> What remains clear is that religion stands in service of a well-functioning human rights system.

The solution to the wave of human rights violations based on religion is not to dismiss religion to the private sphere but to eradicate the vices and nurture the virtues of religion and affirm those religious teachings and practices that are most favourable to human rights, democracy, and the rule of law.<sup>68</sup> The relationship between human rights and religion should, therefore, be that of interdependence.

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<sup>67</sup> 'Frederick Powell: 'Religion and Human Rights-Compatible or Conflicting' <http://www.renecassin.org/wp-content/uploads/2015/08/Essay-2015-Frederick-Powell.pdf> on 14 November 2016.

<sup>68</sup> 'John Witte: 'To Serve Right and to Fight Wrong' Why Religion, Human Rights and Human Dignity need each Other' on 23<sup>rd</sup> December 2016.

## **CHAPTER 4: THE VIABILITY OF RELIGION IN THE HUMAN RIGHTS DISCOURSE**

This chapter discusses the international right to freedom of religion including its content and permissible limitations. It then makes an argument for the positive role played by religion and the possible initiatives that could be undertaken by religious leaders under the Beirut declaration. The chapter concludes by stating that religious leaders are better positioned to educate citizens on international human rights because of the respect that they command among their followers.

### **4.1 The right to freedom of religion as an international human right**

This section discusses the right to freedom of religion or belief under the UDHR and the ICCPR. The contents of the right and its permissible limitations under the said instruments are also discussed.

#### **4.1.1 International legal framework for the freedom of religion of belief**

The UDHR, adopted in 1948 is the first international instrument to provide for the freedom of religion as a human right. Article 18 states that:

*“everyone has the right to freedom of thought, conscience, and religion: this right includes freedom {...} either alone or in a community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance”.*

After the UDHR, the ICCPR was adopted in 1966. The ICCPR provides for the freedom of religion under Article 18. The document goes further to provide under Article 4(2) that the right to freedom of thought, conscience, and religion is a non-derogable right. Therefore, the state cannot suspend the right even in a state of emergency.<sup>69</sup> It is important to note that the right to manifest one’s religion or belief is not an absolute right and may be subject to limitations as stated in Article 18(3) of the ICCPR. The ICCPR requires that such limitations be prescribed by

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<sup>69</sup><https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rightsscrutiny/PublicSectorGuidanceSheets/Pages/Absoluterights.aspx> on 15 January 2018

law and must be necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>70</sup>

Since there were differing opinions on the limits to the free exercise of religious freedom, an instrument that would explain the specific guarantees of the right in more detail was needed.<sup>71</sup> The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was therefore adopted in 1981. It added the word ‘whatever’ before the word ‘belief’ found in the UDHR. The reason for the addition was the argument put forth by the communists stating that protecting ‘religion’ would imply a discrimination against atheists or non-religious convictions.<sup>72</sup>

The three instruments discussed above form the primary sources of law underpinning the mandate of the Special Rapporteur on the right to the freedom of religion or belief.<sup>73</sup> The Special Rapporteur is an independent expert mandated to identify existing and emerging obstacles to the enjoyment of the right to freedom of religion or belief and to make recommendations on ways to overcome the obstacles.<sup>74</sup>

#### **4.1.2 Content of the right to freedom of religion**

Cardinal Franz Koenig once stated that the freedom of religion constitutes the very foundation for the other fundamental freedom of man.<sup>75</sup> Therefore, the importance of religious freedom for creating harmony and peace in the world cannot be overemphasized.<sup>76</sup> Man’s right to freedom of religion is not disputed but the precise content of the right is not clearly known. This section will attempt to state the contents of the right.

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<sup>70</sup> Article 18(3), *international convention on civil and political rights*, 16 December 1966.

<sup>71</sup> ‘Christian Walter: The Protection of Freedom of Religion within the Institutional System of the United Nations.’

<sup>72</sup> ‘Christian Walter: The Protection of Freedom of Religion within the Institutional System of the United Nations.’

<sup>73</sup> <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx> on 27 December 2017.

<sup>74</sup> <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx> on 27 December 2017.

<sup>75</sup> <http://www.upf.org/resources/speeches-and-articles/1308-zoehrer-the-role-of-religion-in-protecting-human-rights-and-dignity> on 29 December 2017.

<sup>76</sup> <http://www.upf.org/resources/speeches-and-articles/1308-zoehrer-the-role-of-religion-in-protecting-human-rights-and-dignity> on 29 December 2017.

The right to freedom of religion has two dimensions; the right to hold religious beliefs (*forum internum*) and the right to manifest those beliefs (*forum externum*).<sup>77</sup> Forum internum is an inviolable right under the ICCPR and the UDHR and cannot be limited in any way. The right includes: first, as was stated in *Employment Division v Smith*<sup>78</sup>, the right to believe and manifest whatever religious beliefs one desires. However, the right to manifest one's religion or belief is subject to certain limitations<sup>79</sup> that will be discussed in another section of this chapter.

The freedom of religion may be exercised in private or in public, in a community with others or individually. The right belongs to individuals, associations, communities, congregations, and institutions.<sup>80</sup> According to Professor Richard Garnett, any legal regime of human rights that is only designed to protect a reduced notion of the freedom of religion will leave vulnerable and unprotected important aspects of that freedom.<sup>81</sup> Consequently, group rights are of great importance in any given society. Religious groups have a right to self-determination, autonomy, to organise themselves, and to establish their own criteria for membership and leadership.<sup>82</sup> Indeed, church autonomy is the litmus test of a state's commitment to genuine religious freedom as was stated by Gerald Bradley.<sup>83</sup>

For many individuals, religious activities derive meaning from participating in larger religious communities. This is because religious communities represent ongoing traditions of shared beliefs as was held in the case of *Corporation of the Presiding Bishop v Amos*.<sup>84</sup> Further, the existence of religious communities is necessary for pluralism in a democratic society.<sup>85</sup> One is therefore entitled to assemble with others, establish and maintain the building of places of

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<sup>77</sup> Parker T, 'the freedom to manifest religious belief: an analysis of the necessity clauses of the ICCPR and the ECHR' *Duke journal of comparative and international law* (2006), 94.

<sup>78</sup> *Employment division v smith*, 494 U.S. 872(1990).

<sup>79</sup> Article 18(3), *International Convention on Civil and Political Rights*, 16 December 1966.

<sup>80</sup> Garnett, R 'religious liberty, church autonomy, and the structure of freedom' legal studies research paper No. 10-10, Notre Dame law school.

<sup>81</sup> Garnett, R 'religious liberty, church autonomy, and the structure of freedom' legal studies research paper No. 10-10, Notre Dame law school.

<sup>82</sup> Garnett, R 'religious liberty, church autonomy, and the structure of freedom' legal studies research paper No. 10-10, Notre dame law school.

<sup>83</sup> Garnett, R 'religious liberty, church autonomy, and the structure of freedom' legal studies research paper No. 10-10, Notre Dame law school.

<sup>84</sup> *Corporation of presiding Bishop v Amos*, 483 U.S 327(1987).

<sup>85</sup> *Hassan and chaush v Bulgaria*, ECtHR judgement of 26 October 2000, para.60.

worship.<sup>86</sup> The exercise of the right in communities includes the use of articles and materials related to the rites and customs of that specific belief or religion, the display of symbols, the wearing of distinctive clothing and the participation in rituals associated with certain stages in life.<sup>87</sup>

The freedom from coercion is another aspect of the right.<sup>88</sup> Coercion hinders the human person from worshipping in accordance with his conscience<sup>89</sup> thereby violating the dignity of the person. It does not matter that some good may result from coercion. What is of importance is the inherent wrongfulness of forcing an individual to behave in a manner that is contrary to his or her conscience.<sup>90</sup> The use of threat of physical force or penal sanctions to compel believers and non-believers to adopt or renounce their religious beliefs is prohibited.<sup>91</sup>

For religious freedom to flourish, state neutrality is required. there is no fixed meaning for neutrality. 'It is a coat of many colors' as was stated by Harlan J. in *Board of Education v Allen*.<sup>92</sup> Under the principle of neutrality, the state cannot favour one religion to the detriment of another.<sup>93</sup> Neutrality is not a strict wall of separation between the church and the state because the state has an active role in creating a legal and institutional framework to ensure the free exercise of religion in practice.<sup>94</sup> The principle of neutrality also serves to prevent discrimination on the basis of religion in government institutions as well private institutions.<sup>95</sup>

Article 6(c) of the 1981 Declaration of the General Assembly encompasses the use of religious symbols as part of the right to freedom of religion.<sup>96</sup> States are urged to exert effort in accordance with their national legislation and international human rights law to ensure that

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<sup>86</sup><http://www.uscirf.gov/reports-briefs/human-rights-documents/international-human-rights-standards-selected-provisions> on 19 December 2017.

<sup>87</sup> CCPR *General Comment No.22, Freedom of Thought, Conscience and Religion*, 30 July 1993.

<sup>88</sup> Article 18(2), *International Convention on Civil and Political Rights*, 16 December 1966.

<sup>89</sup> Garnett, R 'religious liberty, church autonomy, and the structure of freedom' legal studies research paper No. 10-10, Notre Dame law school.

<sup>90</sup> Alfred Kellerman, Kurt Siehr, Talia Einhorn, *Israel among the nations: international and comparative law perspectives on Israel's 50th anniversary*, Kluwer law international ,1998 ,89.

<sup>91</sup> CCPR *General Comment No.22, Freedom of Thought, Conscience and Religion*, 30 July 1993.

<sup>92</sup> *Board of education v Allen*, 392, US, 236 (1968).

<sup>93</sup> 'Robert sedler: Separation of the Church and State, Neutrality, and Religious Freedom in American Constitutional Law' on 20 January 2018.

<sup>94</sup> 'Balazs schanda: Church Autonomy and Religious Liberty-National Report of Hungary' on 19 January 2018

<sup>95</sup> <http://www.cdpcj.qc.ca/en/droits-de-la-personne/droits-pour-tous/Pages/neutralite.aspx> on 10 January 2018.

<sup>96</sup> <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/Standards.aspx> on 5 January 2018.

religious sites, shrines, expressions and places are protected.<sup>97</sup> Further, the human rights committee stated that the concept of worship extends to the display of religious symbols.<sup>98</sup>

#### **4.2 Limitations on the right to freedom of religion**

Society has the right to defend itself from abuses and violations of fundamental rights and freedoms.<sup>99</sup> This is done through the government that acts as guarantor of the rights of its citizens based on the social contract. The enactment of legislation by the state is in pursuit of its mandate under the social contract. The provision of limitations on certain human rights enables the government to safeguard and protect the right and fundamental freedom of its citizens. Limitations must be proportionate and directly related to the law on which they are based.<sup>100</sup>

Limitations on human rights under the international human rights law are strictly interpreted.<sup>101</sup> The law must be narrowly tailored to achieve a specific purpose that is non-discriminatory and does not negatively affect the guaranteed rights. The freedom to manifest one's belief or religion must be exercised with regard to the rights and freedoms enjoyed by others<sup>102</sup> and hence the need for limitations. This is in recognition of the fact that the manifestation by one person of his or her religious belief may have an impact on others.<sup>103</sup> It is important to realise that the same freedom and right to manifest one's religion or belief attach to the other members of society in equal measure.

Article 30 of the UDHR and Article 5(1) of the ICCPR provide that limitations to rights cannot be used to destroy a protected right. The UDHR has a general limitation clause under Article 29(2). The freedom to manifest religion under Article 18 (2) of the ICCPR is qualified by the limitations set out in sub-paragraph 3 of the ICCPR which provides that:

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<sup>97</sup> Article 4(b), *Commission on human rights resolution 2005/40*.

<sup>98</sup> CCPR *General Comment No.22, Freedom of Thought, Conscience and Religion*, 30 July 1993, para. 4.

<sup>99</sup> <https://www.humanrights.gov.au/permmissible-limitations-freedom-manifest-religion-or-belief> on 5 January 2018.

<sup>100</sup> Parker T, 'the freedom to manifest religious belief: an analysis of the necessity clauses of the ICCPR and the ECHR' *Duke journal of comparative and international law* (2006), 95.

<sup>101</sup> <http://www.tandfonline.com/doi/full/10.1080/15570274.2015.1005913?src=recsys> on 5 January 2018.

<sup>102</sup> <https://www.humanrights.gov.au/permmissible-limitations-freedom-manifest-religion-or-belief> on 5 January 2018.

<sup>103</sup> *Ewelda and others v the United Kingdom*, ECtHR judgement of 27 May 2013, para.80.

*“The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”.*

The limitation stated under the ICCPR only applies to the freedom to manifest one's religion or belief and not the freedom of thought, conscience and the freedom to adopt a religion or belief of one's choice.<sup>104</sup> Further, the provision that the limitations be prescribed by law requires the limitations to be adequately specific to enable individuals to know how to regulate their conduct.<sup>105</sup> This, therefore, means that the criteria set out under the law must be known to the public, to those mandated with implementing the law and those interpreting it. The acts of the executive and subordinate authorities should not be restrictive of the right to freedom of thought conscience and religion.<sup>106</sup>

The European Court has narrowly interpreted the “prescribed by law” requirement under its European Convention on Human Rights in order to prevent the acts of hiding violations behind national laws.<sup>107</sup> In *Kalac v Turkey*,<sup>108</sup> the court stated that the requirement is designed to ensure some legal protection in national law against arbitrary interference by public authorities. The requirement for necessity means that any such limitation must be equal to the aim to protect any of the state interests listed.

For the limitation under Article 18(3) to be legitimate, it must be enforced solely for the necessary purposes envisaged by the article. This incorporates a proportionality requirement: restrictive measure must be appropriate to achieve their protective function.<sup>109</sup> In *X v Sydney Children's Hospitals networks*,<sup>110</sup> the New South Wales supreme court held that a 17-year-old and his parents couldn't refuse life-saving therapeutic treatment on the basis of religious beliefs. In doing this, the state exercised its protective function over the minor by ensuring that he received the medical treatment he required.

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<sup>104</sup> <http://www.tandfonline.com/doi/full/10.1080/15570274.2015.1005913?src=recsys> on 5 January 2018.

<sup>105</sup> <http://www.tandfonline.com/doi/full/10.1080/15570274.2015.1005913?src=recsys> on 5 January 2018.

Arcot Krishnaswami: *Study of discrimination in the matter of religious rights and practices*, UN, New York 1960.

<sup>107</sup> Parker T, ‘the freedom to manifest religious belief: an analysis of the necessity clauses of the ICCPR and the ECHR’ *Duke journal of comparative and international law* (2006), 97.

<sup>108</sup> *Kulac v Turkey*, ECtHR judgement of 1 July 1997, para 26.

<sup>109</sup> CCPR *General Comment No.27, Article 12(freedom of Movement)*, 2 November 1999, para. 14.

<sup>110</sup> *X v Sydney Children's Hospitals networks* (2013) NSWCA 320.

The presence of an established religion in a state should not result in the impairment or limitation of the religious freedom of its citizens.<sup>111</sup> However, the presence of an established state religion does not necessarily imply a violation of religious rights and freedoms.<sup>112</sup> In the European cases of *Dahlab v Switzerland*,<sup>113</sup> *Sahin v Turkey*<sup>114</sup> and *Dogru v France*,<sup>115</sup> the court held that the right to manifest religious beliefs is outweighed by the state's interest in protecting the rights and freedom of others and preserving public order and safety.<sup>116</sup>

Finally, the *Siracusa* principles on the ICCPR provide that every limitation imposed by the law shall be subject to the possibility of challenge and remedy against its abusive application.<sup>117</sup> Individuals and groups have a right to institute proceedings in court when they feel that the reasons for limiting their rights do not meet the criteria set out in the law.

### **4.3 In defense of religion in the human rights discourse**

This section attempts to provide a justification for the use of religion to promote human rights. The Beirut declaration is discussed because it represents a commitment by religious leaders to protect and promote the respect of human rights.

#### **4.3.1 The Beirut declaration: A step in the right direction**

The Beirut declaration was the result of a two-day discussion in Beirut aimed at addressing discrimination and religious-based violence.<sup>118</sup> In addition to launching the declaration, the Office of the United Nations High Commissioner for Human Rights in cooperation with civil societies formed the human rights initiative "*faith for rights*".<sup>119</sup> Such an initiative, designed to unite religious communities of different faiths to counter discrimination and religious-based violence so as to promote the protection of human rights<sup>120</sup> is proof of the viability of religion in

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<sup>111</sup> CCPR General Comment No.22, *Freedom of Thought, Conscience and Religion*, 30 July 1993, para. 9.

<sup>112</sup> *Derby v Sweden*

<sup>113</sup> *Dahlab v Switzerland*, ECtHR judgement of 15 February 2001.

<sup>114</sup> *Leyla Sahin v Turkey*, ECtHR judgement of 10 November 2005.

<sup>115</sup> *Dogru v France*, ECtHR judgement of 4 December 2008.

<sup>116</sup> Calo Z, pluralism, secularism and the European Court of Human Rights, *journal of law and religion* (2010), 261-280.

<sup>117</sup> Article 1(A)(8), *Siracusa principles on the limitation and derogate on provisions in the ICCPR*.

<sup>118</sup> <http://iheu.org/humanists-religious-leaders-and-the-un-launch-beirut-declaration-on-combating-human-rights-abuse/> on 16 January 2018.

<sup>119</sup> <http://iheu.org/humanists-religious-leaders-and-the-un-launch-beirut-declaration-on-combating-human-rights-abuse/> on 16 January 2018.

<sup>120</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/FaithforRights.aspx> on 18 January 2018.

human rights. Zeid Ra'ad Al Hussein, the UN High Commissioner stated that the aim is to foster a community where diversity is respected and celebrated.<sup>121</sup> The Declaration is linked to the “18 Commitments on Faith for Rights” which affirm a common commitment to upholding the dignity and equal worth of all human beings.<sup>122</sup> Mr. Zeid recognised religious leaders as key human right actors because they have considerable influence on the heart and minds of believers.

Religious leaders occupy an important position in society and the respect they earn makes them important players in protecting human rights. Ahmed Shaheed, the UN Special Rapporteur on the Freedom of Religion or Belief called for special attention towards young people.<sup>123</sup> The youth are vulnerable and are susceptible to the influence of terrorist groups because the groups promise to give them a sense of identity.<sup>124</sup> A study by the United States Institute of Peace found that identity-seeking was the largest reason for joining terrorist groups.<sup>125</sup> Since the youth look up to religious leaders for guidance, mentoring and advice, the leaders are able to engage them in human rights education. Mr. Shaheed further stated that it is essential that the leaders engage with the local communities at a very early age to cultivate an environment of tolerance and respect for the rights and freedoms of others.

Under the Beirut declaration, religious leaders are tasked with countering incitement to hatred. Rather than focusing on the doctrinal differences, the Beirut declaration advocates for the identification of a common ground among all religions and beliefs. The action plan for religious leaders from Africa urges religious leaders to; base what they consider to be absolute truths on ethical and human rights principles, Promote the value of accepting others as they are and discard ideas of being superior to other human beings, move beyond tolerance and advocate for peace and respect based on international human rights law, and Develop an inter-faith code of conduct based on ethical and human rights principles.

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<sup>121</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/FaithforRights.aspx> on 18 January 2018.

<sup>122</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/FaithforRights.aspx> on 18 January 2018.

<sup>123</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/FaithforRights.aspx> on 18 January 2018.

<sup>124</sup> <http://www.searct.gov.my/publications/our-publications?id=55> on 25 January 2018.

<sup>125</sup> ‘Colonel John M: United States Institute of Peace Special Report: Why Youth Join AL-Qaeda’ <https://www.scribd.com/document/30983812/United-States-Institute-of-Peace-Special-Report-Why-Youth-Join-AL-Qaeda> on 30 January 2018.

#### 4.4 A brief study of religious freedom in Pakistan and France

Pakistan is a religious state while France is a secular state. Pakistan and France are used in this part to show the religious and secular dimensions of human rights law discussed in chapter 3.

##### 4.4.1 Pakistan

Pakistan has a population of 199 million people.<sup>126</sup> 96% of the population are Muslims, 4% non-Muslims including Christians, Hindus, Buddhists, Sikhs, Jains, Parsis, and atheists.<sup>127</sup> It is a party to the UDHR and the ICCPR which mean that they are bound by its provisions on the freedom of religion.<sup>128</sup> Pakistan initially entered into a reservation to Article 18 of the ICCPR but withdrew its reservations in 2011. The reservation stated that Article 18 would apply to the extent that it was not inconsistent with the constitution and sharia law.

The constitution provides for the right of minorities to freely profess and practice their religious beliefs.<sup>129</sup> It further provides that adequate provision will be made to safeguard the legitimate interest of minorities and that all persons are equal before the law. In spite of the guarantees provided by the constitution, members of religious minority groups are discriminated against with some being killed in sectarian attacks.<sup>130</sup> The Lahore bombing, for example, was part of an effort by Jamaat-ul-Ahrar, an Islamic militant group, to try and eradicate the Christian minority.<sup>131</sup> Rita Izsak, the UN Special Rapporteur on minority issues, stated that asylum seekers belonging to religious minority groups in Pakistan have been subjected to persecution, discrimination, and violence.<sup>132</sup>

The constitution establishes Islam as the state religion and all laws are required to be consistent with Islam. While the existence of a state religion as stated in this chapter does not necessarily

<sup>126</sup> <http://www.worldometers.info/world-population/pakistan-population/> On 20 January 2018.

<sup>127</sup> All party parliamentary group for international freedom of religion or belief, *Freedom of religion or belief in Pakistan and UK government policy: APPG for international freedom of religion or belief parliamentary inquiry full report*.

<sup>128</sup> All party parliamentary group for international freedom of religion or belief, *Freedom of religion or belief in Pakistan and UK government policy: APPG for international freedom of religion or belief parliamentary inquiry full report*.

<sup>129</sup> <https://blogs.tribune.com.pk/story/23654/contradicting-the-constitution-illegally/> on 20 January 2018.

<sup>130</sup> <https://www.wilsoncenter.org/event/religious-intolerance-pakistan-and-the-plight-religious-minorities> on 20 January 2018.

<sup>131</sup> <https://www.ft.com/content/e566507a-f5ac-11e5-96db-fc683b5e52db> on 17 January 2018.

<sup>132</sup> <https://blogs.tribune.com.pk/story/23654/contradicting-the-constitution-illegally/> on 20 January 2018.

imply a violation of religious freedoms, the conduct of the state has not been neutral. Government policies do not afford equal protection to all the citizens and blasphemy laws are designed to marginalize the Ahmadiyya Muslim community thereby making them unable to freely profess their religious beliefs.<sup>133</sup> The government classifies passports based on religion and requires religious information when applying for national identity cards. This amounts to discrimination based on religious beliefs because people of minority groups are treated differently. Children born to non-Muslim women who later convert to Islam after marriage to a non-Muslim are considered illegitimate and they cannot inherit.

The publication of religious documents has not been restricted in general.<sup>134</sup> Nevertheless, the sale of Ahmadiyya literature has been banned. The Ahmadiyya community has been the subject of systematic persecution even though they profess the Islamic religion. A person must swear that they believe prophet Muhammad is the final prophet and denounce the Ahmadiyya movement founder as a false prophet and his followers as non-Muslims in order to be listed as a Muslim.<sup>135</sup> This pressurizes the Ahmadiyya's to denounce their beliefs in order to enjoy citizenship rights which also includes the right to vote.

Ordinance XX of 1984 is meant to criminalize the public practice of religious beliefs by the Ahmadis and restrict the usage of Islamic terms and titles by the Ahmadiyya community. This goes against Article 18 of the ICCPR and UDHR which provides for the freedom of conscience, thought and belief and the right cannot be limited. In *Zaheeruddin v. State*,<sup>136</sup> the Court decided that Ordinance XX does not violate freedom of religion as mandated by the Pakistan Constitution.

#### 4.4.2 France

France is a state that has committed itself to *laïcité* which translated into English means secularism. However, *laïcité* and secularism do not have the same meaning.<sup>137</sup> It is provided for in Article 1 of the French constitution which states that:

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<sup>133</sup> Pakistan 2014 international religious freedom report, 3.

<sup>134</sup> Pakistan 2014 international religious freedom report, 3.

<sup>135</sup> Pakistan 2014 international religious freedom report, 3.

<sup>136</sup> *Zeheer-ud-din v State*, 1993 SCMR 1718.

<sup>137</sup> <http://www.normandyvision.org/article12030701.php> on December 2017.

*“France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion...”*

Laïcité entails the removal of religion and beliefs from the public sphere<sup>138</sup> to foster a neutral environment for the citizens of France. Scharffs describes laïcité as a concept that is closer to secularism as opposed to secularity.<sup>139</sup> He defines secularism as a positive ideology obligating the state to adopt an approach that may manifest itself as oppositional to the religion-based reason for political actors, hostility towards religion in the public sphere and insistence that religious manifestations or beliefs be relegated to the private sphere.

In the spirit of laïcité, France passed a law banning the use of clearly visible religious symbols in public schools including the hijab.<sup>140</sup> Its effect was an increase in demand for private Muslim schools thereby keeping Muslims out of the conventional sphere instead of assimilating them into the French society.<sup>141</sup> The human rights watch described the law as coercive and discriminatory because it disproportionately affected Muslim girls.<sup>142</sup> It described the law as violating the right to freedom of religion and expression. For the Muslim women, wearing headscarves is not only a form of religious expression but it is also obligatory. Regis Debray commented that the application of laïcité with reference to headscarves had nothing to do with secularism.<sup>143</sup>

According to Elizabeth Winkler, imposing governmental control on Islam will push more Muslims into radical sects.<sup>144</sup> Sansal Boualem commented that laïcité is unfathomable to many Muslims who view it as a directive to abandon their belief system.<sup>145</sup> Therefore, instead of fostering harmony in the society it may lead to further religious tensions based. Although laïcité

<sup>138</sup> <http://www.normandyvision.org/article12030701.php> on 15 December 2017.

<sup>139</sup> Brett Scharffs, *Four views of the citadel: The Consequential Distinction between Secularism and Secularity*, international center for law and religious studies, 3.

<sup>140</sup> Elizabeth Winkler: 'Is It Time for France to Abandon laïcité?' 7 January 2016

<https://newrepublic.com/article/127179/time-france-abandon-laicite> on 24 January 2018.

<sup>141</sup> [https://en.wikipedia.org/wiki/Freedom\\_of\\_religion\\_in\\_France#Reports\\_by\\_the\\_United\\_States\\_Commission\\_on\\_International\\_Religious\\_Freedom](https://en.wikipedia.org/wiki/Freedom_of_religion_in_France#Reports_by_the_United_States_Commission_on_International_Religious_Freedom) on 23 January 2018

<sup>142</sup> <https://www.hrw.org/news/2004/02/26/france-headscarf-ban-violates-religious-freedom> on 20 January 2018

<sup>143</sup> Tim King: 'Secularism in France' *Prospect magazine*, 20 March 2004

<https://www.prospectmagazine.co.uk/magazine/secularisminfrance> on 17 January 2018

<sup>144</sup> <https://newrepublic.com/article/127179/time-france-abandon-laicite> on 16 January 2018.

<sup>145</sup> <https://gettingonmysoapbox.wordpress.com/2016/09/01/is-laicite-deterring-terrorism-or-aiding-frances-fight-against-t/> <https://gettingonmysoapbox.wordpress.com/2016/09/01/is-laicite-deterring-terrorism-or-aiding-frances-fight-against-t/> on 17 December 2018.

is applicable to all religions, many in France are unaffected because they are not religious.<sup>146</sup> The situation is exacerbated by the fact that most of the state holidays are Catholic holy days. Traces of Catholicism are also being witnessed within the education system whereby the school calendar is organised around catholic holy days.

December 9 is a day of laïcité and public schools are required to teach the principle of laïcité. The effort made by France to create a public sphere that is devoid of any religious influence is perhaps excessive as it tends to be suppressive of religion or beliefs. The situation in France presents an example of active secularism. Instead of keeping France secular, it seems that laïcité is being used as a sword against Islam rather than a shield to protect religious freedom.<sup>147</sup>

#### **4.5 conclusion**

While religion has played a role in the violation of numerous freedoms and rights its role is an indispensable one. The freedom of religion has its very foundation in the dignity of the human person and in his nature and its suppression will inevitably result in the violation of other human rights. The solution is not to limit religion to the private sphere but to allow citizens to freely exercise their beliefs in the public sphere within the confines of the law. The state can limit the manifestation of any religion or belief if it is necessary for the preservation of public health and order.

What remains clear is that the government cannot fight the abuse of the right to freedom of religion on its own. Religious leaders are in a better position to locally advocate for tolerance and respect for the beliefs of others.

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<sup>146</sup>Elizabeth Winkler: Is It Time for France to Abandon laïcité?'7 January 2016  
<https://newrepublic.com/article/127179/time-france-abandon-laicite> on 24 January 2018.

<sup>147</sup><https://gettingonmysoapbox.wordpress.com/2016/09/01/is-laicite-deterring-terrorism-or-aiding-frances-fight-against-t/> on 26 January 2018.



## CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

This chapter gives a summary of what was discussed in chapters one to four. It does so by highlighting the key points of each chapter based on the arguments presented. This chapter will conclude by giving recommendations on the role of religion in the protection and realization of human rights.

### 5.1 conclusion

Chapter one highlighted the core issues that formed part of the dissertation. Human rights violations in the God's name have become prevalent all over the world. The first issue that was to be discussed was the relationship between religion and human rights. The second issue was a discussion on the viability of religion in the human rights discourse.

Chapter two provided the theoretical underpinnings basing its arguments on the natural law and social contract theory. The Natural law theory emphasised the importance of protecting human rights; including the right to freedom of religion which requires all human beings to reflect on the dignity of all human persons. It also described religion as a construct of natural law and therefore indispensable to the life of a human being. The social contract theory, on the other hand, sought to call attention to the role of governments as guarantors of human rights.

Chapter three discussed the foundational underpinnings of human rights as including the secular and religious dimensions. Human beings derive their values from their religion or belief. However, conflicting interpretations of religious texts have led to massive human rights violations hence the need for a secular approach to human rights. Secularism is important because it protects the human dignity and rights of believers and non-believers alike. It also helps to bridge the gap between the different belief systems by providing a basis for agreement among human beings in situations where there are conflicting doctrines. The chapter concluded by stating that religion and human rights are interdependent but there is need to get rid of the vices presented by religion by balancing the secular and religious dimensions of human rights.

Chapter 4 focused its discussions on the contents of the international right to the freedom of religion and its limitations. The discussion was centered on the UDHR and the ICCPR which are among the first instruments to provide for the right to freedom of religion. Judge John Noonan

once stated that declarations are not deeds. Therefore, the existence of the UDHR and the ICCPR without implementation from states will not ensure that rights are protected and respected. Based on this understanding the chapter argued that religion is a powerful tool for the protection of human rights when different actors are involved. The chapter also argued that Religious leaders are in a better position to advocate for the right to freedom of religion at the local level. Key provisions of the Beirut Declaration were also discussed, and an emphasis was made on the need for a common ground among all religions and beliefs to foster respect and tolerance.

The status of the right to freedom of religion in Pakistan and France was also discussed. It found that Pakistan provided for the right in its Constitution, but its practices did not respect the supreme law of the land. France on the other hand practices an aggressive form of secularism where religious manifestations are to be secluded to the private sphere. The chapter concluded that France's limitation to the right to manifest one's religion and beliefs were not necessary thereby violating the right to freedom of religion or belief, these two studies confirmed the conclusion arrived at in chapter 3 where it was stated that religion needs secularism and vice versa to prevent any extremes.

## **5.2 Recommendations**

International human rights standards are to be implemented through the state but without religion, the government has an exaggerated role to play. The starting point for the respect of religious diversity and human rights is the presence of a neutral environment. Neutrality in this instance implies the creation of an environment in the public sphere where all religions and beliefs are tolerated within the confines of what article 18 of the UDHR and ICCPR require. Governments should then educate human rights actors and religious actors on the interdependence between religion and human rights. Further, respect for religious diversity and human rights should be taught in school to nurture the young people who are vulnerable and susceptible to the influence of terrorist groups.

Since religious leaders are better placed to advocate for the protection of human rights at the local level, the government should work closely with them. This can be done by enacting laws that require religious leaders to undertake human rights education while emphasizing that any

doctrinal reference among the different religious traditions be resolved by reference to ethical and human rights principles. An interfaith code of conduct that governs the different religious traditions should also be put in place. This initiative can be undertaken by the religious leaders in consultation with the government and other human rights actors.

In situations where the violations are caused by governments either through laws or practice, the UN should give Article 18 more priority.<sup>148</sup> This can be done by creating an international body that will not only ensure that domestic laws provide for the freedom of religion but also ensure that the conduct of states is neutral. It is simply not enough that the human rights watch monitors implementation of international human rights law. There is need to provide human rights education to government bodies to foster an environment of tolerance and respect for the religious freedom of others.

The support and funding of non-governmental organizations(NGO's) is also necessary. This is because Ngo's call attention to human rights violations and make contributions on ways to enhance the protection of human rights. Support for the work done by these NGO's will also ensure that the actions undertaken by governments are also scrutinized and that emphasis on the compliance with human rights principles is made. The use of social media is also an important tool in educating the public on tolerance and respect for religious diversity as well as focusing attention on international human rights issues.

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<sup>148</sup> House of Lords debate, the freedom of religion and belief.

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