

# Freedom of Religion and Gender Equality: **And the Twain shall Meet**

by Sharon A Bong



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**What has gender equality got to do with religious freedom?** In this paper, I offer a gendered response by drawing from my research interests and expertise in women's human rights in religions as well as sexualities and religions within a Southeast Asian context. The two key premises that I will address here are: 1) the realisation that the right to freedom of religion is inextricably connected with gender equality; and 2) *critical relativism* is a way forward that effectively negotiates the tensions in realising the right to freedom of religion and gender equality. And I begin with defining the right to freedom of religion or more specifically, the "right to freedom of thought, conscience and religion".

According to Article 18 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (United Nations, 1948). This is echoed in Article 1(1) of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Article 1(2) of the 1981

Declaration goes on to state that, "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice". And Article 1(3) continues with: "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" (United Nations, 1981).

These Declarations, among others, enshrine the right to freedom of religion as a fundamental human right and this freedom encompasses "internal freedom" and "external freedom". The former "denotes the individual's inner private domain" and the latter, "denotes the outer, often public, domain" (Tahzib-Lie, 2000, p. 967). These private-public spaces for the "teaching, practice, worship and observance" of a person's "religion or belief" often become sites of contestation between competing ideologies and practices. Whilst violations of this freedom is, as prescribed, morally wrong, States (including its apparatuses, eg legal system) may exercise a "margin of appreciation" in curtailing this right to freedom of religion in specific and special circumstances, eg where the interest of the common good takes precedence over individual rights. In this sense, the

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right to freedom of religion is neither an absolute nor a universal right, ie justified and operational in every circumstance for all persons at all times and all places.

Given the “margin of appreciation” in operationalising the right to freedom of religion, how would gender further inflect one’s understanding of this right? On the one hand, this consideration may be considered moot or irrelevant by some as fundamental rights such as the right to freedom of religion are deemed to be accessible and equally accessible by women and men. It is thus gender-neutral. On the other hand, this consideration is highly relevant because we are cognisant (and for many, this is a lived experience) that fundamental rights such as the right to freedom of religion, among a host of others, are neither accessible nor equally accessible by most women as they are, most men. Gender inequality is thus disproportionately and differently experienced by women. There are in other words, biases that abound in the rhetoric and practice of rights and much of these biases are gendered. So contrary to the proponents of the first cardinal principle of human rights — which is inalienability — not all human beings are born equal in dignity. Contrary to proponents of the second cardinal principle of human rights — which is universality — as not all are equal in human dignity, not all human beings are accorded and equally accorded rights (eg most women, some men, sexual, ethnic, religious minorities, indigenous peoples, etc). And contrary to proponents of the third cardinal principle of human rights — which is inviolability — as a consequence of the first two transgressions, violations of rights abound.

Where these violations are targeted at specific groups on account of their sex, gender, sexuality, age, ethnicity, religious persuasion and nationality, we find the intersection of freedom of religion and gender, among other axes of identity. Violations of fundamental rights as a result of such intersectionality are similarly disproportionately and differently experienced by women and gender and sexual minorities in particular, eg gender-based discrimination and gender-based violence.

Thus the right to freedom of religion and women’s human rights, as the foundational premise for gender equality, are indivisible: women can only enjoy the right to freedom of religion if their fundamental right to equality is protected. In this sense, no single right ought to take precedence over other rights. This is the fourth cardinal principle of women’s rights as human rights — indivisibility. As Alison Stuart maintains, “While women may have the right to join or leave a religion, if only men dictate the content of that religion, they are disenfranchised

within the religion that gives meaning to their lives...[and] this disenfranchisement has serious repercussions for gender equality” (Stuart, 2010, p. 431). Such an insight has wide-ranging repercussions as operationalising the right to freedom of religion, entails a critical review of gender equality in religions. Feminist standpoint epistemologies founded on the knowledge and praxis of feminist theorists, feminist theologians, feminist jurisprudence and feminist activists in particular, have offered such a critical review but reiterating the wealth of these insights lies beyond the scope of this paper.

Having established the interconnectedness of freedom of religion and gender equality, it is fitting, at this juncture, to turn to the singular women’s treaty, the 1979 United Nations-adopted Convention on the Elimination of All Forms of Discrimination Against Women. Whilst the Convention does not explicitly mention “belief” or “religion” but under the term “cultural” (which cultural anthropologists would assert, includes religion or belief), it offers two relevant Articles (UN Women, 1979). And these are:

*Article 3*

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

*Article 5*

States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

It is evident from the Articles above that the right to freedom of religion is inseparable from gender equality in religion, as cultures and religions have been identified, along with the “political, social, economic” as “fields” where gender-based discrimination potentially abound. Cultures and religions are, more often than not, perceived as hotbeds for gender-based discrimination as biased cultural practices and interpretations of religious texts not only articulate but also reify, with the weight of tradition and Divine will and Law, “the idea of the inferiority [of women] or the superiority of [men]”. As such, gender-discriminatory cultural practices and biased

interpretations of religious texts, especially when the name of God is invoked, seem immutable, unchanging or unable to change. The Convention offers similar uncompromising grounds for conduct: in situations where “social and cultural patterns of conduct of men and women” are not compatible with gender equality or women’s human rights, States Parties are obliged to “take all appropriate measures” to “modify [such] social and cultural patterns”. The universal (women’s human rights or gender equality) as such, takes precedence over the particular that finds expression in the gendered practice of cultures and religions.

The competing claims of ascendancy, in bringing the conventions home (operationalising rights in local contexts), are apparent. On one end, we have cultural relativism arising from the “fields” of cultures and religions where its key proponents insist on the right to freedom of religion and practice — hence the particular — over universal values. In some instances, the right to freedom of religion and practice endorses the legitimacy of tradition, including harmful ones along with the integrity of belief and praxis as extensions of cultural and religious identities, eg female genital mutilation (as differentiated from female circumcision), child marriage, etc. On the other end, we have universalism where its key proponents insist on the (universal) right to equality over particularised values or ideologies, eg cultures and religions. In these instances, the privileging of the universal bypasses the legitimacy of tradition and this is endorsed precisely because some traditions are harmful. However, such privileging also inadvertently discounts the integrity of belief and praxis as extensions of cultural and religious identities. Uninformed universalism and cultural relativism are ideological pitfalls to avoid. Where cultural relativism is uninformed by universal values, this dangerously slides into “moral relativism” which in turn, leads to a blind adherence to harmful cultural and religious practices that is unchecked by principles of gender equality. And where universalism does not engage with the particularities of cultural and religious beliefs and practices, this problematically slides into “moral imperialism” which in turn, leads to a blind adherence to United Nations conventions at the expense of the integrity of local cultures and religions (Matsuoka, 2007, p. 55).

Such an approach — often touted as the way forward — which positions universalism (right to equality) and cultural relativism (right to freedom of religion) as competing discourses has thus been critiqued as inadequate and ineffective in operationalising freedom of religion and gender equality in religions. Meghana Nayak aptly terms this approach as “secular universalism” where the

universal branding of universalism “is indubitably sutured to secularism... [and is represented] as naturally and inherently better for gender equality and religion/culture as being synonymous with gender hierarchy and oppression” (Nayak, 2013, p. 121). In contrast to the mostly Western approach in secularising human rights discourses and practice, individuals and collectives (eg movements) whose activism is informed by both rights-based *and* faith-based frameworks know this to be a false dichotomy. One can be a proponent of the right to equality and the right to freedom of religion rather than choose either/or standpoints. This strategy that goes beyond the economy of the dualism of either a universal or particular standpoint is what I have termed as *critical relativism* (Bong, 2006). This strategy is differentiated from “moral relativism” as it is not only informed by but also engaged with universal values and in doing so, offers a sustained, concerted and fuller response as opposed to opting for either universalism or cultural relativism as the way forward.

To illustrate, a critical relativist standpoint and praxis firstly moves beyond the competing claims for ascendancy between the discourses of rights and religions. Sisters in Islam, a feminist Muslim women’s non-governmental organisation in Malaysia embodies such a standpoint and praxis. They show how donning the *tudung* (veil) is fundamentally a woman’s “sovereign choice” and this has basis not only from the Qur’an but also women’s human rights. The *tudung* can be both an expression of the right to freedom of religion and practice and a woman’s right to bodily integrity when she is not compelled or coerced into it but rather willingly wears it (or not) as an embodiment of her personhood and piety (Sisters in Islam, 2006).

Secondly, a critical relativist standpoint and praxis recognises the pluralism and attendant messiness of knowing and doing rights in religions. For example, the *bissus*, Indonesia’s ‘fifth gender’, in taking on the role of shamans in the community have culturally been looked upon as a “sacred gender” although this status has come into decline. In their struggle for legitimacy in relation to marriage equality, they draw on firstly the rights discourse in terms of their constitutional right to establish a family, as framed in the Yogyakarta Principles (ICJ, 2007) which presents the most comprehensive document on sexual reproductive health and rights. The *bissus* also draw from cultural and religious discourses on “gender variance”. Gender transcendent minorities like the *bissus*, challenge dualistic sex/gender norms that prescribe only two ways of being: one born male ought to be gendered masculine and one born female ought to be gendered feminine and both ought to

desire the opposite sex. Such sex/gender norms are the foundational premise of the natural family that exclude many “unruly bodies” who fall outside this heteronormative centre (heterosexuality made the norm) (Wieringa, 2013, p. 97).

Finally, a critical relativist standpoint and praxis gives legitimacy to the universal and particular as these are mutually constitutive. Given the lived reality of poverty and over population in the Philippines, the Responsible Parenthood and Reproductive Health Act of 2012 in the Catholic-majority state is ground-breaking because the Supreme Court ruled that the Act does not violate “constitutional provisions guaranteeing the right to life”. It firstly, grants legitimacy to the right of poor women, single women and other vulnerable persons to accessible, affordable sexual and reproductive healthcare, in promoting family planning and legalising post-abortion medical care. It is ground-breaking given the Catholic Church’s admonishment of abortion as a sinful practice. Secondly, the Act similarly grants legitimacy to conscientious objectors among service providers by not criminalising them for non-compliance with the Act based on “his or her religious beliefs” in situations that are not classified as “emergency” or “life-threatening” (Torres-Tupas, 2014).

In the instances above, the right to equality and the right to religious freedom intersect in diverse social-cultural contexts in Southeast Asia where cultures and religions continue to substantively impact sexual reproductive health and rights (“SHRH”). In the instances above, the right to gender equality as a universal value is appreciated as mutually constitutive of the right to religious freedom. Fundamentally, these rights are mutually impacting: the integrity of the human person and the integrity of cultures and religions find an equilibrium through the lived realities of women who choose to veil or not, transgender shamans and all who are in need of affordable, accessible and comprehensive SRHR services. In sum, to operationalise *critical relativism* is to more meaningfully realise the right to freedom of religion and gender equality.

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