

FREEDOM OF RELIGIOUS BELIEF AND THE PRACTICE OF RELIGIOUS RITES ACCORDING TO THE JORDANIAN LEGISLATION: DIFFICULT BALANCE BETWEEN INTERNATIONAL AND REGIONAL REQUIREMENTS AS WELL AS THE NATIONAL LEGISLATIVE CONTROLS

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Abstract

This article aims to clarify the controls for protecting the freedom of religious belief and the practice of religious rites in international agreements, regional conventions and Jordanian legislation. To add on, the research addresses the extent to which freedom of religious belief and the practice of religious rites is protected as a real guarantee to create a kind of coexistence among all religions, especially since the right to freedom of belief is a constitutional right which makes violating it a violation of the Constitution. This requires even the authorities in the state to abide by this guarantee; in fact, they must establish legal and realistic mechanisms to achieve the same and confront every violation thereof. That being said, this research tackles the issue of the Jordanian legislature guaranteeing freedom of religious belief in the Jordanian Constitution, and imposing penal protection on any infringement of those freedoms and religious rights. However, said constitutional and penal protection is not sufficient to guarantee those freedoms, and they do not conform to what is stated in the conventions and international and regional agreements signed by the country of Jordan. Lastly, the research concluded with a number of results and recommendations, the most important of which is the need for effective constitutional and criminal protection in Jordanian legislation for the freedom to practice religious rites and beliefs in accordance with the traditions observed, unless they are contrary to the public law or immoral.

Keywords: *religious rites, observed traditions, freedom of religious belief, human rights, public law, Jordan.*

1. Introduction

Relevant national and international developments related to issues affecting the tensions between religious or belief communities have increasingly occupied the agenda of international law (Daly, 2011, p. 300). These issues have always been relevant to oppressed faith communities around the world (Poit, 1962, p. 215), but together with the challenges of absorbing different religious traditions in the West, compounded by a particular security context in which they are perceived, the communities emerge to focus more on said issues (Yildirim, 2020, p. 18).

Many religious and sociological elements have been ingrained in different societies where a specific religion has been practised throughout religious history, mirrored in culture and politics. In fact, religions have inspired many works of literature, poetry, art and music as well as clothing codes and ways of living. Religion has left an indelible mark on society, as seen by holy days, feasts, marriage rites, funeral traditions, pilgrimages, wearing religious symbols (e.g., jewellery or clothing rules) and physical modifications to the body, such as male circumcision. In fact, religions' impact may grow even stronger when governments embrace a state religion or religious philosophy. Unfortunately, in such cases, religious discussions may become mixed up with political issues (Horii, 2018, p. 27).

Alongside laws and practices that do not appear to provide adequate solutions to new and long-standing claims related to the protection of freedom of religion or belief, international law and international judges are increasingly challenged to provide answers as to how we can live in peace with our differences - especially of a religious nature - while still respecting human rights (Thune, 2010, p. 715). Indeed, human rights law, particularly provisions relating to the right to freedom of religion or belief, can provide some answers (Thouless, 1954, p. 86). Freedom of religion and belief requires a new understanding, both in national and international law (Van & Witte, 1996, p. 10).

Therefore, the scientific and practical importance of this article is manifested by defining approach in Jordanian law to ensuring the freedom to practice religious rites, as well as highlighting the milestones of the legal system in this regard, in addition to referring to the jurisprudence of the courts of the Court of Cassation, Administrative Courts and courts of the first instance. We will study those topics in-depth, paying attention to all aspects; theoretical and practical.

Hence, this article aims to clarify and define the controls for the freedom to practice religious rites and beliefs in both international agreements and regional conventions and in Jordanian legislation, where the Jordanian Constitution established a guarantee of freedom of opinion and expression, and religious belief. Moreover, legal controls have been established in order to ensure the practice of this right in a manner that does not violate public law and security in order to maintain the sustainability and stability of society. While this has been referred to as a specific punitive legal legislation, in the event of non-compliance with the specific legal controls for the practice of this right in

which it becomes a legally criminal act that goes beyond the scope of legal controls to the point of insulting individuals, such as addressing phrases to them that involve infringing the freedom of their religious belief and practicing the rites of the religion espoused by the individual.

Further, this article will answer several questions, the most important of which are:

What is meant by the freedom to practice religious rites and beliefs?

What are the controls for the freedom to practice religious rites and beliefs in international conventions and regional agreements?

What are the controls for the freedom to practice the rites of religions and beliefs in the Jordanian legislation?

In this research, the comparative approach and the analytical approach will both be followed to analyze the texts of all state agreements related to the preservation and protection of the freedom to practice religious rites and the protection of religious belief, in addition to the texts analysis of the Jordanian Penal Code and the Criminal Procedures Law as well as their compatibility with international and regional standards; allow us to identify its contents, implications and goals and to criticize and comment on them. Additionally, it will allow us to highlight the critical aspect of the researcher, as the research required the use of several research methods due to its complicated nature between the texts of legislation, opinions, jurisprudence orientations and court rulings due to the diversity of legislations found when dealing with sections and topics included under this topic such as, differences between the jurisprudence orientations, knowledge of the strengths and weaknesses of these various orientations and the extent to which they are adopted in Jordanian legislation and courts (Malkawi, 2008, p. 13).

2. What is Meant by the Freedom of Religious Belief and the Practice of Religious Rites?

Religious freedom, as currently understood, is the state in which individuals or groups are permitted without restriction to accept religious beliefs and identity in civil and political life without restriction and to express and act within certain limits, free from coercive interference or punishment imposed on them by outsiders, including the state (Little et al., 2014, p. 6).

Religion is a grouping of cultural frameworks, worldviews and philosophical systems that connect humanity to spirituality and, occasionally, to moral principles. Many faiths include holy histories, symbols, myths and traditions meant to explain the universe's origins or provide purpose to existence. [...] Moreso, numerous religions have clergy, congregations of the laity, regular gatherings or services for the devotion of a God or prayer, holy locations (either natural or architectural), and/or texts, while also defining allegiance or membership (Edara, 2017, p. 275).

Further, the right to freedom of religion or belief is a fundamental part of the indivisible and interdependent human rights protection system. It is wide-ranging and profound; it includes freedom of thought in all matters, personal conviction and a profession of religion or belief, whether individually or in

community with others (Universal Declaration of Human Rights of the United Nations General Assembly, 1948).

Religious freedom is a principle that supports the freedom of an individual or a group of private or public individuals to manifest their religion, beliefs or religious rites, whether through education, practice or celebration. In fact, the term also includes changing religion or not espousing any religion (Issa & Allal, 2020, p. 107).

To add on, a religion's practice may also involve preaching, remembrance of the actions of a deity or gods, sacrifices, festivals, feasts, trance, initiations, burial ceremonies, marriage services, meditation, music, art, dance, public service or other facets of human culture. However, there are examples of faiths that lack any or all of these qualities of organization, belief, or practice (Rouner, 1994, p. 36).

With that being said, it is important to understand that we do not necessarily get any closer to understanding religious persecution by considering whether religion requires either a belief in a deity, a sense of the transcendent or very different, a belief in the supernatural, an ultimate cause, or community rituals—all of which are the types of Issues typically considered when seeking a definition of religion. While such terms can be useful in understanding religion from the perspective of the religious person or religious scholar, they do not explain what religion means to the person instigating the persecution (Gunn, 2003, p. 198).

In fact, the freedom of belief, or in other words, the religious belief or religious freedom means that a person owns and chooses what pleases him of faith and consideration of the universe, the Creator life, and the human being without coercion, force, or imposition on him (Al-Zuhaili, 2011, p. 342).

Furthermore, legal systems can explicitly or implicitly evaluate or rank religions. They can be described in several ways such as, good religion versus bad religion or religion versus non-religion. Thus, some might view monotheistic religions as traditional, while polytheistic or non-theistic religions may be perceived as primitive or superstitious. Those with a broader sensibility might expand traditional religions to include just Christianity, Islam, Judaism, Buddhism and Hinduism - but exclude other groups such as Falun Gong or Scientologists seeing as they are not real religions, sects or cults and so are not being deserved of the “religion” label, either to receive benefits or to be protected from discrimination (Gunn, 2003, p. 191).

Religions and related social and cultural systems have played a significant role in human history. In fact, they impact how we interpret the world around us and the ideals we accept or reject as mental constructs. They serve as social structures by providing a support network and a sense of belonging. Religions have often been the foundation of power institutions and have grown interwoven. History is replete with examples of "theocratic" nations, whether Christian, Hindu, Muslim, Jewish or other. Yet, the separation of state and religion is still new and only partially implemented, such as Europe while there still being official and de facto state religions. Most of the time, this is not an issue as long as it is moderated (Abdulla, 2018, p. 104).

Even though, to some people the right to freedom of religion or belief is the right to be as they have chosen, deeply rooted in the individual's autonomy (Scharffs, 2010, p. 252). For many religious/faith communities, offers vital guarantees for their survival. As enshrined in international human rights documents, the right to freedom of religion or belief is unique in its formulation, while protecting the exercise of rights in a community with others (Yildirim, 2020, p. 19).

3. Controls of Freedom of Religious Belief and the Practice of Religious Rites in International Agreements and Regional Conventions

The right to freedom of religion or belief is a human right that cannot be realized in isolation. However, it crosses categories of human rights with individual aspects that can only be effectively realized in an organized community of individuals. Said aspects belong to economic, social and cultural rights, such as those related to religious or moral education (Willard, 2001, p. 61). While freedom of religion or belief can be exercised individually, it is generally known that people who share the same belief organize themselves in different ways and thus act together (Scheinin, 1999, p. 392).

Although many do not, democratic states tend to offer full protection of human rights, including freedom of religion, found at the international level (Connolly, 2007, p. 67); However, as we know, many countries provide the protections found in international agreements protecting fundamental rights and freedoms, including religion, in their domestic laws (Babie & Rochow, 2012, p. 17).

Historically, this right in international law has been focused on the religious liberty of minority populations. Laws ensuring the freedom of religious beliefs are no longer centred around the necessity to maintain the status quo to avoid jeopardizing regional security, but rather on various issues such as non-discrimination, equality and dignity. In fact, supporting this freedom has both social and individualist motivations, allowing people to (openly) seek, (vigorously) argue and (freely) maintain the views that they choose, alone or with others. This achieves an enabling environment for this freedom which compels the state to not interfere with matters based on religion or belief and pushes the state to develop and sustain this environment in society at a large scale (Cookson, 2003, p. 67).

Fortunately, human rights organizations condemn harmful behaviours regardless of whether they were traditionally tolerated by certain cultures, nations or faiths since criticism is not intended to be an assault on culture, country or religion but rather an attempt to establish a balance between the right to one's religion and belief and other human rights, since said criticism can result in major human rights violations (Zechenter, 1997, p. 321).

3.1. The position of the Universal Declaration of Human Rights

The position of the Universal Declaration of Human Rights regarding freedom of belief and the practice of religious rites has been made clear in article 18 of it which states that:

“Everyone has the right to freedom of thought, conscience and religion whether it was secretly, publicly, alone, or with a group” (Universal Declaration of Human Rights of the United Nations General Assembly, 1948).

In fact, freedom of religion is a basic freedom that has modern cosmic values that aim to develop the human rights system (Hans AageGravas et al., 2015, p. 65). And, since its definition is linked to individual values, personal freedom and the right to private property, it specifically means that the individual has the right to choose behavioural, moral, intellectual and doctrinal values that constitute the nature of the relationship that connects him to life and others alike (Leech & Visala, 2011, p. 555). Hence, the individual choice of values stemming from self-will and inner sentimental conviction is what gives the individual the ability to embody the values that his conscience reassures him on the level of practical practice in complete independence from the values and choices of society (Rafiq, 2011, p. 112).

Given the different forms of state-religious agreements, international human rights norms relevant to the protection of the right to freedom of religion and belief refrain from prescribing a specific type of connection between state and religion (Willard & Norenzayan, 2013, p. 381). Nor do they explicitly condemn specific models of state-religion relations (Yildirim, 2020, p. 35).

In fact, this situation should be considered a reality of international law and international relations. Nevertheless, they do not offer states *carte blanche* in this area either. Normative demands created by international human rights law that protect the collective dimension of freedom of religion or belief must inevitably have implications for state-religion relations (Decosimo, 2018, p. 17). These legal provisions have significant political consequences and, therefore, often require a change in the existing state-religious relationship if this leads to unjustified interference in exercising the right to freedom of religion or belief (Dworkin, 2012, p. 2).

It can be concluded from this that the effective protection of the collective dimension of religious freedom will be a factor that, through normative requirements, can shape the relationship between state and religion so that they are brought into line with the requirements of human rights (Wood, 2011, p. 736). This will oblige the state to ensure pluralism, equality and non-discrimination when protecting the right to freedom of religion or belief, and respecting the principles of neutrality and impartiality in the exercise of its regulatory powers, which often forces changes regarding longstanding state-religion relationships (Berger, 2014, p. 381). On the other hand, this influence could be problematic. The substantive content of government commitments may not be stated and understandable; international review mechanisms may exercise some reluctance (W Cole Durham, 1999, p. 33).

Hence, such reluctance can lead to a failure in addressing issues found at the heart of the relationship between state and religion, resulting in interference with human rights, particularly freedom of religion or belief (Ramsey, 2012, p. 129). Moreover, political debates and conflicts on these issues at the national and international levels can shape the contours of the leeway given to states to reconcile their respective human rights obligations and the multiple

manifestations of existing state-religion relations, often to the detriment of human rights and Disadvantaging minority religious/belief groups. An examination of state practice raises concerns that practices such as, establishing a religion by the state could result in certain preferences and privileges being accorded to adherents of that religion and are therefore discriminatory (Elizabeth Odio Benito & Droits, 1989, p. 88).

3.2. The position of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief

Although many international and regional human rights instruments guarantee rights related to freedom of religion or belief, none attempt to define the term Religion; There has been a major international effort to explain the underlying rights protected under the concept of religion or belief. To add on, the UN Human Rights Committee has made an important general comment on the scope of freedom of religion or belief within the International Covenant on Civil and Political Freedom rights issued (Bursell, 2007, p. 126); Nevertheless, the term “religion” remains undefined under international law. The lack of a definition of “religion” is not unique to international human rights conventions; most national constitutions also include freedom of religion clauses without defining “religion” (Gunn, 2003, p. 190; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief Order, 1981; The International Covenant on Civil and Political Rights, 1993).

Article (1) of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981 provides that:

1. Every human being has the right to thought, conscience, and religion. This right includes the freedom to believe in a religion or any belief of his choice as well as the freedom to manifest his religion or belief through worship, observance of rites, practice and teaching, whether alone or with a group, publicly or secretly.
2. Nobody may be subjected to coercion that limits his freedom to have a religion or belief of his choice.
3. The freedom of a person to manifest his religion or beliefs may not be subjected except to such limits as may be imposed by law as are necessary to protect public security, public order, public health, public morals or the fundamental rights and freedoms of others (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981).

In fact, this article sought to encompass the freedom of belief and the practice of religious rites in all its aspects and to answer all the problems that may arise when practicing this freedom. Additionally, this article establishes not only the freedom of belief, but also the mechanisms and guarantees for the practice of this freedom in the form of religious rituals (Bouletif, 2018, p. 63).

In addition, nobody may be subjected to discrimination by any state, institution, group of persons or person on the basis of religion or other beliefs. In fact, in the definition of this Declaration, the phrase (intolerance and

discrimination based on religion or belief) means any distinction, exclusion, restriction or preference based on religion or belief with the purpose to enable or impair the recognition, enjoyment or practice of human rights and fundamental freedoms on the basis of equality (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief,1981).

As a matter of fact, discrimination between human beings on the basis of religion or belief disrespects human dignity and leads to a denial of the principles of the Convention the United Nations and must be condemned as a violation of human rights and fundamental freedoms declared by the Universal Declaration of Human Rights. Moreover, as detailed in the two International Covenants on Human Rights, it is also an obstacle to the establishment of friendly and peaceful relations between nations (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief,1981).

Female genital mutilation, son-preference (which can manifest itself in sex-selective abortion, failing to care for new-born girls, discrimination in education in favour of sons, discrimination in nutrition), arranged or forced marriages, child marriage, dowry-related crimes and crimes justified by "honour," exclusion or limitation of some rights of non-adherents to a more powerful religious group in a given community' segregation, are all practices that disproportionately harm women and children, in the name of tradition. Furthermore, in numerous circumstances, situations that violate human dignity from a human rights standpoint go unrecognised, taboo and unpunished. Few of these behaviours are founded on religious principles and the fact that they are firmly ingrained in society and tradition does not make them any simpler to abolish. In this case, legislative changes, education and empowerment are required to bring about change (Hanmer, 2010, p. 454).

Therefore, all states must take effective measures to prevent and eradicate any discrimination based on religion or belief in the recognition of human rights and fundamental freedoms in all areas of civil, economic, political, social and cultural life as well as the enjoyment of these rights and freedoms (SNIDER, 2008, p. 187). Additionally, all states must make every effort to enact or repeal legislation when necessary to prevent any discrimination of this kind and to take all appropriate measures to combat intolerance based on religion or other beliefs in this regard (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief,1981).

In fact, the child's father or legal guardians, as the case may be, have the right to organize life within the family according to their religion or belief, considering the moral education they believe that the child should be brought up with (Jantzen, 1987, p. 282). Also, every child has the right to learn matters of religion or belief in accordance with the wishes of his/her parents or legal guardians, as the case may be (O'Mahony, 2016, p. 44). Hence, the child must not be compelled to receive an education in religion or belief that contradicts the wishes of his/her parents or legal guardians provided that the interests of the child must be the primary consideration (Cooper, 1984, p. 206). The child

must be protected from any form of discrimination based on religion or belief and must be raised in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, as well as the respect for the freedom of others in religion or belief and on full awareness of the obligation to devote his/her energy and talents to the service of his/her fellow human being (Thornton, 1966, p. 7). That being said, while the child is not under the care of his/her parents or legal guardians, consideration must be taken of their expressed desires or any other evidence of their desires in relation to religion or belief provided that the interests of the child must be the primary consideration (Van Eyghen, 2016, p. 34). Further, the religious or belief practices on which the child is brought up must not be harmful to his/her physical or mental health, or otherwise to his/her full development but without prejudice to paragraph (3) of article (1) of this declaration (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, 1981).

The extent to which freedom of thought, conscience and religion allow a community of believers' particular behaviours to deviate from those of the rest of society is frequently challenged within the human rights community, such as attitudes toward women in religious leadership roles, traditional rites involving children, marriage, divorce, or burial regulations, prohibitions on depicting supernatural beings or other religious characters (Greenawalt, 2009, p. 37).

In addition, every child also has the right to learn matters of religion or belief in accordance with the wishes of his/her parents or legal guardians, as the case may be, and he/she shall not be forced to receive an education in religion or belief contrary to the wishes of his/her parents or legal guardians provided that the interests of the child must be the primary consideration (Bouletif, 2018, p. 64).

In fact, the right to freedom of thought, conscience, religion or belief includes the following freedoms:

- A. The freedom to practice worship or to hold meetings related to religion or belief and to establish and maintain premises for these purposes;
- B. Freedom to establish and maintain appropriate charitable or humanitarian institutions;
- C. The freedom to make, acquire and use a sufficient amount of necessary materials and things related to the rituals or traditions of a religion or belief;
- D. Freedom to write, issue and distribute publications related to these fields;
- E. Freedom to teach religion or belief in places suitable for these purposes;
- F. The freedom to solicit voluntary contributions, financial and non-financial from individuals and institutions;
- G. Freedom to create, appoint, elect or assign suitable leaders as may be needed to meet the requirements and standards of any religion or belief;
- H. Freedom to observe holidays, celebrate holidays and perform rites in accordance with the teachings of a person's religion or belief; and I. The freedom to establish and maintain contacts with individuals and groups on matters of religion or belief at the national and international levels (The

Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief,1981).

In order to guarantee the freedoms stated in this declaration, these rights must be found in the legislation of each country in a way that makes it possible for every individual to enjoy these rights and freedoms in a practical way (The Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief,1981).

3.3. The position of the European Convention on Human Rights

Referring to the provision of article (9) of the European Convention on Human Rights of 1950 in the special chapter (Freedom of Thought, Conscience, and Religion), it states the following:

1. Everyone has the right to freedom of thought, conscience and religion while this includes the freedom to change his/her religion or belief as well as his/her freedom to manifest his/her religion or belief in worship, observance of rituals, practice and education whether alone or as part of a group in public or alone;
2. The freedom to manifest one's religion or belief is subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety as well as for the protection of public law, public health or morals or for the protection of the rights and freedoms of others (The European Convention on Human Rights,1950).

Like all other human rights, this freedom does not "trump" other freedoms. However, it occasionally conflicts with other human rights, such as freedom of speech and freedom from discrimination based on gender or sexual orientation. This is mirrored, for example, in the framework of Article 9 of the European Convention on Human Rights: there is full protection for the right to religious belief, conscience and thinking, but expressions only receive qualified protection provided they do not contradict other human rights (Warren, 2003, p. 77).

3.4. The position of the American Convention on Human Rights

Religious freedom is a core value in American constitutional law. Thomas Jefferson called it the most inalienable and sacred of all human rights (Brown & Scott, 2019, p. 60). It must be left to the conviction and conscience of every man, and it is every man's right to exercise it as these may they dictate (Hynson, 1976, p. 216).

In fact, article (12) of the American Convention on Human Rights of 1969 states in the special chapter of (Freedom of Conscience and Religion) that:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs and the freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. Nobody shall be subject to restrictions that might impair his/her freedom to maintain or to change his/her religion or beliefs.
3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, law, health, morals or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or minors that is in accord with their own convictions (The American Convention on Human Rights, 1969).

3.5. The position of the Arab Convention on Human Rights

In reference to the freedom to practice religious rites and beliefs in the Arab Convention on Human Rights of 2004, article (29) of the Arab Convention for Human Rights of 2004 published in the Official Gazette No. (4658) on page 2374 dated 16 May 2004 provides that:

1. Everyone shall have the right to freedom of thought, belief, and religion which may be subject only to such limitations as are prescribed by law.
2. Freedom to manifest or practice one's religion or belief or to perform rituals either individually or with others shall be subjected only to such limitations as are prescribed by law and are necessary for a tolerant society that respects freedoms and human rights, to protect public safety, public order, public health, morals or to protect the fundamental rights of others and their freedoms.
3. Parents and legal guardians are free to secure the religious and moral upbringing of their children (The Arab Charter on Human Rights, 2004).

According to that, it is visible that the international and regional community has ensured the protection of freedom of religious belief and the freedom to practice religious rites by laying down special provisions in the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981, the American Convention on Human Rights of 1969 and the Arab Convention on Human Rights of 2004. Yet, said protection differs in these international conventions and agreements in terms of the right of thought, belief, and religion.

4. Controls of Freedom of Religious Belief and the Practice of Religious Rites in Jordanian Legislation

Members of non-Muslim religious communities in Jordan enjoy all civil, political, economic, social and cultural rights as well as, freedoms in their individual capacity as citizens of the state and not in the collective capacity that refers to them as religious minorities (Al-Bashir, 2006, p. 119).

So, the state protects the freedom to practice religious rites and beliefs in accordance with the traditions observed in the Hashemite Kingdom of Jordan unless they are contrary to public law or public morals (Al-Khatib, 2022, p. 88).

Religions have played an important role throughout history in setting constraints on human conduct in order to safeguard the physical and psychological integrity or dignity of others. However, while religious ideologies have contributed to creating a consciousness of human rights and dignity, religious and belief-related human rights are not immune to the conflicts and inconsistencies in human rights treaties. In fact, as with harmful traditional behaviours, convictions or ideas are also used to justify actual physical injury with serious health repercussions (Sagala, 2020, p. 33).

4.1. The position of the Jordanian Constitution

The practice of the external manifestations of religion is the necessary result of freedom of belief. In fact, the individual in his/her practice of freedom of belief is subject to a spiritual authority that directs him/her and imposes on her/him a certain direction of behaviour. Therefore, the external manifestations of the practice of religious rituals and rites may risk colliding with the requirements and necessities of public law (Al-Adayleh, 2001, p. 46).

In reference to the controls on freedom of religious belief and the practice of religious rites in the Jordanian Constitution, and tracking previous constitutions that regulated freedom of religious belief, article (10) of the repealed Basic Law of the Emirate of East-Jordan provided that:

Islam is the religion of the state and is guaranteed to all residents of the Hashemite Kingdom of Jordan to have the complete freedom of belief and freedom to practice rituals of worship in accordance with their traditions as long as they do not violate public security or law or otherwise being unethical (The repealed Basic Law of the Emirate of Transjordan, 1928).

Further, article (16) of the repealed Jordanian Constitution of 1946 stated that:

The state protects the freedom to practice the rites of religions and beliefs in accordance with the traditions observed in the Hashemite Kingdom of Jordan unless they do not violate the order or are unethical (The repealed Jordanian Constitution, 1946).

Nevertheless, in reference to the current Constitution, article (14) of the Jordanian Constitution of 1952 and its amendments as applicable it was stated that:

The state protects the freedom to practice religious rites and beliefs in accordance with the traditions observed in the Kingdom unless they do not violate public law or are unethical (The Jordanian Constitution, 1952).

Thus, this freedom, like other rights and liberties provided in the Jordanian Constitution, is not absolute, since it is restricted not to disturb public law and morals as well as what the Jordanian Constitution states in article two that the state's religion, Islam, does not prejudice the due respect for other religions in the state. Rather, the believers of these religions enjoy their freedom of belief and worship as long as they do not violate the public law of the state (Al-Khatib, 1986, p. 46).

Moreover, referring to the jurisprudential established opinions, the Jordanian High Court of Justice (formerly) ruled in its judgment No. (51/2001), issued on 20 January 2002 that:

The purposes of recognizing any church and/or a group and/or a sect in the idiomatic sense referred to above, a resolution must be issued by the Council of Ministers (formerly the Executive Council) coupled with a Royal Decree, as explicitly stated in article (3) of the Law of Councils of Non-Muslim Religious Communities referred to herein which stated that: (For non-Muslim religious sects established in eastern Jordan and included in the first table annexed to this law, or any other non-Muslim religious sect present in eastern Jordan, recognized by the government after the enforcement of the provisions of this law and added to the aforementioned table by a decision to the effect "to be

established” and with the approval of His Highness, the Prince “the Executive Council” courts known as the councils of religious sects ...) and since the so-called Arab Orthodox Church in Jordan and Palestine, which was not mentioned in the aforementioned table (and in the sense the term is a church) a sect that differs from the church of the Greek Orthodox sect in the Kingdom mentioned in the aforementioned table, which is what the petitioners admitted in the sixth reason for the appeal, where they say that the Arab Orthodox Church is not a new sect, but rather an existing sect that does not need a new license, and since, assuming that the Arab Orthodox Church is a recognized church in America, this does not mean that it is recognized since there has not yet been a decision by the Council of Ministers coupled with a royal decree that includes as a church or the recognition of the so-called new sect similar to the sects that originally existed in the Kingdom when the law of councils of non-Muslim religious sects was issued, i.e. the Roman Orthodox, the Roman Catholic, the Armenian and the Latin or similar to the denominations/churches that were later recognized by the government as the Arab Episcopal Evangelical Community) in 1947, (the Maronite community) in 1958, (the Evangelical Lutheran Church) in 1959, (the Syriac Orthodox) in 1959 and (the Seventh-day Adventist Sect) in 1960. Hence, we declare that since no decision was issued by the Jordanian government to recognize the so-called originally affiliated with the Arab Orthodox Archdiocese in America, the first petitioner does not have the right to practice ecclesiastical activity, conducting the religious rites and ceremonies as well as the issuance of documents and certificates under the slogan and name of this new church in Jordan regardless of the type of building and the place it takes in the Kingdom to practice this activity. (The Jordanian High Court of Justice-formerly, 2002).

In fact, it is noted from the foregoing that, despite the fact that the Jordanian constitutional legislature has laid down provisions in the heart of the Constitution regulating freedom of religious belief and the protection of the freedom to perform religious rites, yet these provisions are not sufficient to guarantee the protection of freedom of religious belief and the practice of religious rites from a constitutional point of view in addition to being against what is stated in international and regional conventions and agreements other than the fact that these provisions are shrouded in ambiguity and do not meet the needs of society and the international as well as the regional developments that have occurred to protect religious belief.

4.2. The position of the Jordanian Penal Code

The Jordanian Penal Code regarding the assault on the freedom to practice religious rites and beliefs, article (273) of the Jordanian Penal Code provides (in crimes that affect religion and encroach on the sanctity of the dead) that: “Those proved to be insulting the prophets will be imprisoned from one to three years” (The Jordanian Penal Code,1960).

The Jordanian penal legislature has placed a punishment for anyone who harms religion, whether it is through public speech against the prophets or by sabotaging and desecrating places of worship, or by disturbing people when

performing religious rites or otherwise by attacking the places of burial of the dead, or by publishing publications, pictures, or drawings related to the same resulting in insulting religious feeling or belief (Al-Awwad, 2010, p. 45).

Further, article (275) of the same law provides that:

Anyone who destroys, damages or desecrates a place of worship, an emblem or anything sanctified by a group of people, intending thereby to insult the religion of any group of people, or does so knowing that that group will consider this act as an insult to its religion, shall be punished by imprisonment from six months to two years or by a fine of fifty Dinars to two hundred Dinars, or by both of these penalties (The Jordanian Penal Code,1960).

Also, whoever intentionally disturbs a group of people who gathered within the limits of the law to perform religious rituals, or subjected them to ridicule when performing them, or caused disturbance during that, or assaulted any person who, within the limits of the law, performed religious rituals in that meeting, or any other person present at that meeting without having a justification or a legitimate excuse shall be punished by imprisonment up to six months or a fine of up to fifty dinars, or both (The Jordanian Penal Code,1960).

In addition, each of the following shall be punished by imprisonment for a period not exceeding three months or a fine not exceeding twenty Dinars:

1. Publishing something in print, manuscript, picture, drawing or symbol that may offend the religious feeling of other persons or insult their religious belief, or
2. Speak in a public place and in hearing from another person a word or voice that may lead to insulting that other person's religious feeling or belief (The Jordanian Penal Code,1960).

Moreso, in refrence to the jurisprudential established opinions, the Jordanian Court of Cassation, in its criminal capacity, ruled, in its judgment No. (111/2016) dated 17 February 2016, that:

We find that the legislature raised freedom of opinion and expression up to the rank of constitutional rights by providing for the same in article (15) of the Jordanian Constitution in addition to the provision on freedom of opinion and expression in all international and regional conventions concerned with human rights under article (19) of the Universal Declaration of Human Rights of 1948, the International Covenant on Civil Rights and international and regional conventions that did not leave this right at all. Rather, it should be surrounded by some restrictions, including that it be within the limits of public law, the law and public morals and in a manner that does not harm the interests and reputation of others (The Jordanian Court of Cassation, 2006).

Also, the Penal Magistrate's Court in East Amman (Jordan) ruled, in its judgment No. (4496/2020) dated 5 August 2021, stated that:

First of all, the court finds that the Jordanian Constitution has guaranteed public freedoms and established solid legal principles in order to ensure that the exercise of these freedoms are like freedom of opinion, expression and religious belief, but within legal controls and determinants that are embodied in not violating public law, the law and public morals as article 14 of the Jordanian Constitution provides that "the state protects the freedom to perform religious

rites and beliefs in accordance with the traditions observed in the Kingdom unless it violates the law.” It is understood from this text that the constitutional legislature has guaranteed the freedom of religious belief to individuals and the practice of religious rites in a manner that does not violate public law and that the legislature has elevated freedom of opinion and expression to the rank of constitutional rights by stipulating it in article (15) of the Jordanian Constitution, in addition to providing for freedom of opinion and expression in all international and regional conventions concerned with human rights under article (19) of the Universal Declaration of Human Rights of 1948, the International Convention on Civil Rights and international and regional conventions did not leave this right to be very wide, but rather surrounded it by some restrictions, including that it be within the limits of public law, the law and public morals and in a manner that does not harm the interests and reputation of others.” Further, and in a related context, the court finds it necessary to shed light on the right to freedom of expression and religious belief guaranteed by the Constitution established by the Jordanian Constitutional Legislater. Legal controls were established in order to ensure the exercise of this right without prejudice to public order and security, which is considered one of the conditions for the sustainability and stability of society, while referring to specific punitive legal legislation in the case of non-compliance with the legal controls specific to the exercise of this right, which have already been stated earlier on in this research (The Penal Magistrate’s Court in East Amman-Jordan, 2021).

Yet, and in another ruling, the Madaba Criminal Magistrate’s Court (Jordan) ruled, in its judgment No. (1385/2015) dated 23December 2015, that: Accordingly, the court finds that what the defendant did of actions of his uttering in terms that would offend religious feeling and belief, i.e. that you are Christian, you have movements of incantations and sorcery, and you are Christian infidels, crusaders, your blood is wasted heard by other people and in a public place designated for worship (church) and that he has committed this act of his own free will and with the intention of doing so in this case, constitutes all the elements and factors of the crime attributed to him. Further, and with regard to the crime of vandalizing and desecrating places of worship ascribed to the defendant within the limits of article 275 of the Penal Code, This crime is represented by vandalizing, breaking, damaging or desecrating places of worship with the intent of insulting the religion of any group of people and their symbols or anything else has its sanctity, as every nation has sanctities that it cares for and preserves, among which are places of worship or the establishment of rituals, and every religion of the heavenly religions has rituals that are performed in places designated for that, the rituals of that religion, and therefore they are characterized by privacy, as they belong to a particular religion for the purpose of worship and closeness to God, and express the spiritual elevation in the souls of those who embrace a certain religion and believe that the person in it is the closest to God and that the sacred religious symbols have a special status with their owners because they represent the embodiment of their religious beliefs and ideas. As for religious symbols, they

may be people or places, as the symbol can be a moral or material thing and it is something that has an important moral value for members of religion, as it enters as a belief in their beliefs which religious symbols include for example, the cross, which is a symbol of the Christian religion, and it should be noted in this regard that the protection of religious sanctities is something that has been guaranteed by declarations of human rights, international conventions and internal laws, where the Universal Declaration of Human Rights provides for the freedom of religion and belief and its inviolability as well as the Constitution's guarantee of freedom of Religious belief as well as the International Covenant on Religious and Political Rights. It must also be noted here that the true Islamic religion has emphasized respect for religions and adherence for those whom God chose by His messages of the prophets and their sanctities (The Madaba Criminal Magistrate's Court-Jordan, 2015).

Unfortunately, discrimination and intolerance are directed towards some or all Christians, the Christian faith or the practice of Christianity. In fact, as with other types of religious prejudice, offenders may be members of other religions - generally the dominant religions - as well as secular institutions. Hostility against Christians expresses itself in attacks on houses of worship, verbal abuse and limitations on building and, in certain cases, preserving churches or monasteries, particularly in nations where Christians are a minority (Koopmans, 2014, p. 37).

Accordingly, the Jordanian legislator, despite his guarantee of freedom of religious belief in the Jordanian Constitution, the imposition of penal protection for any infringement of those freedoms and religious rights in the Penal Code, and ensuring the protection of freedom of belief, yet, this constitutional and penal protection was not sufficient and consistent with international and regional conventions in all aspects of protection.

5. Conclusion

The international and regional community ensured the protection of freedom of religious belief and the freedom to practice religious rites through special provisions such as the Universal Declaration of Human Rights, the Special Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981 and the American Convention on Human Rights of 1969 as well as the Arab Convention on Human Rights of 2004 while that protection differs in those international conventions and agreements in terms of the right to freedom of thought, belief and religion.

Furthermore, freedom of belief is a real guarantee for creating a kind of coexistence among all religions, especially since the right to freedom of belief is a constitutional right that should be protected and respected even by authorities, and violating it is a crime that is punishable by the law

In fact, the Jordanian constitutional legislature established legal controls in order to ensure the exercise of this right without prejudice to public law and security, which is one of the conditions for the sustainability and stability of society.

Moreover, the Jordanian legislature referred to specific punitive legal legislation in the event of non-compliance with the specific legal controls for the exercise of freedom of expression and freedom of religious belief.

Hence, the Jordanian Constitution on the protection of freedom of religious belief should be amended, in conformity with international and regional conventions, by extending the protection of freedom of religious belief and practice of religious observance through adding provisions to the Jordanian Constitution that regulate and address the mechanism for the exercise of religious observances, that at the same time are not contrary to public law and morals.

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