

Religious Freedom and Anti-discrimination Laws: A Comparative Study of the US and the UK

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Abstract: This paper examines religious freedom and anti-discrimination laws in the United Kingdom and the United States, exploring the similarities and disparities between the two countries in terms of legal protection of religious rights and prevention of discrimination. At a time when global religious diversity and immigration issues are becoming more and more prominent, countries are facing new challenges in the relationship between religion and law. By means of comparative analysis, this paper first summarizes the legal frameworks of the two countries, and then explores the roles of their respective legal systems in protecting religious freedom and preventing discrimination in the light of typical cases. It is found that the UK prefers the influence of the European Court of Human Rights, while the US has constructed a unique legal system at the federal and state levels. Meanwhile, in the handling of cases, the United States is simply more inclined to protect the individual right to freedom of religion and impose severe restrictions on the government, while the United Kingdom is more willing to balance individual rights to freedom of religion with the common good of society. Finally, based on the results of the study, recommendations are made to improve the legislation and implementation of this aspect in each country.

Keywords: Religious freedom, Anti-discrimination laws, The US law, The UK law.

1. Introduction

The intersection of religious freedom and anti-discrimination legislation represents a pivotal point in the legal frameworks of democratic societies [1]. This kind of intersection serves to balance the rights of individuals to practice their faith with the imperative to protect all citizens from discrimination. In examining this balance, the United States and the United Kingdom provide a compelling basis for comparison. Both nations have a long history of religious diversity and have established legal protections to uphold religious freedoms. However, their approaches reflect disparate legal frameworks and divergent societal values and traditions.

In America, the First Amendment to the Constitution enshrines the freedom of religions, prohibiting the government from enacting laws that establish a state religion or impede the free exercise of religion. This foundation has improved a legal environment where religious freedom is robustly protected, resulting in various legal disputes in state level when religious practices intersect with anti-discrimination principles. For instance, a landmark case illustrating this tension is *Burwell v. Hobby Lobby Stores, Inc.* (2014) [2]. In a ruling that permitted closely held for-profit corporations

to be exempt from regulations that their owners objected to on religious grounds, the Supreme Court held that the Affordable Care Act's mandate for contraceptive coverage did not apply to such entities.

In contrast, the United Kingdom operates under a distinct legal paradigm, shaped by its long-standing established church and a more centralized approach to legislative protections compared to the US. The UK's Equality Act 2010 provides a comprehensive anti-discrimination framework that encompasses religion as one of its protected characteristics. The Act's objective is to harmonize and strengthen anti-discrimination legislation while ensuring that religious freedoms are respected in the context of broader societal equality. A significant case in this context is *Masterpiece Cakeshop v. Colorado Civil Rights Commission* (2018) [3]. In this case, the Supreme Court ruled in favor of a baker who refused to create a wedding cake for a same-sex couple on the grounds of his religious beliefs, which indicates that the Colorado Civil Rights Commission had shown hostility towards his religious views, thus violating the First Amendment.

This comparative study examines significant legal cases and precedents in both the United States and the United Kingdom, investigating how each legal system addresses the tensions between religious liberty and anti-discrimination. By analyzing pivotal judicial decisions and legislative developments and comparing the two countries' own legislation and practice of this issue, this study aims to elucidate the methods by which the United States and the United Kingdom balance these fundamental rights and give some potential possibilities of development, offering insights into the broader implications for policy and legal practice in this regard.

2. Legal Basis of the US

2.1. Legal Basis of Religious Freedom

Among religious legislation worldwide, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) are the two essential international documents setting out the basic and fundamental principles of religious freedom. According to article 18 of UDHR, which states that the right to freedom of thought and religion is a fundamental human right. This right encompasses the freedom to change one's religion or belief, as well as the freedom to manifest one's religion or belief in various ways, including through teaching, worship, and observance, either individually or in a community with others, in public or private [4]. This defines American citizens have their own freedoms to believe in and exercise religions they want. Additionally, according to article 18 of ICCPR, it states that everyone has the right to the freedom of thought, conscientiousness, and religion. This right encompasses the freedom to adhere to or adopt a religion or belief of one's choice. Furthermore, it guarantees the freedom to manifest one's religion or belief in worship, observance, and teaching, either individually or in community with others, in public or private [5]. This indicates everyone can manifest his or her own religion and belief without any limitations from others, which defines freedom of religion. Although there are few direct references to international laws or documents in the U.S. legal system and they place more emphasis on the core framework of domestic constitutional and federal law, these documents provide a broad and original guidance to the U.S. legal system especially for rights of religious freedom.

The legal basis of religion in the US mainly consists of articles in First Amendment of the US constitution, which includes two clauses: Establishment Clause and Free Exercise Clause [6]. According to the First Amendment, it explains that congress should not make laws to be an establishment of religion, or prohibiting the exercise of the freedom of speech and of the press. Specifically, Establishment Clause prohibits the government from establishing a state religion or favoring a particular religion in religious matters, and Free Exercise Clause protects rights that give individual freedoms to exercise religions. The two clauses of the First Amendment were formally adopted as part of the Bill of Rights in 1791 and subsequently extended to the states through the

Fourteenth Amendment, which is known as incorporation [7]. Additionally, other federal laws and state laws further clarify the scope of protection of religious freedom. For some representative cases, such as *Employment Division v. Smith* (1990) where the US Supreme Court ruled that a state could ban religious services involving the use of illegal drugs without having to show that the ban was the least restrictive of religious freedom, which established the principle that freedom of religion is limited under generally applicable law [8]. Also, case *Burwell v. Hobby Lobby Stores, Inc.* (2014) proved that a private business can refuse to provide certain health insurance benefits like contraceptive services on the basis of religious beliefs, even if the benefit is mandated by law under the Religious Freedom Restoration Act (RFRA) [2].

2.2. Legal Basis of Anti-discrimination Laws

At international level, still referring to UDHR and ICCPR. According to article seven in UDHR, which indicates that all individuals are entitled to the same rights and protections under the law, regardless of their background or status [9]. and article 26 in ICCPR, which indicates that the legislation will prohibit any form of discriminatory practice and guarantee all individuals equal and effective protection against discrimination on the basis of any characteristic, like race, color, religion, birth, or other status [10]. The two declarations directly states that there should not be any discrimination based on one's religions and beliefs, which lays a solid foundation in the legal basis of anti-discrimination law. Still, although international laws and articles are not dominant part of American legislation, people could not deny their framing role in every country in world legal system. Compared to the legal system in UK, the international documents have fewer influences on the US legal basis in religious freedom and anti-discrimination [11].

The legal basis of anti-discrimination principles in America mainly lays in Title VII of the Civil Rights Act of 1964, which essentially emphasizes employee's rights protecting them from being discriminated based on some characteristics especially religious beliefs [12]. This law prohibits employers from discriminating on the basis of religion in the hiring process and requires employers to make reasonable accommodations for employees' religious practices [13]. Other fields of human rights are defined in some other federal laws, state laws and case laws, like Religious Freedom Restoration Act aiming to prevent the government from enforcing stress to religious practice, Fair Housing Act aiming to prohibit discrimination in housing based on religion [14]. Federal laws and state laws compose the whole framework of anti-discrimination law based on religion in various fields of life.

Religious freedom is a significant contributor to American democratic process and anti-discrimination protects basic human rights of American citizens. The tension between discrimination laws and religious freedom principles is immense, as it is hard to define whether a rule is discrimination because of special religious beliefs or a common regulation in the society that everyone needs to follow with. In America, based on some international regulations, they have their own legal framework in anti-discrimination laws and religious freedom protections in comprehensive fields, whose main contributors are federal laws and state laws.

3. Legal Basis of the UK

3.1. Legal Basis of Religious Freedom

From international insights, the UK belongs to Europe geographically and it is limited by European Court of Human Rights as a member of Council of Europe who publishes European Convention on Human Rights (ECHR). Unlike the US, the UK includes ECHR in its domestic laws by Human Rights Act (1998) to enable UK citizens to invoke the rights guaranteed by the ECHR directly in the domestic courts without having to travel to the European Court of Human Rights to seek redress. Therefore,

this demonstrates the apparent influences of the Europe and international legal system on the UK law. According to article 9 in both ECHR and Human Rights Act (1998), it expresses that the right to freedom of thought, conscience, and religion is a fundamental human right. This right encompasses the freedom to change one's religion or belief, as well as the freedom to manifest one's religion or belief in public or private, alone or in community with others, and in a variety of ways, including worship, teaching, practice, and observance [15]. And it also explains that freedom to manifest religion or beliefs should be subject only to such limitations that are prescribed by law for society's safety. The law protects individual rights to practice religions and beliefs freely in private and public lives except that the manifestation harms public safety and orders or influences others' rights and freedoms. This indicates that the relationship between religious freedom and rights limitations is defined by the Human Rights Act originally [16]. This could be demonstrated in cases like *Begum v. Headteacher and Governors of Denbigh High School* (2006) [17]. In this case, the English Court of Appeal held that the school's rule prohibiting students from wearing religious clothing, such as the Muslim headscarf, did not violate the right to freedom of religion. The Court held that the school had a right to be consistent in its religious dress code to protect the school rules and the rights of other students. In another case *Eweida v. British Airways* (2010) [18]. In this case, British Airways required employees to conceal religious symbols (such as crosses), a requirement that Eweida argued violated her right to religious expression. The European Court of Human Rights ultimately sided with Eweida, finding that the company's policy was not sufficiently justified by the necessity of the policy which was inconsistent with the protection of freedom of religion.

3.2. Legal Basis of Anti-discrimination Laws

Like religious freedom principles, anti-discrimination is also included in Human Rights Act (1998) and ECHR, which is shown in the article 14, expressing that the enjoyment of the rights and freedoms should be guaranteed without discrimination on the basis of any characteristic, including but not limited to sex, race, religion, or other status [19]. Additionally, Equality Act 2010 also mentions content about anti-discrimination and lays a solid foundation of it. This law involves various protected characteristics including religious beliefs and it prohibits direct and indirect discrimination, enforcing that employers, educational institutions, providers of public services, etc. must take actions and adjustments to prevent discrimination based on religious beliefs except reasonable hardship during the process [20]. For instance, they should allow Muslims to pray during working time and to wear religious costumes. There are also some cases that utilizes the Act, like *Azmi v. Kirklees Metropolitan Borough Council* (2007) [21]. A Muslim teaching assistant was deemed unable to teach effectively because she wore a veil. The Employment Tribunal ultimately found that the employer's decision was not discriminatory but based on quality of teaching considerations [22]. Another case, *Ladele v. Islington Borough Council* (2009), involved a Christian civil servant who was dismissed for refusing to officiate at a same-sex wedding because of her religious beliefs. The Court of Appeal ruled that the employer held that equality law requires employers to ensure that public services are not prejudiced by religious beliefs [23].

The framework of religious freedom and anti-discrimination law mainly consists of Human Rights Act based on ECHR and Equality Act, where international articles like UDHR and ICCPR also have guiding and framing impact on it. It establishes its own balance between two fields by testing whether the limitations from the government are necessary and reasonable. In addition, from representative cases mentioned above, it is reasonable to conclude that British courts tend to allow some rules that treat people equally and that restrict everyone in general, even though they may appear to be some restrictions on religious freedom.

4. Comparative Analysis

4.1. Comparison of Legal System and Legislation

Although legal system and religious traditions in the two countries have a lot of similarities, there are still some disparities especially in the fields of religious freedom and anti-discrimination. In the United States, they are strict principle of separation of church and state defining in the first Amendment, indicating that congress should not make laws to be an establishment of religion, which means religion is unable to influence any decisions and policies in the state. On the contrary, Anglicanism, a branch of Christianity, is official religion in the UK, leading to a closer relationship between religion and the country, and there are some privileges for it in the laws and social practices. Additionally, unlike the UK having only the parliament to publish laws, the US is a federal country, demonstrating it has the constitution and legislative laws. For legal systems, the US has its constitution that guides all the laws and lays a solid foundation for the legal system. In contrast, the UK has no constitution but various laws composing its constitutional principles and legal system. The main laws in the US regulating the religious freedom and discrimination are Human Rights Act and Equality Act, whereas the US has fellow legislative laws Religious Freedom Restoration Act and Human Rights Act other than the American constitution.

In American culture, citizens always advocate for more diversity including for religions, leading to a more complex situation for the government to balance between religions and religion and laws. For the UK, because it has its own official religion, there is no such sophisticated dilemma, but the government still need to weigh the costs and benefits between limitations of religious freedom and citizens' human rights. Also, the US has already utilized the Strict Scrutiny Principle used to deal with cases including human rights like religious freedom since last century, which emphasizes that when the government imposes restrictions on constitutionally protected rights, it must demonstrate that its actions are "necessary" and represent the "least restrictive means". This means the government must show that its action is essential to achieve a significant governmental interest and that it imposes the least burden on the right. Compared to the US, the UK government tends to find a balancing point between rights like religious freedom and social benefits. Courts will apply the balancing principle to weigh the relative importance of various rights and public interests, which emphasizes protecting individual rights while considering broader societal benefits and the reasonableness of legal constraints.

4.2. Comparison of Cases

Several cases in the US shows courts and governments' attitudes towards this issue. In *Employment Division of Oregon v Smith*(1990), the Court considered a drug rehabilitation organization fired an employee because they ingested a hallucinogenic cactus during the ceremony at the Native American church [24]. Because they were fired for misconduct, they lost their benefits. Therefore, they argued, but without success, that refusing to provide them with benefits for this reason discriminated them and violated their First Amendment rights. The Court held that the government has the ability of enforcing laws of general application and it cannot be based on measuring the impact on the spiritual development of individuals. Also, as long as the law "is neutral and has general applicability", it would not violate the first Amendment though it has some negative influences to religious practices. This case shows limitations constitutional protection has when facing general applicable laws, which has some similarities with balancing principle in the UK, but America has more strict regulations to governments when enforcing laws about religions. Another case also gives an explanation of the US system. In the case *Burwell v. Hobby Lobby Stores* (2014), Hobby Lobby's owner Green's religious views led to Hobby Lobby becoming the leading supporter of the National Christian Charitable

Foundation. Green and his family felt that contraception was immoral [2]. As a result, they challenged a new requirement under federal law that their company provide health insurance coverage for emergency contraceptive pills and intrauterine devices to their female employees. It held that this regulation violated its religious freedom because they believed that life begins at the time of a woman's fertilization. Finally, the Court allowed closed-ended for-profit companies to refuse to provide contraceptives on religious grounds because employers faced with the choice of either being subject to tax penalties or doing something that violates and discriminates their religious beliefs, and this provided a significant burden on them. These two cases demonstrate that, in the US, the courts tend to protect human rights of religious freedom although this may cause some effects to others in the society except that it produces a negative effect to the society or it violates the constitutional principles.

In the UK, there are also some cases demonstrating the conflicts between religious freedom and the discriminations. In the case *Ladele v. London Borough of Islington* (2009), Ladele, a register, refused to register for a same-sex couples because of her religious beliefs, and received a disciplinary action from the employer [22]. She believed that this violated her human rights of religious freedom in the first Amendment and discriminated her religious beliefs. Finally, The United Kingdom Court of Appeal found that the employer's request was reasonable and did not infringe Ladele's freedom of religion. The court held that the protection of equal rights for same-sex couples was an important public interest and that Ladele's religious beliefs could not be used as a reason for refusing to perform his job duties. The case demonstrates that United Kingdom law favours the latter when balancing religious freedom with the public interest (e.g. anti-discrimination), i.e. in some cases the public interest and anti-discrimination legal protection takes precedence over the religious freedom of the individual. Another case *Eweida v. British Airways plc* (2010) also is an instance of the issue [18]. Nadia Eweida, an employee of United Kingdom Airways, was asked to hide her by the company for wearing a visible Christian cross, citing the company's rules that did not allow the wearing of prominent religious symbols [25]. Eweida argues that this violates her freedom of religion or belief. The European Court of Human Rights found that United Kingdom's regulations were unreasonable and violated Eweida's freedom of religion. The court held that companies could adopt a more flexible policy to respect the religious expressions of their employees without having to take measures that are completely prohibitive, and they could not accept the policy because of lack of a necessary and essential enough reason. This case shows how United Kingdom law strikes a balance between anti-discrimination and religious freedom. While the courts generally tend to maintain public order, in this case the court upheld freedom of expression of religious belief. These two cases show a tendency that the UK is always willing to balance between religious freedom, equality, and public interests, and the courts prefer social interests to others sometimes though the citizens' human rights are also protected. And the UK tends to establish a normal and fair standard of dealing with those conflicts, contributing to a uniform and consolidated criteria that, if they are general and everyone needs to follow them, could avoid some conflicts between minorities and the public.

Generally, the two countries have some apparent similarities and disparities. Because of different political structures, historical background, and little differences in legal systems, the US tends to protect individuals' rights of religious freedom when facing legal conflicts, especially for government intervening and anti-discriminating. Many case have demonstrated that the US legal system tends to provide more immunities to individuals and religious groups and treat governments more strictly when they may impose effects to the laws. Unlike the US, the UK focuses more concentratedly on the balance between human rights of religious freedom and public benefits. The UK courts always limit the priority of religious freedom when maintaining social orders and social equality, and they also protect the expression of religious freedom and anti-discrimination in certain circumstances.

5. Suggestions about Religious Freedom and Anti-discrimination Law

5.1. Suggestions about Religious Freedom and Anti-discrimination Law for the US

The United States tends to take a strictly protective approach to safeguarding religious freedom, especially when government intervention is involved. While this has been effective in protecting the rights of religious minorities, in some instances it may overlook the rights of other social groups or the public interest. Therefore, the United States could learn from the United Kingdom's concept of balance in dealing with the balance between religious freedom and other rights by strictly protecting religious freedom while ensuring that other fundamental rights are not violated. For example, in areas such as public health, education and employment, the U.S. could explore more reasonable principles and rules to both religious groups and the government to balance and avoid conflicts between religious beliefs and the public interest of society.

Additionally, religious organizations in the United States enjoy broader exemptions under certain circumstances, particularly in the areas of employment and education. While these exemptions protect the independence of religious organizations, they may also lead to discriminatory acts or unfair treatment. The United Kingdom has still been able to reasonably regulate religious organizations and the state religion under the state religion system to ensure equal treatment and public accountability. The United States could consider strengthening the regulation of religious organizations and the government without diminishing religious freedom, to ensure that they enjoy immunity while not undermining the rights of other citizens.

The United Kingdom actively promotes religious diversity and inclusiveness through its legal system like the Equality Act 2010. While the U.S. is also pursuing a multicultural society, further positive steps can be taken to support and enhance understanding and cooperation among different religious groups. For example, by promoting multicultural education programs or establishing more reasonable rules and regulations of equality and fairness, encouraging respect for religious diversity in the public and private sectors, and being more proactive in considering the needs of religious minorities in legislation and policy development.

5.2. Suggestions about Religious Freedom and Anti-discrimination Law for the UK

The United Kingdom generally applies a “reasonableness test” to religious freedom cases, emphasizing the balancing of religious freedom with other social rights and the public interest. This approach can sometimes weaken the protection of religious freedom. The UK could consider adopting a “strict scrutiny” standard similar to that of the United States in certain circumstances, particularly where core issues of religious belief are at stake, in order to provide stronger protection for individuals' rights to religious belief and practice.

The English common law system makes the role of case law in religious freedom and anti-discrimination law particularly important. However, there may be inconsistencies in the decisions of different courts in the UK as some cases shown, particularly in complex cases involving religious freedom. The UK could learn from the US federal court system to enhance the guidance of the Supreme Court on religious cases, so that lower courts have a clearer legal basis for dealing with similar cases, and to ensure and improve consistency and transparency of judgments in religious case law.

In the United States, religious freedom and anti-discrimination issues are often at the center of public debate, and public opinion and the participation of social groups play an important role in legislation and policymaking, which shows influential power of public opinions. The UK can increase public understanding of and participation in religious freedom and anti-discrimination laws through public education, social discussion and policy consultation to ensure that legislation and policies

better reflect the pluralistic needs of society, increasing public supports and acceptance of the legislation and execution efficiency of the laws.

6. Conclusions

The study found that the UK, due to the limitations of the European Court of Human Rights, has built its own legal system of religious freedom and anti-discrimination through the ECHR and the Human Rights Act 1998 and the Equality Act 2010, and also - is more inclined to the influence of the ECHR, whereas the US, which is less influenced by international bodies such as the United Nations, has constructed a distinctive federal and state hierarchy through the First Amendment to the Constitution and the Civil Rights Act 1964. The United States has a unique system of federal and state laws through the First Amendment and the Civil Rights Act 1964. At the same time, in the handling of cases, due to a social culture that emphasizes human rights and the rights of vulnerable groups, the United States is simply more inclined to protect the right to individual religious freedom and impose strict restrictions on the government, with the principle of strict scrutiny, making it more difficult for the government to legislate in this area. The UK, on the other hand, prefers to balance the individual right to freedom of religion with the common good of society, and in doing so establishes universal rules for all to follow, including religious minorities. Lastly, the balance between religious freedom and anti-discrimination laws varies between the two countries, depending on their respective historical backgrounds and legal traditions, but both countries are committed to seeking a harmonious coexistence of religious freedom and equal rights in pluralistic societies.

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