

**NEUTRALITY OR PARTIALITY:
DECONSTRUCTING THE COMPELLING STATE INTEREST TEST
IN THE TENSION BETWEEN RELIGIOUS LIBERTY AND
GENDER EQUALITY***

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ABSTRACT

A review of Philippine jurisprudence on the right to religion underscores the adherence of the Supreme Court to the benevolent neutrality doctrine, which allows religious accommodations in relation to state actions, and the compelling state interest test, which accords religious freedom a “preferred” status within a hierarchy of rights.

This Essay posits that the compelling state interest test elevates the right to religious liberty to a preeminent status. In cases where anti-discrimination legislation addressing diverse Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics (“SOGIESC”) is enacted and faces constitutional challenges for impinging on religious freedom, the right to gender equality carries a disproportionately heavier burden. Both rights, however, are equal, indivisible, and interconnected. Thus, it is argued that a paradigm shift is needed from a perspective of hierarchy to equal treatment of the rights.

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I. INTRODUCTION

“The enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent.”¹ This is the declaration made by the United Nations (UN) General Assembly in 1950, which was echoed during the 1993 Vienna World Conference on Human Rights.² It emphasizes the intrinsic interconnectedness of various human rights such that the fulfillment or violation of a particular right has a profound impact on the enjoyment of all other rights. Thus, human rights, whether civil, political, economic, social, or cultural, intricately belong together and reciprocally support each other.

However, while the theoretical interrelation of these human rights is well-established, the practical landscape of human rights often appears to belie this ideal. One area of contention within the human rights discourse revolves

¹ United Nations General Assembly, Draft International Covenant on Human Rights and Measures of Implementation: Future Work of the Commission on Human Rights at E, ¶ 3, U.N. Doc. A/RES/421(V) (1950).

² See World Conference on Human Rights, *Vienna Declaration and Programme of Action*, A/CONF/157/23 (1993).

around the perceived conflict between the exercise of freedom of religion and the protection of persons from gender discrimination based on their diverse Sexual Orientation,³ Gender Identity,⁴ Expression,⁵ and Sex Characteristics⁶ or SOGIESC.

A prevailing perspective, particularly among human rights activists, holds that freedom of religion and the demand for gender equality of persons of diverse SOGIESC are inherently incompatible. Instances where religious educational institutions refuse admission to transgender students on religious grounds, conservative medical practitioners decline treatment to homosexual patients citing religious freedom, or devout hotel owners deny accommodations to gay couples based on religious objections, serve as stark illustrations of this perceived clash. While freedom of religion is considered to belong to a “conservative” and classical tenet of rights,⁷ the right to gender equality of persons of diverse SOGIESC, on the other hand, is seen to represent the more recent progressive and “liberal” trends within the realm of human rights law.⁸

In the Philippines, the tension between these rights came to the forefront during the debate surrounding the Gender Equality Bill,⁹ with certain religious groups expressing concerns that the legislation might impinge upon religious freedom. This bill, which advocates for legal recognition of the right to gender equality, seeks to curb various forms of discrimination, marginalization, and violence on the basis of SOGIESC, including those related to economic activities and public accommodations.¹⁰ For instance, it prohibits religious

³ “*Sexual orientation* refers to a person’s physical, romantic and/or emotional attraction towards other people of the same sex (homosexual), different sex (heterosexual) or of both sexes (bisexual).” Office of the United Nations High Commissioner for Human Rights [hereinafter “OHCHR”], *Born Free and Equal: Sexual Orientation, Gender Identity, and Sex Characteristics in International Human Rights Law*, at 6, U.N. Doc. HR/PUB/12/06/Rev.1 (2019).

⁴ “*Gender identity* reflects a deeply felt and experienced sense of one’s own gender, which may or may not be aligned with the sex assigned to them at birth.” *Id.*

⁵ “*Gender expression* is the way in which a person expresses one’s gender through actions and appearance, including dress, speech and mannerisms.” *Id.*

⁶ “*Sex characteristics* refer to each person’s physical characteristics relating to sex, including genitalia and other reproductive anatomy, chromosomes and hormones, and secondary physical characteristics emerging from puberty.” *Id.*

⁷ See HEINER BIELEFELDT, MICHAEL WIENER & NAZILA GHANEA-HERCOCK, *FREEDOM OF RELIGION OR BELIEF: AN INTERNATIONAL LAW COMMENTARY* (1st ed. 2016).

⁸ See Michael O’Flaherty, *Sexual Orientation and Gender Identity*, in *INTERNATIONAL HUMAN RIGHTS LAW* 306 (4th ed. 2022).

⁹ See H. No. 10176, 19th Cong., 2nd Sess. (2024). *Sexual Orientation, Gender Identity or Expression, or Sex Characteristics Equality Act*; S. No. 1600, 19th Cong., 1st Sess. (2022) *SOGIESC Equality Act*.

¹⁰ As early as 2000, an Anti-Discrimination Bill which prohibited discrimination on the basis of sexual orientation, had already been filed by the late Senator Miriam Defensor-Santiago and former Akbayan Party-List Representative Loretta Rosales under the 11th Congress.

educational institutions from using religious principles as a basis for denying admission or expelling students of diverse SOGIESC;¹¹ it prevents doctors from refusing to treat a patient of diverse SOGIESC due to religious beliefs against homosexuality;¹² and it prohibits business owners from invoking religious convictions to justify denial of services to customers of diverse SOGIESC.¹³

A review of prevailing Philippine jurisprudence on the right to free exercise of religion reveals the adherence of the Supreme Court to the doctrine of benevolent neutrality, which allows for the accommodation of religious practices in the context of governmental actions. This accommodation is not intended to promote any particular religion but rather to facilitate persons and groups in exercising their religious beliefs without hindrance.¹⁴ In determining the boundaries of religious freedom, the Supreme Court applies the compelling state interest test, a standard that presumes the primacy of the free exercise of religion as a fundamental right and subjects laws burdening such right to strict scrutiny.¹⁵

Given the benevolent accommodation of the exercise of religious freedom and its preferential treatment under the test, can and should the right to gender equality of persons of diverse SOGIESC be accorded equal consideration? This Essay contends that the compelling state interest test, due to its preferential treatment of religious freedom, tilts the balance in favor of this right. When confronted with state actions forwarding the right to gender equality of persons of diverse SOGIESC, the test imposes a heavier burden on gender equality claims.

The Essay argues that both rights merit equal treatment in accordance with the indivisibility principle of human rights. It advocates for a paradigm shift away from a hierarchical perspective on rights to one where the two rights are regarded as equal in the eyes of the law.

However, it did not take off and through the years, it has been followed by several versions of anti-discrimination bills in the House of Representatives and the Senate, which also failed to prosper. Michelle Abad, *TIMELINE: SOGIE equality in the Philippines*, RAPPLER, August 28, 2019 at <https://www.rappler.com/newsbreak/iq/238593-timeline-sogie-equality-philippines/>. To date, there are five Congressional bills and three Senate bills against discrimination based on SOGIESC that are pending.

¹¹ See, e.g., H. No. 10176 § 5(d); S. No. 1600 § 5(B).

¹² See, e.g., H. No. 10176 § 5(g); S. No. 1600 § 5(E).

¹³ See, e.g., H. No. 10176 § 5(b)-(i); S. No. 1600 § 5(K).

¹⁴ *Estrada v. Escritor* [hereinafter “*Estrada*”], A.M. No. P-02-1651, 492 SCRA 1, 42, June 22, 2006.

¹⁵ *Id.* at 63-4.

Section II provides a brief background on the right to religious liberty and the right to equality in both foreign and local legal landscapes, as well as theoretical perspectives from various authors. Section III examines the interaction between the compelling state interest test and the benevolent neutrality doctrine in Philippine jurisprudence. Section IV asserts that the compelling interest test is not impartial as it inherently defers to religious liberty, as applied by the Supreme Court. Section V demonstrates an application of the test and forwards that the right to gender equality withstands it. Section VI further provides that all rights are equal, and the free exercise of religion is not unlimited. Section VII illustrates how the seemingly contrasting rights can harmoniously coexist, while Section VIII concludes the discussion.

II. SURVEY OF THE SCHOLARLY AND LEGAL LANDSCAPE

A. International and Foreign Legal Landscapes

The right to religious liberty and the right to equality are both firmly entrenched within the framework of international and regional human rights law.¹⁶ These distinct yet interrelated rights find expression in various human rights instruments. The right to religious freedom safeguards the fundamental entitlement of persons to adopt, change, or maintain a religion or belief of their choosing. Moreover, it shields them from coercion or external pressures that might impede their capacity to embrace a religion or belief, and it affirms the right to openly manifest one's religion or belief. On the other hand, the right to equality emphasizes the foundational principle that all human beings are born inherently free and equal in dignity and rights. It stands as an unequivocal declaration that all persons are equal before the law and are entitled to its full protection without discrimination. The parameters of non-discrimination explicitly encompass a range of grounds, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

While prohibited grounds of discrimination as espoused in these instruments uniformly incorporate, they do not explicitly enumerate sexual orientation, gender identity, and intersex status. However, the Human Rights

¹⁶ See, e.g., Universal Declaration of Human Rights, Dec. 10, 1948; International Covenant on Civil and Political Rights, Mar. 26, 1976, 999 U.N.T.S. 171; Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, U.N. Doc. A/Res/36/55, Nov. 25, 1981; American Convention on Human Rights, 1144 U.N.T.S. 123 Nov. 22, 1969; African Charter on Human and Peoples' Rights 1520 U.N.T.S. 217, Nov. 16, 1981; Convention on the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 221, Nov. 4, 1950.

Committee (HRC) made a significant determination in *Toonen v. Australia*¹⁷ where it established that the term “sex” in Articles 2(1) and 26 of the International Covenant on Civil and Political Rights includes sexual orientation. Relatedly, the HRC and the Committee on Economic, Social, and Cultural Rights, responsible for overseeing the International Covenant on Economic, Social and Cultural Rights, clarified in their General Comments that sexual orientation, gender identity, and sex characteristics are also included among those grounds that cannot be used as basis for discrimination.¹⁸

In 2018, the intersection of the right to religious freedom and the right against gender discrimination of persons of diverse SOGIESC was discussed in the US case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*,¹⁹ which involved a baker who refused to make a wedding cake for a same-sex couple due to his religious objections to same-sex marriage.²⁰

The central question posed in this case was whether compelling the baker to create cakes for same-sex weddings would infringe upon his freedom of religion. In its decision, the US Supreme Court did not directly address this issue. Instead, the Court relied on narrower grounds, ruling that members of the Civil Rights Commission, who presided over the case, had exhibited impermissible hostility towards religion during its formal public hearings. In this regard, it concluded that there was a violation of the free exercise clause of the US Constitution, which bars even “subtle departures from neutrality” on matters of religion.²¹

¹⁷ Nicholas Toonen, Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, U.N. No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994). The author was an activist for the promotion of the rights of homosexuals in Tasmania, one of Australia's six constitutive states. He challenged two provisions of the Tasmanian Criminal Code, which criminalize various forms of sexual contact between men, including all forms of sexual contacts between consenting adult homosexual men in private. The author argued that these provisions violated, among others, the right to non-discrimination under Article 26 of the ICCPR. In response, the State Party sought the guidance of the HRC as to whether sexual orientation may be subsumed under the term “... or other status” in Article 26. The HRC held that the reference to “sex” in Articles 2(1) includes sexual orientation.

¹⁸ HRC, General Comment No. 35: Liberty and Security of Person, at art. 9, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014); Commission on Economic, Social and Cultural Rights [hereinafter “CESCR”], General Comment No. 14: The Right to the Highest Attainable Standard of Health, at ¶ 18, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); CESCR, General Comment No. 15: The Right to Water, at art. 11 & 12, ¶ 13, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2002); CESCR, General Comment No. 18: The Right to Work, at art. 6, ¶ 12, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006); CESCR, General Comment No. 19: The Right to Social Security, at ¶ 29, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008).

¹⁹ [Hereinafter “*Masterpiece*”], 138 S.Ct. 1719 (2018).

²⁰ *Id.* at 1723.

²¹ *Id.* at 1729–30. (Citations omitted.)

While the Court did not definitively resolve whether the baker's refusal to design and create a cake for a same-sex wedding on religious grounds was justified, it emphasized that "while those religious and philosophical objections are protected, it is a general rule that such objections do not allow business owners and other actors [...] to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law."²²

In subsequent developments, the tension reemerged in the case of *Brush & Nib Studio v. City of Phoenix*,²³ which centered on the constitutionality of a city ordinance prohibiting discrimination based on sexual orientation in public accommodations. The case hinged on the argument that such an ordinance violated the right to freedom of religion of business owners by compelling them to create custom-made merchandise for same-sex weddings against their religious beliefs.²⁴

The Arizona Supreme Court, applying the compelling state interest test under Arizona's Free Exercise of Religion Act, concluded that the ordinance unduly burdened religious freedom.²⁵ The financial penalties imposed by the ordinance significantly encumbered the exercise of religious beliefs. Additionally, the objective of the ordinance to eradicate discrimination in public goods and services did not appear to be an overriding interest that justifies the infringement on the religious liberties of the business owners. Moreover, it was deemed that the application of the ordinance to business owners who invoked religious freedom was not the least restrictive means of furthering the interest of the government.²⁶

Similarly, tensions between religious freedom and gender equality for persons of diverse SOGIESC have surfaced in other parts of the world. In the Canadian case *Hall v. Powers*, a student at a private Catholic high school sought permission to bring his boyfriend as his date to their school prom.²⁷ However, the school authorities denied his request, citing concerns that such authorization would endorse a homosexual lifestyle conflicting with the religious beliefs of the institution. Consequently, the student sought an injunction to challenge this decision. The Ontario Supreme Court granted the injunction and ruled that the

²² *Id.* at 1727.

²³ 448 P.3d 890, 898–927 (Ariz. 2019).

²⁴ *Brush & Nib Studio v. City of Phoenix*, 448 P.3d 890, 917–27 (Ariz. 2019).

²⁵ *Id.* at 926.

²⁶ *Id.* at 926.

²⁷ INTERNATIONAL COMMISSION OF JURISTS, SOGI CASEBOOK 231 (2011), available at <https://www.icj.org/sogi-casebook-introduction/chapter-ten-freedom-of-religion-and-non-discrimination/>, citing *Hall v. Powers*, 59 O.R. (3d) 423 (2002).

prom was a social event separate from the religious education provided by the school.²⁸ Granting the injunction would not impact the teachings of the school or the beliefs of the Catholic Church. Conversely, denying the injunction would harm the student by excluding him from a significant social event.²⁹

Meanwhile, in 2011, the Bristol County Court adjudicated the case of *Hall v. Bull*,³⁰ involving a same-sex couple in a civil partnership who was denied accommodation in a hotel owned and operated by a devout Christian family. The denial was based on the policy of the hotel that double rooms were exclusively for married heterosexual couples, reflecting the religious beliefs of the owners. The Court ruled that the right of the defendants to manifest their religion, although protected under the European Convention, was subject to qualification.³¹ Equality laws prohibiting discrimination based on sexual orientation were deemed a necessary and proportionate intervention to safeguard the rights of others.

B. Theoretical Perspectives

In the ongoing debate between conservative religious adherents and gender rights advocates, Krzysztof Charamsa highlighted the perceived antiquated stance of the Catholic Church on homosexuality. He coined the term “ecclesial homophobia” to describe what he saw as homophobic discrimination within the Catholic Church.³² He argued that this discrimination permeated various sectors of the church, its ecclesial theories, and pastoral practices.³³

Charamsa pointed out that the church prohibited the study, exchange, and discussion of modern human sciences related to sexual orientation and gender identity, deeming them incompatible with Catholic doctrine.³⁴ He stressed that the Church held a stereotypic and offensive perception of gays, making it difficult to engage in meaningful dialogue on the subject. He also mentioned an ecclesiastical law barring gay men from becoming priests, citing the Church’s belief that gay men lacked the necessary sexual and affective maturity.

²⁸ *Id.* at 232–33.

²⁹ *See id.* at 233.

³⁰ *Id.* at 245, *citing* *Hall v. Bull* (2011).

³¹ *Id.* at 246.

³² Krzysztof Charamsa, *Discrimination Against Sexual Minorities: A Case of Teaching and Practices of the Catholic Church*, in SPECIAL RAPPOURTEUR’S COMPILATION OF ARTICLES ON FREEDOM OF RELIGION OR BELIEF AND SEXUALITY 54 (2017).

³³ *Id.* at 55.

³⁴ *Id.* at 56.

Charamsa further asserted that the Church, under the influence of “heteronormativity” imposed by its doctrine, compelled homosexual minorities to conceal their identities, preventing their discussion in any form.³⁵ He argued that the Church saw this “silence” as a means to eliminate the possibility of homophobia. Additionally, he highlighted instances of real persecution and suppression of public gay associations within the Church.³⁶ Charamsa contended that the Church failed to provide pastoral assistance to gay persons without pathologizing them and demanding that they hide their identities.³⁷ He concluded by suggesting that the church remained ignorant about homosexuality due to its reluctance to engage with insights from the field of human sciences.

On the other hand, Mark Barwick posited that while religions have historically opposed homosexual relationships, they are also malleable and adaptive to their environment.³⁸ Religion can reflect the dominant host culture and as such, can become a lens and interpreter of society.³⁹ He averred that “religious people [...], who lay claim to universal principles of love, compassion and justice, should be at the forefront of promoting respect for diversity and combating ignorance and discrimination.”⁴⁰

Barwick stressed the fundamental principle enshrined in the UN Declaration of Human Rights that all persons should be free and equal in dignity and rights.⁴¹ To uphold this principle, he asserted that public figures bear a special responsibility to foster an environment of respect and harmonious relationships within society. Furthermore, he argued that a broader and sustained dialogue was imperative to reconcile religious teachings with diverse expressions of human sexuality and gender identities.

C. Philippine Legal Landscape

In the Philippines, against the backdrop of controversy surrounding the Gender Equality Bill, Jayeel Cornelio and Robbin Dagle spelled out the ways in which religious freedom has been invoked both in support of and opposition to same-sex marriage and gender equality.⁴² Advocates for SOGIESC rights and

³⁵ *Id.*

³⁶ *Id.* at 63.

³⁷ *Id.*

³⁸ Mark Barwick, *The Grounds We Share: Values, Religion and Sexualities*, in SPECIAL RAPPORTEUR’S COMPILATION OF ARTICLES ON FREEDOM OF RELIGION OR BELIEF AND SEXUALITY 68 (2017).

³⁹ *Id.* at 68.

⁴⁰ *Id.* at 69.

⁴¹ *Id.* at 72.

⁴² Jayeel Cornelio & Robbin Charles Dagle, *Weaponising Religious Freedom: Same-Sex Marriage and Gender Equality in the Philippines*, 14 RELIGION & HUM. RTS. 65–94 (2019).

their allies have invoked religious freedom to advance equality. For instance, in 2015, the Catholic Bishops' Conference of the Philippines issued the "Pastoral Moral Guidance on the Anti-Discrimination Bill" stating that any bill countering discrimination is a "gesture of charity" and that there should be "zero-tolerance" for bullying against LGBTQs in Catholic institutions.⁴³ On the other hand, conservative Christian groups have leveraged it to uphold traditional sexual norms. Various religious critics rallied against the Gender Equality Bill, averring that it would promote morally reprehensible sexuality.⁴⁴

Meanwhile, Alfonso Manalo underscored the strategic use of rhetoric and narrative by the proponents of the bill to cast it not only as a matter of the rights of persons of diverse SOGIESC but also as an issue of universal social rights.⁴⁵ Conversely, opponents of the bill employed a strategy involving the incorporation of various dimensions into the discourse. They tapped into latent attitudes amongst Church elites and other supporters of the bill, expanding the scope of the discussion to encompass academic and religious freedom, despite the bill explicitly stating that it could not impede on these entrenched rights.⁴⁶ By framing the bill as a potential threat to the free exercise of religion, they purportedly sowed discord among its supporters.

Amidst the brewing tension between religious liberty and gender equality, the Philippine Supreme Court has adopted a stance of benevolent neutrality-accommodation with regard to the constitutional right to religion.

In the case of *American Bible Society v. City of Manila*,⁴⁷ the Supreme Court ruled that a business engaged in dissemination of religious information could not be subject to taxation, as it would constitute an infringement of the constitutional right to free exercise of religion.⁴⁸ The Court emphasized that only a clear and present danger of substantial evil, necessitating state intervention, can justify limitations on the right to religious freedom.⁴⁹

⁴³ *Id.* at 82.

⁴⁴ *Id.* at 78.

⁴⁵ Alfonso Ralph Mendoza Manalo, *Rhetoric: A Necessary Strategy in Debating the Ratification of the SOGIE Equality Bill*, SYNERGY (2020), available at utsynergyjournal.org/2020/05/05/rhetoric-a-necessary-strategy-in-debating-the-ratification-of-the-sogie-equality-bill/.

⁴⁶ *Id.*

⁴⁷ 101 Phil. 386 (1957). Plaintiff, which was engaged in the business of distribution and sale of bibles and other religious literature in the Philippines, questioned an ordinance requiring it to secure a mayor's permit and a municipal license, as it purportedly amounted to religious censorship and restraint in the free exercise and enjoyment of religious profession. The Supreme Court upheld the argument of the plaintiff and held that the ordinance restricted its right to free exercise of religion.

⁴⁸ *Id.* at 401.

⁴⁹ *Id.* at 398.

Subsequently, in *Ebralinag v. Division Superintendent of Schools of Cebu*, the Court held that any prior restraint or restriction on the exercise of religious freedom must be justified by a presence of a grave and present danger of a serious evil to public safety, public morals, public health, or any other legitimate public interest.⁵⁰ The Court reiterated this in *Iglesia ni Cristo v. Court of Appeals*, where it considered the censorship of a televised criticism by the Iglesia Ni Cristo of another religion as an interference to the Iglesia's right to free exercise of religion.⁵¹

The Court further underscored the preferred status of religion in its decision in *Estrada v. Escritor*, emphasizing that the Philippine Constitution adheres to the benevolent neutrality approach, allowing accommodation of religion based on morality as long as it does not conflict with compelling state interests.⁵² The Court clarified that only the prevention of an immediate and grave danger to the security and welfare of the community can justify limitations on religious freedom. Accordingly, if the government fails to demonstrate the seriousness and immediacy of such a threat, state intrusion into religious freedom is constitutionally impermissible, as held in *Imbong v. Ochoa*⁵³ and *In re Valenciano*.⁵⁴

⁵⁰ [Hereinafter "*Ebralinag*"], G.R. No. 95770, 219 SCRA 256, 273, Mar. 1, 1993. (Citation omitted.)

⁵¹ [Hereinafter "*Iglesia ni Cristo*"], G.R. No. 119673, 259 SCRA 529, 545-46, July 26, 1996. This case involved the television program, "Ang Iglesia ni Cristo," which was given an "X" rating by the Board of Review for Motion Pictures and Television on the ground that it purportedly offended and constituted an attack against other religions.

⁵² *Estrada*, 492 SCRA at 182. The case involved a court interpreter who was sought to be penalized for living with a married man for more than twenty years and having a son with him. Respondent proffered that their conjugal arrangement was permitted by her religion, and they even had a "declaration of pledging faithfulness" under the approval of their congregation. The Supreme Court did not penalize her, as she had made out a case for exemption from the law based on her fundamental right to freedom of religion.

⁵³ [Hereinafter "*Imbong*"] G.R. No. 204819, 721 SCRA 146, 341, Apr. 8, 2014. This case questioned the constitutionality of the Reproductive Health Law for being violative of the right to religious freedom, specifically, its provisions compelling medical practitioners, who are conscientious objectors of the law, to refer patients who seek advice on reproductive health programs to other doctors and provide full and correct information on such programs and services, although it is against their religious beliefs and convictions. The Supreme Court held that such provisions are unconstitutional, as the Government failed to show that there was a compelling state interest that would limit the right to religious freedom of the conscientious objectors.

⁵⁴ [Hereinafter "*In re Valenciano*"] A.M. No. 10-4-19-SC, 819 SCRA 313, 348, Mar. 7, 2017. This case involved the use of the basement of the Quezon City Hall of Justice as a Roman Catholic Chapel. Allegedly, it violated the constitutional provision on the separation of the church and state. The Supreme Court held that there was no compelling state interest to prohibit the holding of religious rituals in the basement of the city hall.

Amidst the prevailing benevolent neutrality approach to the right to religious freedom, the Supreme Court has consistently upheld the notion that the concept of morality referenced in the law is inherently public and secular, rather than religious. This principle has been reaffirmed in prominent cases such as *Estrada*,⁵⁵ *Ang Ladlad v. COMELEC*⁵⁶ and *Leus v. St. Scholastica's College*.⁵⁷ The Court maintains that the government should proscribe certain conduct, not because it contradicts the beliefs of one religion or another, but because it poses a detriment to the conditions upon which the existence and advancement of human society depend.

Significantly, the Supreme Court, in the case of *Ang Ladlad*, definitively established that homosexual conduct is not considered a criminal offense in the country and, therefore, is not deemed immoral under Philippine law.⁵⁸ It emphasized the application of laws of general applicability with equal force to persons of diverse SOGIESC, in accordance with the constitutional right to equal protection of the law.⁵⁹

In the case of *Falcis v. Civil Registrar General*,⁶⁰ the Supreme Court also recognized the capability of the 1987 Constitution to accommodate a contemporaneous understanding of SOGIESC and acknowledged the imperative of empowering and upholding the dignity of the community composed of persons of diverse SOGIESC.

⁵⁵ 492 SCRA at 87.

⁵⁶ [Hereinafter "*Ang Ladlad*"], G.R. No. 190582, 618 SCRA 32, 59, Apr. 8, 2010. This case involved a national organization representing persons of diverse SOGIESC whose petition for accreditation as a party-list candidate was denied by the Commission on Elections (COMELEC) due to moral grounds. The Supreme Court held that the COMELEC erred in relying on religious belief to justify the exclusion of the organization, as the Government is expected to act for secular purposes and in ways that have primarily secular effects.

⁵⁷ [Hereinafter "*Leus*"], G.R. No. 187226, 748 SCRA 378, 404, Jan. 28, 2015. It involved a non-teaching personnel who was terminated by her employer on the ground of committing a disgraceful and immoral conduct for engaging in pre-marital sexual relation. The Supreme Court held that the conduct cannot be considered immoral under the prevailing norms of conduct, as there is no law that penalizes an unmarried mother by reason of her sexual conduct or proscribes the consensual sexual activity between two unmarried persons.

⁵⁸ *Ang Ladlad*, 618 SCRA at 61–62.

⁵⁹ *Id.* at 64–65.

⁶⁰ [Hereinafter "*Falcis*"], G.R. No. 217910, 917 SCRA 197, 243, Sept. 3, 2019. This case questioned the constitutionality of Articles 1 and 2 of the Family Code of the Philippines, which purportedly limited civil marriages and related rights to heterosexuals to the prejudice of same-sex couples who are also equally capable of founding their own families and fulfilling essential marital obligations. Although the Supreme Court dismissed the case on the grounds of lack of actual case or controversy and petitioner's legal standing, it acknowledged, however, that the Philippine Constitution is capable of accepting a contemporary understanding of SOGIESC, and there is a need to empower and uphold the dignity of persons of diverse SOGIESC. It also recognized that the social concept of family and the roles of men and women in the family have already evolved, and the heteronormativity in marriage is not a static concept.

III. THE COMPELLING STATE INTEREST TEST THROUGH THE LENS OF THE BENEVOLENT NEUTRALITY DOCTRINE

In contrast to the international legal landscape, the Philippines has yet to encounter a judicial confrontation where the rights of persons of diverse SOGIESC intersect with the right to religious liberty, and no case in this domain has been adjudicated by the Supreme Court. For now, the Supreme Court's stance on the matter remains to be seen.

However, an examination of Philippine jurisprudence reveals that, in cases involving conflict between the right to religious freedom and the State, the Supreme Court adheres to the doctrine of benevolent neutrality. Benevolent neutrality entails that with respect to governmental actions, religion may be accommodated, not with the aim of promoting a particular religion but to allow persons and groups to freely exercise their religion without hindrance.⁶¹ The essence of accommodation is to alleviate any burden on, or facilitate the exercise of, religious beliefs of a person or institution.⁶² It is important to note that the objective of the accommodation theory is not to declare a facially neutral law as unconstitutional, but to seek an exemption from its application or its perceived burdensome effect, whether through legislative or judicial means.⁶³

While the Supreme Court advocates for benevolent neutrality, it also highlights the paramount importance of safeguarding the interests of the State. To strike a balance between these competing interests, the Court has articulated the necessity of applying a test to delineate between permissible and impermissible religious exercises.⁶⁴

In determining the boundaries of religious freedom in the Philippines, jurisprudence draws a crucial distinction between cases involving religious speech and those concerning religious conduct. When religious speech is at issue, the Supreme Court invokes either the “clear and present danger” test or the “grave and immediate danger” test, which were mentioned in *American Bible Society*,⁶⁵ and applied in *Ebralinag*⁶⁶ and *Iglesia ni Cristo*,⁶⁷ among others. On the one hand, when the matter involves conduct arising from religious beliefs, the Supreme Court turns to the “compelling state interest” test. Under this test, only

⁶¹ *Estrada*, 492 SCRA at 42.

⁶² *Id.*

⁶³ *Id.* at 42–3.

⁶⁴ *Id.*

⁶⁵ 101 Phil. at 398–99.

⁶⁶ 219 SCRA at 273.

⁶⁷ 259 SCRA at 544.

a compelling state interest can justify infringement upon the fundamental right to religious liberty. Laws imposing burdens on religious freedom are subject to strict scrutiny.⁶⁸ Consequently, not just any state interest will suffice to outweigh the right to religious freedom, as this right holds a “preferred” position in the hierarchy of rights and is considered the most inherent and sacrosanct of all human rights.⁶⁹

Under the three-step process of the test, the plaintiff is first required to establish that the statute or government action imposes a burden on the free exercise of religion.⁷⁰ Once shown, the onus is shifted to the defendant to establish the presence of a sufficiently compelling state interest that justifies the encroachment upon religious liberty. Finally, the defendant must establish that the state, in pursuing its legitimate objectives, employed the least intrusive means possible to avoid infringing on religious liberties.⁷¹

IV. UNMASKING THE PARTIALITY OF THE TEST

In the landmark case of *Estrada*, the Supreme Court expounded on the compelling state interest test, stating that it serves the purpose of upholding religious liberty while simultaneously safeguarding the paramount interest of the State.⁷² This framework conveys the idea of a delicate balance between the interests of religion and the State. It argues that religious adherents cannot claim exemption from complying with a state law unless they can demonstrate that the law imposes a substantial burden on the exercise of their right to religious freedom. Conversely, the State cannot compel religious adherents to comply with a law that encumbers their right to religious liberty unless it can establish that the purpose of the law is sufficiently compelling, and that there are no other less restrictive alternatives available to achieve the objectives of the State. The Supreme Court held that by upholding the paramount interest, the test is structured to protect the very existence of the State, which is indispensable for the preservation of religious liberty.⁷³

However, a comprehensive analysis of the compelling state interest test underscores its inherent deference to religious liberty. The test fundamentally operates on the premise that the right to religious freedom is a “preferred” right.

⁶⁸ *Estrada*, 492 SCRA at 63–64.

⁶⁹ *Id.*

⁷⁰ *Id.* at 74. (Citation omitted.)

⁷¹ *Id.* (Citation omitted.)

⁷² *Id.* at 73–74. (Citation omitted.)

⁷³ *Id.* (Citation omitted.)

As elucidated in *Estrada*,⁷⁴ *Imbong*,⁷⁵ and *In re Valenciano*,⁷⁶ the test rigorously scrutinizes laws burdening the right to religion and regards this right as preferred and sacred.

While this declaration does not necessarily signify that the right to religious freedom invariably supersedes all other human rights in situations of conflict, it suggests that the right to religious freedom is regarded with significant favor. Instead of being considered on equal footing with all other fundamental human rights, such as, for instance, the right to equal protection of the law, the scales of liberty already appear to tilt heavily towards religious liberty. Unless it can be conclusively demonstrated that the purpose of a state action in advancing a particular human right is compelling enough and that the means employed are minimally intrusive upon the right to religious freedom, the latter is highly likely to prevail under the test.

Furthermore, the Supreme Court places significant emphasis on the doctrine of benevolent neutrality-accommodation as the guiding “spirit, intent, and framework” embedded within the Philippine Constitution.⁷⁷ Provisions regarding tax exemption for church property, the compensation of religious officers in government institutions, and optional religious instruction collectively reflect the benevolent accommodation of religious exercises under the free exercise clause. They permit exceptions to the separation between the Church and State to uphold religious liberty. This explicit constitutional “endorsement” of religious accommodation further reinforces the preferential treatment afforded to the right to religion.

Notably, the benevolent neutrality principle applies irrespective of whether a law, alleged to encumber a person’s religious faith, is facially neutral and generally applicable.

Illustratively, in *American Bible Society*, the Supreme Court found inapplicable to a company engaged in distributing and selling religious literature from an ordinance requiring the procurement of a mayor’s permit and municipal license, following its claims of a violation of its right to the free exercise of religious profession.⁷⁸ Similarly, in *Ebralinag*, the Supreme Court declared unjustified the expulsion from school of students of the Jehovah’s Witness faith for their refusal to participate in certain patriotic activities due to their religious

⁷⁴ *Id.* at 74.

⁷⁵ *Imbong*, 721 SCRA at 330-31.

⁷⁶ *In re Valenciano*, 819 SCRA at 348.

⁷⁷ *Estrada*, 492 SCRA at 55.

⁷⁸ *American Bible Society*, 101 Phil. at 401–02.

beliefs.⁷⁹ Lastly, in *Imbong*, the Supreme Court declared unconstitutional the provisions of the Reproductive Health Law that compelled medical practitioners to refer patients, who seek advice on reproductive health programs, to other doctors and provide full and correct information on such programs and services, regardless of their religious beliefs and convictions.⁸⁰ The Court held that the said provisions would burden the right of the medical practitioners to free exercise of religion, and there was no compelling state interest to permit the law to restrain the exercise of said right.⁸¹ In each of these instances, the Supreme Court upheld the claims of religious freedom, even in the face of laws that appeared neutral and generally applicable. These cases highlight that the American doctrine that the right to free exercise of religion does not exempt persons from complying with valid and neutral laws of general applicability is not adhered to in the Philippines.⁸²

There is also a notable disparity in the quantum of burden between those who assert a violation of the right to religious freedom and the government or advocates of the allegedly burdensome law. The test only requires the plaintiffs to establish that a statute or government action created a burden on the free exercise of religion. Once the burden is met, the onus shifts to the defendants to establish two critical elements: (1) that the law serves a legitimate and compelling purpose; and (2) that the means employed to achieve the State's legitimate objective are the least intrusive. Apparently, the test imposes a more substantial burden on the defendants than those who oppose it on religious freedom grounds. As they are the ones alleging a violation, the plaintiffs should bear a more substantial burden, or at the very least, a burden equal to that of the defendants. This approach contributes to the partiality of the test, clearly favoring the right to religion.

The test does not also qualify the quantum of burden that the plaintiffs have to establish. It appears that as long as any burden on the exercise of the right to religion, whether slight or significant, is demonstrated, the plaintiffs are

⁷⁹ *Ebralinag*, 219 SCRA at 269–74.

⁸⁰ *Imbong*, 721 SCRA at 375.

⁸¹ *Id.* at 336–41.

⁸² *Emp't Div. v. Smith*, 110 S.Ct. 1595, 160–03 (1990). The case involved a challenge by Native Americans to an Oregon law prohibiting the use of peyote, a hallucinogenic substance. Specifically, they challenged the State's determination that their religious use of peyote, which resulted in their dismissal from employment, was a misconduct disqualifying them from receipt of unemployment compensation benefits. The Supreme Court ruled against the Native Americans and concluded that there was no violation of free exercise of religion because the Oregon law was neutral and not motivated by a desire to interfere with religion, as it applied to everyone in the state. The free exercise clause could not be used to challenge such a neutral law of general applicability.

deemed to have satisfied the initial burden of the first step of the test, and the heavier burden will already be shifted to the defendants.

In contrast, the test provides qualifications on the quantum of burden that defendants must meet. The second step of the test requires the defendants to establish not only that the purpose of the law is legitimate but also compelling. Additionally, they must demonstrate how and to what extent the legitimate state objective will be undermined if exemptions are granted. The third step also demands the defendants to show that the means of achieving the objective of the State are not just less intrusive, but the least restrictive possible. Thus, if the court finds alternative means that are less invasive than those provided by law, exemptions based on religious freedom may be granted, or in more extreme cases, a declaration of unconstitutionality may be rendered, as demonstrated in *Imbong*, notwithstanding that the law promotes a compelling state interest.⁸³

V. EVALUATING GENDER EQUALITY FROM THE PERSPECTIVE OF THE COMPELLING STATE INTEREST TEST

Given the marked preferential treatment afforded to the right to religious freedom within the framework of the compelling state interest test, any state action with the potential to restrain the free exercise of religion must undergo strict scrutiny before being permitted.

As such, this heightened scrutiny also applies to State actions protecting persons of diverse SOGIESC, for instance, legislation proscribing acts of discrimination against them, particularly those related to economic and public accommodations. Such legislation may apply within educational and medical institutions and business establishments, among others, and may demand compliance from persons irrespective of their beliefs.

It is worth noting that conservative religious adherents have historically resisted the extension of gender equality rights to persons of diverse SOGIESC, citing concerns that such measures could run counter to their religious principles and teachings, potentially infringing on their right to freely exercise their religion. However, even under strict scrutiny, such legislation cannot be deemed unconstitutional for violation of the right to freedom of religion as it withstands the compelling state interest test, as shown below.

⁸³ *Imbong*, 721 SCRA at 342.

A. First step: Impingement on the Right to Religious Freedom

Under the first step of the compelling state interest test, religious freedom claimants may assert that such State measure impinge upon their rights. For instance, under the threat of legal penalties, a religious educational institution cannot deny admission to or expel students of diverse SOGIESC based on religious doctrines or traditions; doctors cannot decline to provide medical treatment to a patient of diverse SOGIESC on the basis of their religious beliefs against homosexuality; and business owners cannot rely on their religious convictions to justify denying services to customers of diverse SOGIESC.

With these restrictions, religious persons may find themselves at a crossroads: they must either set aside their religious beliefs to comply with state regulations, thus avoiding legal penalties, or adhere to their religious convictions and accept the consequences of violating the legal mandate. In this context, conservative religious adherents may contend that their right to religious liberty is unduly burdened by the State's action.

B. Second step: Legitimate and Compelling Purpose

In this regard, the next crucial question is whether the State's interest in prohibiting gender discrimination is sufficiently compelling to justify the religious burden imposed.

The answer is unequivocally in the affirmative. The State's interest in preventing gender discrimination is not only legitimate, but also compelling enough to warrant the restriction on religious freedom. Gender discrimination is a pervasive issue that transcends individual cases and encompasses broader societal concerns. It intersects with various other rights and facets of human life, making it a cross-cutting issue of profound importance. Consequently, it impacts not only persons of diverse SOGIESC but society as a whole. Gender discrimination strikes at the core of human existence, founded on the intrinsic dignity and inherent rights of every person, regardless of their SOGIESC, to enjoy equal access to human rights—an overarching principle enshrined in the Constitution, which the State is duty-bound to uphold.

1. Right to Education

One of the fundamental human rights that the pursuit of gender equality aims to safeguard is the right to education for persons of diverse SOGIESC. The Special Rapporteur on the right to education has documented instances where young people of diverse SOGIESC have been refused admission to or expelled

from educational institutions on the ground of their SOGIESC.⁸⁴ This issue is particularly pertinent in the context of conservative religious educational institutions.

A notable case occurred in the Philippines, where the Commission on Human Rights raised concerns about a private Catholic school in Iloilo City. The school had included in its handbook for employees and students a declaration characterizing homosexuality as immoral and, thus, a basis for expulsion.⁸⁵ The Commission cautioned the school that its discriminatory policy could potentially lead to penalties under the city's anti-discrimination ordinance, which aims to protect persons of diverse SOGIESC. It also added that, as a Christ-centered educational community, the school bears a moral responsibility to cultivate an environment that is more equitable and inclusive, one that welcomes all students, regardless of their gender expression and sexual orientation.

It is worth noting that in the Philippines, young persons who belong to diverse SOGIESC groups are at an elevated risk of experiencing discrimination and abuse.⁸⁶ Consequently, discrimination in the realms of education can result in a range of adverse consequences, including social isolation, stigmatization, diminished self-esteem, and depression. Moreover, it can contribute to truancy, absenteeism, students being compelled to leave educational institutions prematurely, and, in the most severe cases, instances of suicide.⁸⁷ A study conducted in the Philippines revealed that college students of diverse SOGIESC exhibited markedly underdeveloped emotional and social competencies. This underdevelopment was attributed to the continued experience of stigma, bias, and discrimination within Philippine society, which acted as specific stressors significantly impacting their emotional and social intelligence and behaviors.⁸⁸

⁸⁴ See V. Muñoz Villalobos, Report of the Special Rapporteur on the Right to Education, at 18, ¶ 113, U.N. Doc. E/CN.4/2006/45 (2006).

⁸⁵ Gabriel Lulu, *CHR warns Iloilo school: Ordinance penalizes discrimination vs LGBT*, INQUIRER.NET, August 9, 2020 at <https://newsinfo.inquirer.net/1319121/chr-warns-iloilo-school-ordinance-penalizes-discrimination-vs-lgbt>.

⁸⁶ See International Gay and Lesbian Human Rights Commission, Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and Homosexuality in the Philippines (Oct. 2012), available at https://iglhrc.org/sites/default/files/philippines_report.pdf.

⁸⁷ See, e.g., OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity, and Sex Characteristics in International Human Rights Law*, at 62 & n.269, U.N. Doc. HR/PUB/12/06/Rev.1 (2019).

⁸⁸ Human Rights Watch, *“Just Let Us Be” Discrimination Against LGBT Students in the Philippines*, HUMAN RIGHTS WATCH, June 21, 2017, available at <https://www.hrw.org/report/2017/06/22/just-let-us-be/discrimination-against-lgbt-students-philippines> citing Remedios Moog, *Emotional-Social Intelligence, Self-Efficacy and Life Satisfaction of Self-Identified Lesbian, Gay, Bisexual and Transgender Students* (2012) (unpublished manuscript on file with the author).

Significantly, a 2013 study examining the relationship between sexual orientation and suicide among young Filipino men highlights the pressing concerns regarding the mental well-being of persons of diverse SOGIESC. The study revealed that Filipino gay and bisexual men, particularly within the age group of 15 to 24 years old, exhibited a higher prevalence of suicidal ideation compared to their heterosexual peers.⁸⁹ Disturbingly, experience of suicidal ideation was more than twice as high among young homosexual Filipino men, with a rate of 16%, as opposed to heterosexual men at 8%.⁹⁰ Furthermore, young gay and bisexual men were also more likely to attempt suicide, with 39% of those who had contemplated suicide ultimately making attempts, in contrast to the 26% observed among their heterosexual counterparts.⁹¹ A parallel trend was noted among young lesbian and bisexual women, where 27% contemplated suicide in comparison to their heterosexual counterparts at 18%. Of those who considered suicide, 6.6% of lesbian and bisexual women made suicide attempts, as opposed to only 3.9% of their heterosexual peers.⁹² These effects were found to be associated with factors such as depression, the recent suicide attempt of a friend, and experiences of threat and victimization.⁹³

2. *Right to Health*

Turning to the right to health, it represents another fundamental human right that is central to the objectives of gender equality for persons of diverse SOGIESC.

A 2015 report by the United Nations High Commissioner for Human Rights highlighted the detrimental impact of homophobic, sexist, and transphobic attitudes and practices within healthcare institutions and among healthcare personnel.⁹⁴ These practices discourage persons of diverse SOGIESC from seeking essential health services, thereby exacerbating the challenges in addressing critical health issues, including HIV/AIDS.⁹⁵ Furthermore, the

⁸⁹ Eric Julian Manalastas, *Sexual Orientation and Suicide Risk in the Philippines: Evidence from a Nationally Representative Sample of Young Filipino Men*, 46 PHIL. J. PSYCHOL. 9 (2013).

⁹⁰ *Id.* at 6–7.

⁹¹ *Id.* at 7.

⁹² Human Rights Watch, *supra* note 88 citing Eric Julian Manalastas, *Suicide Ideation and Suicide Attempt Among Young Lesbian and Bisexual Filipina Women: Evidence for Disparities in the Philippines*, 32 ASIAN WOMEN 101, 109–10 (2016).

⁹³ Manalastas, *supra* note 85, at 109.

⁹⁴ United Nations Human Rights Council, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, U.N. Doc. A/HRC/29/23 (2015).

⁹⁵ See United Nations Commission on Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, at 18, ¶ 56 & n. 101, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011).

Committee on the Elimination of Discrimination Against Women expressed concern regarding the mistreatment and abuses faced by lesbian, bisexual, transgender, and intersex women at the hands of health service providers.⁹⁶ The report also sheds light on the insensitivity of healthcare professionals to the unique needs of transgender persons, often exacerbated by a lack of necessary professional training.⁹⁷ In addition, intersex children are frequently subjected to discrimination and stigmatization.⁹⁸

In the Philippine context, a 2013 report by the Health Action Information Network emphasized how the stigma and discrimination faced by gender variant males at all societal levels pose significant health and social risks for Filipino men engaged in same-sex relationships and transgender persons. They are often marginalized and exposed to various forms of violence, preventing them from accessing the healthcare services they urgently require.⁹⁹

In 2015, the High Commissioner on Human Rights conducted an assessment revealing that persons of diverse SOGIESC, who are denied basic rights such as access to healthcare and education often find themselves mired in poverty and excluded from economic opportunities.¹⁰⁰ Indeed, discrimination in education carries long-lasting ramifications as it obstructs persons of diverse SOGIESC from securing gainful employment.¹⁰¹ Denial of essential healthcare services further impeded their ability to maintain a healthy life and pursue livelihoods. Studies conducted in various countries have indicated that persons of diverse SOGIESC experience elevated rates of poverty, homelessness, and food insecurity in comparison to the broader community.¹⁰² Consequently, homophobia, which perpetuates gender discrimination, has been recognized by the World Bank as detrimental to economic growth and development.¹⁰³

⁹⁶ *Id.* at 18, ¶ 56 & n.103.

⁹⁷ *Id.* at 19, ¶ 56 & n.105.

⁹⁸ *Id.* at 18, ¶ 57 & n.106.

⁹⁹ United Nations Development Programme & United States Agency for International Development, *Being LGBT in Asia: The Philippines Country Report*, at 33 (2014).

¹⁰⁰ United Nations Human Rights Council, *supra* note 94, at 12, ¶ 42.

¹⁰¹ OHCHR, *supra* note 87 *citing* International Labour Organization, Results of the ILO's PRIDE Project, "Gender Identity and Sexual Orientation: Promoting Rights, Diversity and Equality in the World of Work" (2016).

¹⁰² *See* United Nations Human Rights Council, *supra* note 94, at 12, ¶ 42 *citing* Lucas Paoli Itaborahy, *LGBT People Living in Poverty in Rio de Janeiro* (London, Micro Rainbow, 2014). Gary J. Gates, *Food Insecurity and SNAP (Food Stamps) Participation in LGBT Communities*, Williams Institute (2014).

¹⁰³ United Nations Human Rights Council, *supra* note 94, at 12, ¶ 42 *citing* M.V. Lee Badgett, *The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India*, World Bank Group (2014).

3. *Right to Life*

It is also essential to emphasize that the societal stigma directed at persons of diverse SOGIESC due to discrimination significantly contributes to the proliferation of SOGIESC-related crimes. Tragically, they are often subjected to violence and even killed for supposedly bringing “shame” or “dishonor” to their families. This may occur when they are being perceived as transgressing gender norms, engaging in same-sex sexual activity, or merely possessing atypical sex characteristics.¹⁰⁴

The global Trans Murder Monitoring Project has documented 208 transgender persons who were killed due to their gender identity across 17 Asian countries between 2008 and 2016.¹⁰⁵ Alarming, the Philippines holds the unenviable record of having the highest number of hate crimes against the transgender community among the countries in the ASEAN, with 43 transgender and gender-diverse persons murdered during this period.¹⁰⁶ In this regard, the State has a legitimate and compelling interest in preventing gender discrimination, as it directly implicates its obligation to safeguard the right to life and security of all people within its jurisdiction, irrespective of their SOGIESC.

Evidently, gender discrimination transcends mere issue of equality; it profoundly affects various fundamental human rights, including the rights to education, health, and life. At its core, this discrimination infringes upon human dignity, which the State unequivocally commits to uphold under the 1987 Constitution and various international human rights instruments to which it is a signatory. While gender discrimination directly impacts persons of diverse SOGIESC, it ultimately imperils general welfare, human development, economic advancement, and peace and order—all of which the State has a legitimate and compelling interest to protect and uphold.

¹⁰⁴ OHCHR, *supra* note 87.

¹⁰⁵ Trans Europe and Central Asia, Trans Day of Visibility Press Release, at 2 n. 3 (Mar. 30, 2017), *available at* http://transrespect.org/wp-content/uploads/2017/03/TvT_TMM_TDoV2017_Tables_EN.pdf; Destination Justice, *Revealing the Rainbow, The Human Rights Situation of Southeast Asia’s LGBTQI Communities and Their Defenders* (2018), *available at* <https://aseansogiecacus.org/images/resources/publications/20180531%20REVEALING%20THE%20RAINBOW%20Destination%20Justice.pdf>.

¹⁰⁶ Trans Europe and Central Asia, Trans Day of Visibility Press Release, at 1 (Mar. 30, 2017), *available at* http://transrespect.org/wp-content/uploads/2017/03/TvT_TMM_TDoV2017_Tables_EN.pdf;

C. Third step: Least Intrusive Means

Anent the third step of the compelling state interest test, which assesses whether the State employs the least intrusive means to achieve its objective, it is imperative to emphasize that the application of anti-discrimination legislation to all people, regardless of their religion or belief, is the only way by which the State can effectively fulfill its primary goal of curbing gender discrimination. Failure to do so would significantly undermine the State's objective of promoting gender equality, as discrimination would still persist among religious freedom claimants.

More critically, persons who have violated the law might simply invoke religious freedom claims to evade penalties, feigning sincere religious beliefs on the matter. This, in turn, would compromise the State's ability to enforce its mandate and ultimately undermine the overarching objective of achieving gender equality for persons of diverse SOGIESC.

It must be stressed that the objective of equal access cannot be realized by permitting exemptions based on one's beliefs. The fundamental purpose of public accommodation laws is to prevent the "deprivation of personal dignity that surely accompanies denials of equal access to public establishments."¹⁰⁷ Allowing businesses and other actors in society to refuse services or accommodation to groups they disfavor, while openly advertising such practices, inherently perpetuates inequality and profoundly stigmatizes the affected group.

VI. BALANCING RELIGIOUS FREEDOM AND GENDER EQUALITY RIGHTS

While the compelling state interest test may seem to demonstrate partiality in favor of the right to religious freedom, it should not be construed, however, as an inherent disadvantage for the right against gender discrimination concerning persons of diverse SOGIESC. Gender equality advocates and the State can present a compelling argument in defense of safeguarding the right against gender discrimination of persons of diverse SOGIESC in order to justify a restriction on the exercise of the right to religious liberty. It must stem from the fundamental principle that the right to gender equality deserves equal consideration with the right to religious freedom. Correlatively, a paradigm shift is necessary from a hierarchical view of rights towards a framework where all rights are regarded as equal in the eyes of the law.

¹⁰⁷ *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 354 (1964). (Citation omitted.)

A. No Rights Above the Others

It must be highlighted that UN recognizes that all human rights are indivisible. The fifth paragraph of the Vienna Declaration and Programme of Action, crafted during the Vienna World Conference of Human Rights in 1993 and unanimously adopted by 171 nations present, elucidates indivisibility in this perspective:

All human rights are universal, indivisible and interdependent and interrelated. The International community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.¹⁰⁸

Hence, whether civil, political, economic, social, or cultural in nature, human rights are all interrelated and interdependent. Consequently, they all hold equal status as rights, are inextricably bound and fundamental in the inherent dignity of every person. There is no such thing as a “lesser” right or a hierarchical arrangement of human rights. Thus, no right should be given primacy or greater importance over another. Both rights, the right to religious freedom and the right to protection against gender discrimination, are of equal significance and merit equitable consideration under the law.

Pointedly, the ICCPR, to which the Philippines became a signatory in 1966 and later ratified in 1986, explicitly recognizes that the rights outlined in the Covenant, including the right to religious freedom and the right against gender discrimination, are rooted in the inherent dignity of every person.¹⁰⁹ This acknowledgement implies that these rights are fundamental to human existence.

The right to religious freedom acknowledges that every human being has an inherent faculty of thought or conscience, enabling them to exercise free will in determining their beliefs and convictions. This right guarantees that the freedom to believe is absolute and cannot be interfered with by anyone, including the State. The right also acknowledges that free will is susceptible to abuse. Thus, with regard to the manifestation of one’s religion or belief, the right allows certain restrictions if they are prescribed by law and deemed necessary to safeguard public safety, order, health, moral, or the fundamental rights and

¹⁰⁸ World Conference on Human Rights in Vienna, Vienna Declaration and Programme of Action, at art. I ¶5, U.N. Doc. A/CONF/157/23 (June 25, 1993).

¹⁰⁹ International Covenant on Civil and Political Rights, pmbl., Dec. 16, 1966, 999 U.N.T.S. 171.

freedoms of others. Meanwhile, the right against discrimination acknowledges the equality in dignity and rights of every human being, ensuring that every person is entitled to respect and equal protection regardless of race, color, sex, gender, sexual orientation, language, religion, age, birth, or other status. Both of these rights emanate from the inherent nature of human beings and are indispensable to human existence. As such, they both merit equal treatment.

It is also equally important to underscore that the Constitution not only safeguards the right to religion but also enshrines the right of every person to equal protection under the law.¹¹⁰

Significantly, in the case of *Ang Ladlad*, the Supreme Court upheld the right to equal protection of the law for a group of persons of diverse SOGIESC in the context of electoral participation in the party-list system.¹¹¹ The Court ruled that disqualifying petitioner Ang Ladlad as a party-list candidate, based on the assertion that the general Philippine population believed homosexuality to be immoral and unacceptable, was unfounded.¹¹² It emphasized that the Filipino voters had not expressed this belief, and further, that homosexuality was not considered a criminal offense in the Philippines.

The alleged moral disapproval of the broader community towards persons of diverse SOGIESC, even if shown to be accurate, did not constitute a legitimate state interest that could satisfy the rational basis review required under the equal protection clause. The Court highlighted that any differentiation by the COMELEC in the treatment of Ang Ladlad would only foster disapproval or bias against persons of diverse SOGIESC. The Court concluded that, from the standpoint of the political process, persons of diverse SOGIESC have the same interest in participating in the party-list system on the same basis as other political parties similarly situated. Thus, laws of general applicability should apply with equal force to persons of diverse SOGIESC, and they deserve to participate in the party-list system on the same basis as other marginalized and under-represented sectors.¹¹³

The *Ang Ladlad* decision marked a significant milestone in the ongoing struggle for gender equality within the community of persons of diverse SOGIESC. It conveyed that: (a) discrimination against persons of diverse SOGIESC cannot be justified solely on the basis of the personal belief that homosexuality is immoral; (b) religious disapproval of homosexuality, rooted in moral grounds, cannot constitute a legitimate state interest that justifies

¹¹⁰ CONST. art. III, §1.

¹¹¹ *Ang Ladlad*, 618 SCRA at 64–65.

¹¹² *Id.* at 64.

¹¹³ *Id.* at 64–65.

discrimination against persons of diverse SOGIESC; and (c) in the eyes of the Philippine law, homosexuality is not considered immoral, as it is not a criminal offense in the country—an affirmation of the doctrine that the concept of morality referred to in the law is not religious but secular in character.¹¹⁴

Historically, both the right to equal protection of laws and the right to religious freedom have been recognized in the Philippines even before the adoption of the 1935 and the 1973 Constitution. The enduring presence of these rights in the Philippine Constitution highlights their fundamental importance in the lives of the Filipinos.

Crucially, the Constitution refrains from categorizing these rights or other constitutional human rights based on their relative importance. Instead, it emphasizes, in Article II, Section 11, that all human rights should be fully respected in the same vein that the dignity of every human person should be valued.¹¹⁵ In this regard, no right should be treated as more important than the other.

Significantly, every person, irrespective of their beliefs or sexual orientation, deserves equal treatment in the eyes of the law due to their common humanity and shared dignity. Article 1 of the UDHR provides that everyone should be “free and equal in dignity and rights.”¹¹⁶ This principle dictates that no one should face discrimination or violence on account of their sexual orientation, gender identity or sex characteristics. Similarly, no one should endure hardship or inhumane treatment due to their religious beliefs or convictions. “Free and equal in dignity and rights” is the unifying principle that must govern all human relations, regardless of one’s personal feelings or attitudes toward another person’s life choices.¹¹⁷

B. Limitations on Free Exercise of Religion

It also bears pointing out that while the right to religious freedom is regarded as non-derogable under the ICCPR, it is not, however, an absolute right. It is “subject to regulation where the belief is translated into external acts

¹¹⁴ *Id.* Similarly, the declaration of the Supreme Court in *Falis* as to the capability of the Constitution to accommodate a contemporaneous understanding of SOGIESC is a promising development on gender equality issue for the community of diverse SOGIESC as it opens up a window for a possible judicial recognition of the community’s gender equality rights, such as those provided under the pending SOGIESC bill or even the right to enter into a same-sex marital union as may be allowed in any future legislative action. *Falis*, 917 SCRA 197.

¹¹⁵ CONST. art. II, §11.

¹¹⁶ Universal Declaration of Human Rights, at 72, U.N. Doc. A/810 (Dec. 10, 1948).

¹¹⁷ Barwick, *supra* note 38, at 72.

that affect the public welfare.”¹¹⁸ As provided under Article 18(3) of the ICCPR, the freedom to manifest one’s religion or belief can be limited if prescribed by law and necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.¹¹⁹ The limitation imposed on the right to religious freedom is a recognition that it cannot trample upon other human rights such as the right to gender equality.

Pointedly, General Comment No. 22 on the right to religious freedom of the ICCPR provides guidance on the interpretation of permissible limitation clauses.¹²⁰ The HRC holds that State parties should interpret these limitations with a focus on protecting the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all specified grounds. In this regard, the right to free exercise of religion can only be enjoyed with proper regard to the rights of others. The imposed limitations imply that it should not be treated as superior over other rights but should operate at a level wherein it can co-exist equally with other rights.

Finally, in the context of Philippine jurisprudence, the decisions in *Estrada* and *Ang Ladlad* elucidate that morality, as referred to in the law, is inherently public and secular, rather than religious. This perspective signifies that courts cannot judge the validity or propriety of certain actions based on what a certain religion prescribes or proscribes; instead, their determination should be grounded in whether the actions comply with or contravene the law of the land. The case of *Leus* further highlights that the assessment of immorality should consider prevailing norms of conduct, primarily rooted in public and secular morality rather than religious morality.

Thus, in the realm of gender equality, a person’s SOGIESC cannot be judicially declared immoral on the basis of a certain religious belief. The concept of secular morality necessitates that courts maintain a neutral stance on matters of faith and view the morality of certain actions through the lens of secular law, not of religious teachings or doctrines. By doing so, the right to religion will not be perceived as a preferred right but one that stands equally with other rights in the eyes of the law.

¹¹⁸ *Ebralinag*, 219 SCRA at 271.

¹¹⁹ International Covenant on Civil and Political Rights, art. 18, ¶ 3, Dec. 16, 1966, 999 U.N.T.S. 171.

¹²⁰ Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), ¶¶ 1–9, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993).

VII. ENVISIONING HARMONIOUS COEXISTENCE

Equal treatment of the rights to religious liberty and gender equality is the key to easing the tension between the two. According to Heiner Bielefeldt, this approach transcends the often-perceived abstract dichotomy between these rights and opens doors to viable compromises and potential synergies.¹²¹ It will also lead to a holistic understanding that both norms are inherently interconnected.¹²²

Bielefeldt posits that equal treatment of these rights is the precondition for doing justice to human beings.¹²³ According to him, the assumption that one has to make a “choice” between either of these rights can have devastating consequences for countless people living “in circumstances where they would actually need both: respect for their religious identities, in accordance with their religious self-understanding, as well as the freedom to live in harmony with their sexual orientations or gender identities.”¹²⁴ The perception that there is a dichotomy in the relationship between freedom of religion and the right to gender equality further reinforces existing divides rather than eradicate them.¹²⁵ Bielefeldt, quoting United Nations Deputy High Commissioner for Human Rights Kate Gilmore, further pointed out that it is akin to separating the “two most existential dimensions of human life artificially from each other: love and faith.”¹²⁶

Freedom of religion does not have to be pitted against the right to gender equality of persons of diverse SOGIESC. On the contrary, it can play a vital role in mitigating the tensions between these rights by fostering respect for sexual diversity.

The right to freedom of religion is not a tool to serve a particular religion or belief; rather, it is intended to protect believers themselves.¹²⁷ By placing the emphasis on human beings, religious liberty acknowledges the intricacies of human existence, including the diverse expressions, concerns, and beliefs of persons. It regards religion as a reflection of social reality.¹²⁸ As such, according

¹²¹ HEINER BIELEFELDT, *Towards a Holistic Human Rights Approach: Religious Freedom and Respect for Sexual Diversity*, in SPECIAL RAPPORTEUR'S COMPILATION OF ARTICLES FREEDOM OF RELIGION OR BELIEF AND SEXUALITY 15 (2017).

¹²² *Id.* at 16.

¹²³ *Id.* at 15.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 16.

¹²⁷ *Id.* at 8.

¹²⁸ *Id.* at 13.

to Bielefeldt: “religions can change.”¹²⁹ While their foundations might have been built from century-old teachings and traditions, they can adapt to the evolving circumstances of the times without necessarily compromising the essence of their foundational beliefs. Freedom of religion can thus widen the room for interpretation by the faithful of their beliefs¹³⁰ and “encourage the elaboration of innovative positions within religious discourses, including feminist theologies, queer theologies, and the exegesis of religious texts from diverse sexuality and gender perspectives.”¹³¹ Here, religion serves as an advocate for the respect of sexual diversity and can promote compassion and tolerance towards persons of diverse SOGIESC. Ultimately, this facilitates the harmonious coexistence of the right to religious liberty and the right to gender equality within society.

Significantly, in recent years, notable religious leaders, scholars, and organizations across different faiths have encouraged inclusion of and compassion towards persons of diverse SOGIESC.

Pope Francis, the leader of the Catholic Church, has repeatedly spoken about the need of welcoming and loving all persons, regardless of their sexual orientation. In 2013, he articulated the Church’s need to embrace rather than exclude, and to show mercy instead of condemnation towards homosexuals.¹³² He also expressed that he does not possess the authority to judge someone who is gay and seeking a connection with God in good faith. He pointed out that the catechism of the Catholic Church teaches against marginalizing persons based on their sexual orientation and advocated for their integration into society.¹³³ Remarkably, in a 2020 documentary, he opined that civil union should be legally recognized for same-sex couples and affirmed that persons of diverse SOGIESC are children of God.¹³⁴

Within Judaism, support for the rights of persons of diverse SOGIESC has also found resonance. Reconstructionist Judaism, for instance, views discrimination against gays and lesbians as a violation of core Jewish values, including justice, human dignity, inclusivity, and the responsibility to protect

¹²⁹ *Id.* at 9.

¹³⁰ *Id.* at 13.

¹³¹ *Id.*

¹³² Laurie Goodstein, *Pope Says Church Is 'Obsessed' With Gays, Abortion and Birth Control*, N.Y. TIMES, Sept. 19, 2013, at <https://www.nytimes.com/2013/09/20/world/europe/pope-bluntly-faults-churchs-focus-on-gays-and-abortion.html>.

¹³³ Philip Pulella, *Pope says gays should not be marginalized*, REUTERS, July 29, 2013, at <https://www.reuters.com/article/us-pope-gays-idUSBRE96S0DX20130729>.

¹³⁴ Allison Hope, *How to read Pope Francis' message of love for LGBTQ people*, CNN, Oct. 21, 2020, at <https://edition.cnn.com/2020/10/21/opinions/pope-francis-civil-unions-lgbtq-families-hope/index.html>.

those in need.¹³⁵ The Rabbinical Assembly, a leading international assembly for Conservative Jewish Rabbis, has endorsed for full civil equality for gays and lesbians while condemning all forms of violence and discrimination against this community.¹³⁶ Additionally, in 2010, a coalition of 104 Orthodox leaders issued a joint statement emphasizing that embarrassing, harassing, or demeaning someone with a homosexual orientation or same-sex attraction contradicts Torah prohibitions that embody the profound values of Judaism.¹³⁷

In Buddhism, most mainstream traditions have displayed an attitude of tolerance and acceptance toward gender diversity.¹³⁸ Even those within Buddhism who hold negative views on homosexuality have generally refrained from using hate speech or promoting violence.¹³⁹ As Buddhism became more globally interconnected, many Buddhist traditions evolved from passive tolerance to active inclusion of persons of diverse SOGIESC within their traditions. This transformation has extended to public expressions of support for equal rights, including marriage equality.¹⁴⁰ A significant motivating factor behind Buddhism's growing acceptance of sexual diversity is its fundamental commitment to compassion for all sentient beings. This compassion is personified in the figure of the Bodhisattva of Compassion and exemplified by Amida Buddha's Primal Vow to save all beings without any discrimination.¹⁴¹

As regards Hinduism, attitudes towards gender equality issues affecting persons of diverse SOGIESC can vary across different temples and ashrams due to the decentralized nature of Hinduism. However, the Hindu American Foundation, in a policy brief on Hindus and Homosexuality, asserted that Hinduism does not offer a fundamental spiritual basis for rejecting or ostracizing persons of diverse SOGIESC.¹⁴² According to their

¹³⁵ HUMAN DIGNITY TRUST, CRIMINALISING HOMOSEXUALITY AND UNDERSTANDING THE RIGHT TO MANIFEST RELIGION 29, (Nov. 2015), *available at* <https://www.humandignitytrust.org/wp-content/uploads/resources/9.-Criminalisation-Freedom-of-Religion.pdf>, *citing* FEDERATION OF RECONSTRUCTIONIST CONGREGATIONS, HOMOSEXUALITY AND JUDAISM: THE REPORT OF THE RECONSTRUCTIONIST COMMISSION ON HOMOSEXUALITY (1993).

¹³⁶ *Id.* at 30, *citing* RABBINICAL ASSEMBLY, PROCEEDINGS OF THE RABBINICAL ASSEMBLY (1990).

¹³⁷ *Id.*, *citing* RABBI YOSEF ADLER ET AL., STATEMENT OF PRINCIPLES ON THE PLACE OF JEWS WITH A HOMOSEXUAL ORIENTATION IN OUR COMMUNITY (2010), *available at* <http://statementofprinciplesny.blogspot.co.uk/>.

¹³⁸ Michael Vermeulen, *The rise of Rainbow Dharma: Buddhism on sexual diversity and same-sex marriage*, in SPECIAL RAPporteur's COMPILATION OF ARTICLES ON FREEDOM OF RELIGION OR BELIEF AND SEXUALITY 40 (2017).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 37.

¹⁴² HRC Foundation, *Stances of Faiths on LGBTQ Issues: Hinduism*, HUMAN RIGHTS CAMPAIGN, *at* <https://www.hrc.org/resources/stances-of-faiths-on-lgbt-issues-hinduism>.

perspective, these persons share inherent spiritual equality with other Hindus and should not face social ostracism.¹⁴³ In addition, Swami Aksharananda, a prominent Hindu priest, stated in 2013, that Hinduism does not grant anyone the right to pass judgment as God, in Hindu belief, does not engage in judgment.¹⁴⁴ Hinduism teaches that every person is an embodiment of the divine, and discrimination against someone for being different is tantamount to discriminating against God.¹⁴⁵

The statements, opinions, and attitudes expressed by various religious leaders, scholars, and institutions exemplify a positive and humanistic approach towards persons of diverse SOGIESC. These expressions signal that religions, while staying true to their core beliefs, are beginning to transition from a conservative and antagonistic mentality to an open-minded acceptance of persons of diverse SOGIESC and the issues they confront.

Practically, when conflicts arise between the beliefs of religious conservatives and the advocacy for gender rights, a delicate balance between competing interests must be sought.¹⁴⁶ This implies that neither right should be elevated above the other, as both rights hold equal status in accordance with the indivisibility principle of human rights. It is also vital to avoid framing the balancing of interests as a “zero sum” game where a win for religious adherents signifies a loss for persons of diverse SOGIESC, or vice versa.¹⁴⁷ Furthermore, maintaining neutrality in disputes involving religions and the distinction between religious and non-religious beliefs is essential.¹⁴⁸ This means that those mediating conflicts should remain impartial, irrespective of their personal beliefs, to ensure objectivity in resolving disputes.

Respect for the right of persons to believe or not to believe should also be a fundamental tenet. Everyone has the freedom to make their own choices regarding their beliefs, and no one, including the state, should infringe upon this aspect of religious freedom.¹⁴⁹ As such, a person cannot insist that one’s belief is better than others or trample upon someone else’s belief or non-belief. As explained by Ericka Howard:

¹⁴³ *Id.*

¹⁴⁴ Lakhram Bhagirat, *Hinduism and homosexuality – teachings of acceptance, love and karma*, GUYANA TIMES, June 7, 2020, at <https://guyanatimesgy.com/hinduism-and-homosexuality-teachings-of-acceptance-love-and-karma/>.

¹⁴⁵ *Id.*

¹⁴⁶ Ericka Howard, *Clashing Rights? Freedom of Religion or Belief and Equality for LGBT People* in SPECIAL RAPPOREUR’S COMPILATION OF ARTICLES ON FREEDOM OF RELIGION OR BELIEF AND SEXUALITY 21 (2017).

¹⁴⁷ *Id.* at 24.

¹⁴⁸ *Id.* at 22.

¹⁴⁹ *Id.* at 19.

Part of the principle of respect for the rights of others to believe is that, in human rights law, there is no right not to be offended. Freedom of expression includes expressions that may be regarded as deeply offensive, shocking or disturbing; and, religious believers cannot expect to be exempt from criticism. The right to change religion or belief would not be meaningful without open debates about religions and belief with room for criticism and even denial of other people's religion or beliefs. This is very much linked to the next principle.¹⁵⁰

Promoting pluralism and fostering tolerance among different groups is another significant aspect of conflict resolution. Howard says that society should welcome diversity of beliefs and—owing to the principles of pluralism and tolerance—religious adherents should also be able to accept that there will be persons who challenge their belief systems just as non-believers should be able to tolerate expressions of religion that they might find disagreeable.¹⁵¹

Moreover, any limitations imposed on the right to religious freedom must be justifiable and proportionate to the interest of persons of diverse SOGIESC.¹⁵² Howard calls this balancing of interests as a “consideration of the question whether the legitimate aim of the restriction on the right could have been achieved by less restrictive or less discriminatory means.”¹⁵³ Such restrictions must also be prescribed by law, as well as “clear, publicly accessible, and non-retrospective,”¹⁵⁴ to ensure that people are able to understand the circumstances wherein restrictions might be imposed and anticipate the consequences of their noncompliance.¹⁵⁵

Howard noted the recommendations of the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (“ILGA-Europe”) to resolve the differences between between religious adherents and gender rights advocates outside the courts. First, a constructive dialogue should be conducted in good faith, marked by honesty, willingness to embrace each other's perspectives, and mutual respect for the right to express views in a non-judgmental manner.¹⁵⁶ The ILGA report adds that parties involved must refrain from essentializing religions or beliefs, or from erroneously attributing specific views or values to entire groups or communities, regardless of whether they are defined by their religion or belief, sexual orientation, gender identity, or any other

¹⁵⁰ *Id.* at 23.

¹⁵¹ *Id.*

¹⁵² *Id.* at 24.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 24–25.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

characteristic.¹⁵⁷ Lastly, ILGA-Europe proposes that reporting of legal cases should be conducted accurately and within the relevant social context since “erroneous reporting of high-profile cases may make tensions between religion or belief and other interests appear more prevalent or intractable than they actually are.”¹⁵⁸

While the process of dismantling the abstract dichotomy that has arisen through generations of conflicting beliefs and ideals may pose challenges, there is hope for harmonization in the light of these principles, ground rules, and the progressive attitudes exhibited by various religions towards the acceptance of persons of diverse SOGIESC. Ultimately, both religious people and persons of diverse SOGIESC simply seek to be heard, respected, and protected.¹⁵⁹ They do not ask for special treatment but only for a sense of belonging in a society that is safe and respectful of differences.¹⁶⁰

VIII. CONCLUSION

Religion has long held a significant role in Philippine society, deeply embedded within the nation’s political and legal frameworks. The right to religious freedom has evolved to attain a prominent status, often designated as a “preferred” right in our judicial system. This recognition is evident through the doctrines of benevolent neutrality and the compelling state interest test.

The doctrine of benevolent neutrality lays the foundation for accommodating religion when it comes to governmental actions, allowing persons and groups the freedom to exercise their religion without undue impediment.¹⁶¹ It provides the underpinning for the compelling state interest, where the right to religious freedom is considered “favored” subject only to restrictions when there is a compelling state interest and laws encumbering it are rigorously scrutinized.¹⁶²

In this context, the State, in its pursuit of gender equality, bears a substantial burden to demonstrate the necessity of restricting the exercise of religious freedom. To achieve this, it is paramount to underscore that the interest in safeguarding the right of persons of diverse SOGIESC against gender discrimination is both legitimate and compelling. The issue of gender

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Barwick, *supra* note 38, at 73.

¹⁶⁰ *Id.*

¹⁶¹ *Estrada*, 492 SCRA at 43.

¹⁶² *Id.*

discrimination, which intersects with numerous other rights and facets of human life, extends its impact beyond persons of diverse SOGIESC to concern society in its entirety. Furthermore, the right against gender discrimination must be granted parity with the right to religious freedom, in accordance with the indivisibility principle of human rights, which recognizes all human rights as interdependent, interrelated, and equally fundamental.

Much like the right to religious freedom, the right to equality derives from the inherent dignity of every person and finds safeguarding in the Philippine Constitution and in numerous international human rights instruments. While the right to religious liberty enjoys non-derogable status under international human rights law, it is not, however, absolute. The freedom to act upon one's belief is subject to regulation where those beliefs are translated into actions that impact the public welfare. Importantly, the notion of morality in Philippine law is secular rather than religious, and courts must assess the morality of certain actions through the lens of civil law rather than ecclesiastical law. This approach ensures that the right to religion is not elevated as a preferred right but stands on equal footing with other rights in the eyes of the law.

Indeed, all persons merit equitable treatment under the law, grounded in the fundamental principles of common humanity and shared dignity. The equitable treatment of the right to religious liberty and the right to gender equality is essential for alleviating tensions between religious adherents and gender rights advocates. This equitable approach not only transcends abstract divides but also fosters opportunities for both sides to explore common values and promote inclusivity. Significantly, various religions have begun to acknowledge the challenges of gender discrimination faced by persons of diverse SOGIESC, recognizing the imperative of treating them with equal respect, compassion, and acceptance.

In the end, irrespective of religion, belief, sexual orientation, or gender identity, all persons deserve to live in a society that reveres diversity and upholds everyone's inherent dignity.