

**PRICE OF GOD: EMOTIONS AND RATIONALITY IN DETERMINING
CULPABILITY WITHIN THE AMBIT OF
RELIGIOUSLY THIN SKULLS**

Abstract

Amongst the various fundamental rights guaranteed by the Constitution, the Right to Freedom of Religion, covered under Articles 25-28, grants every individual the right to follow their religiously held beliefs and practices. Given that these fundamental rights apply equally to all people on Indian soil, it is not improbable for claims regarding such fundamental freedoms of religion and secularism to tread almost all domains of Indian Jurisprudence. One such untrodden legal realm under Criminal Law is the thin skull principle and duty to mitigate damages when a person refuses to accept medical treatment for reasons grounded in religious beliefs and practices. What then is the extent of liability of the defendant with respect to failure to mitigate damages owing to religious adherence? Should such religiously held beliefs be considered reasonable even though they pose a conceivable risk to life or, impose upon the plaintiff, a duty to mitigate and therefore, not a pre-existing state within the ambit of the eggshell skull rule?

The thin skull rule rests on the underlying principle that the defendant must “take his victim as he finds him” and therefore, must compensate for the injury that his victim suffers even if the injury is of an unusually high degree than reasonably foreseeable in like circumstances owing to some pre-existing vulnerability. Such a pre-existing state extends not only to physical defects but also to psychological incapacities¹. The Supreme Court applied the principle of psychological thin skull in *R v. Blaue*² where the plaintiff, being a Jehovah’s Witness refused blood transfusion subsequent to the defendant’s act of stabbing her thereby, resulting in her death. The defendant argued that he should not be held guilty of manslaughter because the victim unreasonably *chose* not to have the blood transfusion, breaking the causal chain. However, the Court importantly held that in exercising her conviction, the plaintiff did not act unreasonably in eschewing the required medical treatment even though it imposed a risk to life and eventually resulted in her death, atleast in the context of criminal law:

¹ *Steinhauser v. Hertz Corp.* 421 F.2d 1169 (2d Cir. 1970); *Randhawa v Wang* 2008 BCSC 435 (holding eggshell skull principle applies to emotionally fragile plaintiffs) ; *Theisen v Kover* 2008 BCSC 1445 (Cumming J: no basis for giving a more restrictive approach to the principle in cases where psychological injuries are suffered than would be given in cases where only physical harm is suffered)

² 61 Cr App R 271(1975)

It has long been the policy of the law that those who use violence on other people must take their victims as they find them. This in our judgment means the whole man, not just the physical man. It does not lie in the mouth of the assailant to say that his victim's religious beliefs which inhibited him from accepting certain kinds of treatment were unreasonable. The question for decision is what caused her death. The answer is the stab wound. The fact that the victim refused to stop this end coming about does not break the causal connection between the act and death³.

However, such a standard of "reasonableness" is not universal as the thin skull principal rests at the very intersection of two parallel perceptions of an individual- one as an autonomous actor and the other as a sum of their experiences, conditions and choices⁴. Tension then lies in the very nature of religiously- motivated thin skulls being a pre-existing state and a non-voluntary choice incapable of being a *novus actus reus* thereby, making such individuals susceptible to increased harm following being a victim of criminal negligence. Thus, whether or not religious thin skulls should be incorporated within the eggshell skull rule to determine culpability boils down to our assumptions about the reasonable person.

Common law places a great weight on the Reasonable Man, yet the word is almost always challenged. What one considers reasonable can be categorized in two ways- (i) where reasonableness concerns events and states, including risks of which an actor is conscious, that can be justly assessed without regard to the actor's individual traits, and (ii) where reasonableness concerns culpable mental states and emotions that cannot justly be assessed without reference to the actor's capacities⁵. What then are the canons of "reasonableness" in determining culpability? Consider a situation where a Sikh, following his religious beliefs, chooses to wear a turban rather than a protective head-gear while riding on a motorcycle and gets involved in an accident. Where a helmet could have prevented serious injury and the Sikh suffers brain damage. Should the Sikh be compensated for the full extent of his injuries, even though he had *chosen* not to wear a helmet? Such a situation is not improbable and certain jurisdictions have express laws barring Sikhs from wearing head-gears, which would otherwise be obligatory for other people⁶. These legislations essentially provide the framework of "essential religious practices" under Article 25 and helps Court determine whether or not such

³ Id. at 1415

⁴ Olga Redko, "Religious Practice as a Thin Skull in the Context of Civil Liability" (2014) 72:1 UT Fac L Rev 38 at 50.

⁵ Westen, P. Individualizing the Reasonable Person in Criminal Law. *Criminal Law, Philosophy* 2, 137–162 (2008)

⁶ S.129 of the Indian Motor Vehicles Act,1988; Rule 83 of the Highway Code: both exempt turbaned Sikhs from wearing helmets while driving or riding on motorcycles. See also, s.11&12 of the UK Employment Act, 1989 which exempts turbaned Sikhs from wearing protective headgear at a workplace except when dealing with hazardous materials.

convictions fit within the canons of “reasonableness”. Another foreseeable situation is where a Muslim refuses to accept medicines following being a victim to a criminal act during the fasting period of Ramadan. Therefore, to assess whether or not a religiously-motivated refusal of medical treatment is reasonable, one must pay heed to the nature of claim grounded within the faith.

The refusal of blood transfusions is an obligatory practice for eight million Jehovah’s Witnesses worldwide, following which an estimated one thousand followers die each year⁷. Similarly, wearing of turbans is considered to be one of the most prominent identity of a Sikh man⁸. One can argue that the existence of such religious convictions impose upon a victim, a “choice” between grave repercussions(might extend to death) or violating his/her faith(mitigating the injuries) and if a person chooses the latter over the former, the defendant should not be liable for the full extent of the injuries since there was no longer a causal nexus between them. A line, therefore must be drawn between those who are not capable of rational decision making owing to a psychological infirmity and those who are capable. However, such a line of reasoning would exclude those who refuse medical treatment by reason of sincerely held beliefs and would imply that the plaintiff’s religiously-motivated refusal of treatment is an intervening human action, thereby breaking the causal nexus. A crucial element under this doctrine however, is that the intervening cause must *intervene* and therefore, a state that exists prior to the defendant’s action cannot possibly intervene⁹. Religious and cultural attributes are part of the defendant taking the victim as he/she encountered them. Thus, plaintiff’s refusal of medical treatment for religious reasons should not be considered an intervening action since the refusal in this case, is not voluntary to begin with. The plaintiff in such a situation might not be making a free, real and unpressured choice at all and may be led by strong emotions that can erode a plaintiff’s ability to act freely. Certainly, religious convictions are guided by strong emotions and choices made because of it, if considered a choice at all, should be held involuntary. Moreover, when faced with such a choice of accepting or refusing treatment that is against one’s faith, reason does not cross one’s mind in making the decision. In other words, no matter what costs are placed before the defendant, he/she will not forego a sincerely-held

⁷ HK Rignes & H Hegstad, “Refusal of Medical Blood Transfusions Among Jehovah’s Witnesses: Emotion Regulation of the Dissonance of Saving and Sacrificing Life” (2016) 55:5 J Relig Health 1672 at 1674.

⁸ Guru Gobind Singh, 5 Ks

⁹ Michael S. Moore, *The Metaphysics of Causal Intervention*, 88 CAL. L. REV, p.832 (2000)

religious belief, even if it results in death. The plaintiff in such a case, continues to act in accordance with his/her conviction which reason cannot change. Choices backed by such strong emotions should thus, not be treated as a voluntary event subsequent to the initial injury. Rather, they should be treated as a pre-existing state at the time of the defendant's wrongdoing and therefore, incapable of acting as a *novus actus reus*.

Judging from the lens of duty to mitigate, it can be argued that since a victim's unreasonable post-injury behaviour limits the amount of damages that such a victim may recover, harm done to the victim owing to religious adherence must be balanced against the public policy considerations of cost-minimization thereby, limiting the scope of defendant's culpability. However, approaching this issue from the plaintiff's perspective, it would not be justifiable to firstly inflict physical harm on someone and then additionally, limit their scope of autonomous decision-making about a fundamental aspect of their personality and moreover, a Constitutional Right acquired by virtue of being born an Indian Citizen. Additionally, as previously discussed, placing a victim in a position where one has to choose between violating religious ideologies or suffering grave repercussions, i.e., psychological harm v. physical harm, amounts to forcing such a victim into making a decision that is fundamentally constrained since the alternatives transgress the very boundaries of fundamental freedoms, i.e., ensuring respect for one's faith and their autonomy as an actor. Moreover, the cost-minimization argument becomes blurred when there is a psychological cost attached with *accepting* treatment. If the victim, by virtue of his/her religion is opposed to medical treatment, it would not be absurd to assume that he/she would likely suffer a great degree of psychological harm by accepting the treatment. Since such a harm resulted from the defendant's wrongdoing itself, the victim should be compensated for the same. It is extremely difficult to quantify and balance the psychological harm suffered from accepting the treatment vis-à-vis the physical damages suffered as a result of refusal. It therefore, becomes incorrect to assume that the physical harm would manifestly overshadow the psychological harm especially in cases where the plaintiff has decided that the psychological harm would be worse and therefore, not accepting treatment. Since this argument fails to take into account all costs associated with the defendant's wrong-doing, it would not be justifiable to say that decisions made because of religious convictions are subject to limiting the scope of defendant's culpability.

Given that the eggshell skull rule embodies fairness and equality underlying principles of corrective justice, is it in conformity with the rule to expect a religious adherent to bear the costs of their sincerely held beliefs, especially when they live in a society where plurality of religion is not merely a descriptive fact? As a religiously diverse society a secular state that it

so claims, India is thus, an ideal setting to explore this fundamental yet untrodden convergence between religion and law, in so far as it concerns determining culpability in the context of criminal law. This is not to say that all religious thin skulls should be universally incorporated within the ambit of the eggshell skull rule but rather that it should, at least be taken into consideration when a refusal of treatment is borne out of a sincerely held belief and in harmony with the subjective requirements of one's faith. It should be limited where that refusal only claims to be rooted in religion but cannot be sourced, i.e., where it goes beyond the foreseeable religious requirements that necessarily exist within such a multicultural society. Thus, instead of going into the complexities of an objective or subjective understanding of an individual for the purposes of adjudicating on the issue, the ideal way ought to be from the objective lens, not that of a reasonable man but whether that the religious refusal of medical treatment is within the realm of our diverse society that acknowledges the profundity of religious freedom. In doing so, the court rather than asking what a reasonable person in like circumstances would do, would instead first ask whether the religious refusal was in accordance with a sincerely held belief that could be reasonably found in a multicultural society and secondly, whether that refusal can be traced to a reasonably foreseeable understanding of such a religion. This is an important step as it ensures religious autonomy remains a protected right for Indians to "profess, practice and propagate" their religion as they see fit while simultaneously upholding the fundamentals of criminal law. However, easier preached than practiced, the ultimate decision of whether or not religious thin skulls should be incorporated, if at all, within the eggshell skull rule invokes a high degree of judicial discretion as it revolves, more often than not, around the personal bias surrounding one's interpretation of law and religion. Until such a decision is reached on the issue, the question of whether a religious thin skull is analogous to the eggshell skull rule, remains a double-edged sword, at least in the context of criminal law in India.

(2057 words)