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The Impact of the case of Jordaan and Others v Minister of Home Affairs and Another on Religion in South Africa

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Abstract

The judgment in J*ordaan and Others v Minister of Home Affairs and Another* (*Jordaan* case) marks a significant advance in South African equality jurisprudence. It changed a long-standing law rooted in important African tradition and religious principles on marital surname changes. Prior to the *Jordaan* case, legal frameworks permitted only women to adopt their husbands' surnames upon marriage. The judgment rectified this imbalance, granting men the option to adopt their wives' surnames as well. While this decision enhances gender equality, it also raises relevant questions regarding its implications within religious contexts, particularly Christianity, which holds considerable prominence in South Africa. This analysis employs a qualitative research methodology, synthesising relevant literature, and provides an overview of the case's facts and judgment. There is also a comprehensive analysis of the extent to which the Jordaan case affects surname change and Christian beliefs. From a Christian perspective, the shift towards allowing surname adoption in both directions challenges the longstanding belief that only women should take their husbands' surnames. This reconfiguration not only constrains certain interpretations of religious doctrine but does so in a manner that the court has legitimised. However, the judgment could ultimately benefit the Christian community by establishing equitable ground for naming conventions that reinforce partnership rather than hierarchy within familial structures. Consequently, it is recommended that religious leaders actively engage in legislative discussions as Parliament formulates new laws in light of the *Jordaan* ruling, ensuring that religious perspectives are adequately represented and considered in future legal frameworks.

Keywords: Religion, surname change, Christianity, South Africa, gender equality

Introduction

The case of *Jordaan and Others v Minister of Home Affairs and Another* sought to bring equality between married men and wives regarding surname change (*Jordaan* case). The judgement determined that Parliament must create a law allowing men to adopt their wives' surnames. Although the *Jordaan* case was adjudicated from a gender equality perspective, its consequences are far-reaching in the diverse South African society. During deliberations in the *Jordaan* case, the court highlighted that the laws governing surname change were based on patriarchal and religious norms; however, it elaborated only on patriarchal influence, while providing a limited discussion on the role of religious norms *(Jordaan* case 2025). This study aims to address this gap by critically examining the influences of religion on surname changes in South Africa and assessing the ramifications of the *Jordaan* case on religious practices. Additionally, while the Jordaan case has already been explored in relation to the lived experiences and perceptions of South Africans (Kundlwana et al., 2025:2621), Kundlwana et al.'s study falls short of providing a thorough analysis of the judgment's impact on religion.

Open Rubric

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Religion is arguably the most powerful and influential mechanism shaping people's lives in many societies (Leburu & Kgadima, 2025:2). Religion refers to "a unified system of beliefs and practices relative to sacred things," which serves to "unite into one single moral community called a Church" (Adjei & Mpiani, 2022:3531; Leburu & Kgadima, 2025:5; Mwamba, 2014:71). Although in South Africa religious diversity exists and various faiths, such as Judaism, Islam, Buddhism, Hinduism, and indigenous African traditions, are accommodated, this paper will primarily focus on Christianity (Mwamba 2014:71). Christianity is selected because it is the most widespread religion worldwide (Akhverdiev & Ponomarev, 2018:3). Moreover, South Africa is predominantly a Christian nation, with around 84.5% of the population practising Christianity (Department of Statistics South Africa 2025). Christianity has been defined as a system of moral norms, feelings, and behaviour closely linked to biblical principles (Akhverdiev & Ponomarev, 2018:3). Christianity includes various religious denominations such as Protestantism, Catholicism, Lutheranism, and African-initiated churches. However, what unites these Christian denominations is that their teachings and beliefs are derived from the Bible.

This paper investigates the influence of Christian norms on surname change regulations as well as the implications of the court's judgment for the Christian community. It posits that, despite the legal focus of the case, a parallel norm within Christianity persists that upholds the practice of women adopting their husbands' surnames. To achieve this objective, the paper will first provide a summary of the Jordaan case, followed by an examination of the interplay between law and religion. The penultimate section explores biblical texts on name change and concludes with an evaluation of whether the legal provisions deemed unconstitutional infringe on religious rights. Ultimately, the paper advocates for the involvement of religious leaders in the forthcoming legislative discussions regarding surname changes, emphasising the need for their engagement in matters that align with their fundamental beliefs. It also suggests that, going forward, religious leaders should be active participants in court cases that affect their core beliefs.

Methodology

This study utilises a qualitative research methodology, centred on a literature review. The *Jordaan* case serves as the foundational text, informing subsequent discussions. Because the case appropriately illuminated the intersection of law and religion, the study adopted an interdisciplinary approach that merges legal and theological perspectives. By adopting this approach, the study facilitates a comparative examination of the law and religion, specifically in the context of how the two fields interlink and interrelate. Other primary sources of law that were consulted are the Birth and Death Registration Act (1992) and the Regulations of Births and Deaths Act (2014) and the Constitution of South Africa (1996). Regarding Christian beliefs, the New King James Bible serves as the primary religious source. Interpretations of these primary sources were derived from journal articles, textbooks, book chapters, and general literature selected based on their relevance to the study's objectives. Purposive sampling then took place to identify the most relevant literature aligned with the objectives of the paper. A thematic analysis approach was used to facilitate the extraction of key insights into the interconnections and interrelatedness of law and religion. This approach culminated in conclusions regarding how the normative understanding and the egalitarian interpretation of the key biblical principles are understood within contemporary South Africa.

Case summary

In the *Jordaan* case (2025:9), two couples challenged the traditional conventions of surname adoption in South Africa that allowed surname adoption by wives following marriage, as outlined under Section 26(1) of the Birth and Death Registration Act (1992:15) and Section 18 of the Regulations of Births and Deaths (2014:16) (surname change laws). These provisions

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ultimately prohibited couples from retaining the wife's surname as the family name. Consequently, the couples filed a suit in the High Court, arguing that these surname change laws contravened Section 9 of the South African Constitution (1996:10), which guarantees gender equality. The High Court supported their position, deeming the existing surname change laws unconstitutional. In accordance with Section 172(2) of the South African Constitution (1996), the ruling required confirmation by the Constitutional Court for it to be final. Hence, the High Court judgment was brought before the Constitutional Court for confirmation.

The Constitutional Court upheld the High Court's decision, elucidating that the surname change laws unjustly differentiated between genders, thus constituting unfair discrimination as stipulated in Section 9(3) of the Constitution. The Court recognised the inequitable treatment faced by men, who were barred from adopting their wives' surnames. It also highlighted the plight of women, whose surnames were rendered unavailable as potential family designations. The Court held that this discrimination was deeply rooted in patriarchal norms and certain religious practices that had historically perpetuated female subordination and male dominance. The Court mentioned that religion could not be used to perpetuate this kind of hierarchy, which unfortunately no longer fits within a democratic society that upholds equality and dignity. The Court, however, did not acknowledge the importance of reconciling constitutional values, particularly the intersection of rights concerning gender equality and religious freedom as articulated in Sections 15 and 31 of the Constitution. The Constitution guarantees the freedom of religion and belief, and simultaneously mandates equality, necessitating a delicate balance when competing rights are in conflict, as provided for in Section 36. The Court's ruling did not adequately reflect this balance, appearing to prioritise the right to equality over religious rights. While equality forms part of the founding principles of the Constitution, this does not necessarily mean it holds a superior position to other rights, hence the need to apply Section 36 when rights are in conflict. The Court's decision compromised the public's access to a constitutional balance of rights, particularly the right to freedom of religion and belief versus the right to equality. This paper will focus on the intricate balancing of these two competing rights. At this point, it is important to note that the provision permitting only women to adopt their husbands' surnames was declared unconstitutional. As a remedy, the Constitutional Court directed Parliament to amend the relevant laws within two years, while temporarily allowing husbands to adopt their wives' surnames (*Jordaan* case 2025:36).

Religion and the Law

The *Jordaan* case signifies a pivotal development in South African law, paving the way for legislation that promotes gender equality in surname adoption. This evolution reinforces the notion that law is not merely an assembly of regulations but rather a complex process involving legislative, judicial, and administrative interactions. The law-making process is very dynamic, yet with the ultimate goal of assigning rights and duties (Mwamba, 2014:71). Sandberg (2016:66) acknowledges the influence of legal frameworks on various domains, including religion, politics, and familial structures.

Law and religion represent interconnected dimensions of social relations and human existence (Mwamba, 2014:71; Horhogea, 2019:337). Both domains are grounded in analogous foundational concepts concerning existence, societal order, the individual and community, as well as knowledge and truth (Horhogea, 2019:338). This relationship is apparent in shared interpretations of fundamental principles, such as 'sin and crime, covenant and agreement, and justice,' which can lead to convergence in the reasoning of legislators and jurists (Horhogea, 2019:338). Furthermore, legal doctrines are often informed by religious concepts; for instance, the principle of punishment in criminal law draws on theological notions of Purgatory and redemption (Horhogea, 2019:338).

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Another significant connection between law and religion lies in the guarantee of religious freedoms. The right to religion is internationally recognised as a fundamental human right, as enshrined in the Universal Declaration of Human Rights (1948). Article 18 of the Universal Declaration of Human Rights provides that:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance

More than two decades after this Declaration, the right to religion was further reinforced through international and regional agreements, such as Article 18 of the International Convention on Civil and Political Rights (1966:10) and Article 8 of the African Charter on Human and Peoples' Rights (1981:4), which provide for these rights. With South Africa having ratified these instruments, such religious rights enjoy robust protection against any unjustified infringement.

The right to religion is also embedded in section 31 of the Constitution of South Africa (1996:21). This right is a fundamental human entitlement, and any legislative action that constrains it would infringe upon inherent natural rights (Mogoeng Wa Mogoeng, 2024:3). The former Chief Justice of South Africa acknowledged the connection between law and religion when she stated that (Mogoeng Wa Mogoeng, 2024:4):

> I believe that we can only become better people if religion could be allowed to influence the laws that govern our daily lives, starting with the Constitution of any country.

South Africa's human rights jurisprudence encompasses several significant cases concerning the freedom of religion, as delineated in Section 31 of the Constitution of South Africa (1996:21). A prominent example is the case of Christian *Education South Africa v Minister of Education* (1998) (*Christian Education* case). This case was initiated by a representative organisation of 196 Christian independent schools, which alleged that Section 10 of the South Africa Schools Act (1996), which prohibited and criminalised corporal punishment, violated Christian norms of discipline (*Christian Education* case 1998:2). Although the Christian Education South Africa did not obtain a judgment in their favour; the implication of the judgment is that the right to religion is enforceable in courts and a balance will always have to be struck between religious freedoms and other rights — in that case that case, the right to dignity. Furthermore, while religion offers guidelines for moral behaviour, it can inadvertently promote gender inequality in ways that may contradict constitutional provisions (Constitution of South Africa 1996:10; Leburu & Kgadima, 2025:2).

Although this paper focuses on the Christian religion, it is important to consider the case of *MEC for Education: KwaZulu-Natal and Others v Pillay* (2007:4) (*Pillay* case), which concerned the Hindu religious practice of wearing a nose stud at school. The school's failure to provide an exemption for pupils wishing to express their cultural and religious beliefs was found to be discriminatory (*Pillay* case 2007:91–92). The school was accordingly ordered to amend its Code of Conduct to provide for exemptions for religious and cultural practices (*Pillay case* 2007:96). Additionally, the Rastafarian practice of using cannabis was examined in the case of *Minister of Justice and Constitutional Development and Others v Prince (Clarke and Others Intervening); National Director of Public Prosecutions and Others v Rubin; National Director of Public Prosecutions and Others v Acton* (2018) (*Prince* case), and this resulted in adults being permitted to use cannabis in their private homes. Consequently, a Rastafarian attorney who had been denied registration due to cannabis use, an integral aspect of his faith, was permitted to register as a legal practitioner. These cases highlight the importance of

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acknowledging religious diversity by granting exceptions within a typically regulated environment. These precedents, in the context of the Jordaan case, suggest that similar exceptions could apply for Christians who oppose the adoption of a wife's surname by her husband.

Due to the significance of religious and related rights, Section 185 of the Constitution of South Africa (1996) has designated the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities as a protective oversight body for these rights. Its primary aim is to foster respect for the rights of these communities. With the right to religion, societies are free to determine how they practise it. Among Christians, the adoption of the husband's surname has become a prominent norm, essential to their religious practice.

(Sur)Name Adoption and Christianity

The implications of name changes in society vary widely. For instance, substantial shifts in regimes or power dynamics often lead to alterations in personal and place names (Rollmann, 2018:146). Control over nomenclature serves as a vital element in consolidating political power and is integral to social and political transformation (Rollmann, 2018:146). Notably, perspectives on surname adoption following marriage differ within Christian contexts. According to a media survey conducted by Khan (2025), a People's Church of God leader emphasised that the Bible lacks a definitive injunction regarding a man adopting his wife's surname, given that the modern understanding of surnames did not exist in biblical antiquity (Khan, 2025; Zenda, 2025). This interpretation aligns with findings from Kundlwana et al. (2025:2628), where participants recognised that Christianity does not explicitly legislate surname norms. One participant was quoted as saying: "In Christianity, the common teaching is that the wife takes the husband's surname… but the Bible does not give direct laws about surnames, it's more about unity" (Kundlwana et al., 2025:2628).

Conversely, some scholars challenge the assertion that the Bible offers no directive for adopting the husband's surname. They contend that, although such guidance is not explicitly stated, it is reflected in the underlying principles found in biblical texts (Ugwu, 2020). Many Christian denominations continue to employ registers and rituals predicated on the expectation that wives will assume their husbands' names (Kundlwana et al., 2025:2623). The practice of adopting (sur)names within Christianity is also evident in various biblical narratives.

a) Identity and purpose

Historically, names symbolise personal identity, heritage, and lineage in biblical texts (Galang, 2023). The phenomenon of name changes in scripture often correlates with an individual's divinely ordained purpose. Instances of renaming signal shifts in identity or mission, such as God renaming Abram to Abraham and Sarai to Sarah (Genesis 17:15 Galang, 2023; Gregg, 2005, Lambert 2025:4). Throughout scripture, name changes commonly occur in the context of divine encounters that result in transformative missions (Lambert, 2025:1). Jacob was changed to Israel (Genesis 32:28), Simon to Peter (Matthew 16:18), Hoshea to Joshua (Numbers 13:16), and Saul to Paul (Acts 13:9) (Lambert, 2025:6-8). This illustrates that names in the biblical context transcend mere identification; they encapsulate an individual's comprehensive identity, legal standing, social stature, and reputation (Gregg, 2005). This is in line with the scripture which says, 'A good name is to be chosen rather than great riches...' (Proverbs 22:1).

Duff (2016) invokes the creation narrative in Genesis to explain the church's understanding, or, according to the authors of this article, the "misunderstanding" of male and female roles, and their proper relation. Moder (2019:85) contends that the "patriarchal theological interpretations that have depicted God as a dominant male figure that subjects women to a

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male hierarchy as a subordinate" underpin women's practice of adopting their husband's surnames. Following marriage, both partners undergo a redefinition of identity (Ugwu 2020). This new identity would speak to their new calling and new assignment in their marriages.

b) Examples from Biblical Marriages

To analyse the theological perspectives surrounding the practice of adopting a new name upon marriage, one can draw parallels from biblical marriages narratives. One of the most significant illustrations is found in the account of Adam and Eve, the first conjugal union in the scriptural narrative. After the creation of Eve, Adam bestowed upon her the name that connotes her role, for Eve means 'mother of the living' (Genesis 3:20; Ugwu, 2020). This designation underscores a relational dependency, indicating that Eve's identity and purpose were intrinsically linked to Adam, as her capacity to be 'mother of the living' was not achievable in isolation from Adam (Ugwu, 2020).

The biblical precedent for naming conventions suggests a wife's identity is often articulated in relation to her husband. In Hebrew tradition, typically, a wife's name appears in association with her husband's, unless a distinct circumstance necessitates reference to her paternal lineage (Ugwu, 2020). For instance, in Matthew 1:16, the phrase 'Joseph the husband of Mary' clearly mentioned Mary after her husband emphasising her belonging to him rather than her family of origin. This reflects a linguistic parallel with contemporary practices of name incorporation, where a woman is identified through her marital affiliations, thus reinforcing the patriarchal construct present in biblical narratives (Ugwu, 2020). The practice of mentioning wives' names alongside their husbands was the old way of recording women's names through their husbands' names, similar to our current practice. A husband's name or surname identifies a woman as belonging to that particular man (Ugwu, 2020).

The dynamics of marriage suggest mutual belonging. However, the men's prerogative in the naming convention, substantiated by cultural practices, is a manifestation of societal constructs surrounding marriage. The husband initiates the union, pays the bride price, and is culturally positioned as the familial provider, which collectively grants him the privilege of being named first (Ugwu, 2020). This is evident in Genesis 24:1, where Abraham's servant is tasked with procuring a wife for Isaac, highlighting the transactional and territorial dimensions of marriage (Genesis 24:6–10, 52). Likewise, Jacob's laborious undertaking to secure his wives further cements the notion that the ultimate familial identity shifts towards that of the husband once the bride is integrated into his household (Genesis 29:15–28). Ultimately, Jacob departed with his wives and established his own residence, distanced from his in-laws. The significance of these two marriage scenarios lies in the fact that once a man fulfils the dowry obligation and his wife or wives join him in his domicile, the familial identity is predominantly anchored in the male lineage.

c) **Men headship and Identity**

The concept of male headship among Christians is derived from Ephesians 5:22-33, which provides that:

> **23** For the husband is head of the wife, as also Christ is head of the church; and He is the Savior of the body.
>
> **24** Therefore, just as the church is subject to Christ, so *let* the wives *be* to their own husbands in everything.
>
> **25** Husbands, love your wives, just as Christ also loved the church and gave Himself for her,

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This biblical text has received significant scholarly attention across various contexts. For example, Unachukwu (2024) explores this topic from the perspective of Nigerian Christians in Ebonyi State, Choi (2023) wrote from a Korean church perspective, Colyn and Klinker from the context of Pakistani Christians and Kundlwana et al.' (2025:2628) writing from a South African perspective. These scholars agree that this text profoundly influences the familial hierarchy in Christian marriages, with the husband viewed as the head and the wife positioned in a subservient role to the husband's authority. Tousing (2020:77-78), a South African scholar, supports this assertion by highlighting that Ephesians 5:21-33 (along with Colossians 3:18-4:1) shapes the understanding of women's roles within the household and continues to impact Christian congregants significantly.

Tousing (2020:77) argues that Ephesians 5:21-33 is one of the Pauline letters that has played an extraordinarily substantial role in the discussion about women's positions in both the church and society (Vengesai, 2024:7; Tousing 2020:77; Machingura, 2013:234). Ephesians is still regarded as a normative text outlining the God-willed relationship between men and women in marriage (Tousing 2020:82).Women often navigate this dynamic through various forms of compliance, either overtly or subtly, such as acquiescing to their husbands' demands, suppressing personal discontent, or withdrawing from discussions surrounding authority and power (Leburu & Kgadima, 2025:2). Thus, there is a substantial consensus among scholars that nomenclature practices embedded within Christianity perpetuate the adoption of husbands' surnames by wives.

The sacrificial love exhibited by Christ towards the Church serves as an example for the husband's duties, with Ephesians emphasising that just as the Church is united with Christ and adopts His name, similarly, a wife signifies her new identity and spiritual union with her husband upon marriage by adopting his name (Galang, 2023). By taking her husband's surname, a woman aligns herself with the biblical image of Christ's bride (Galang, 2023). This act can only be performed by the wife and the children with whom the husband shares his surname (Piper, 2013). It serves as a reminder of the commitment her husband has made to love and care for her sacrificially, as Christ does for the Church (Galang, 2023). This transition marks her willingness to submit to his leadership, mirroring the Church's submission to Christ's authority (Galang, 2023).

The interpretation of certain biblical verses, specifically 1 Corinthians 14:34-35 and 1 Timothy 2:11-15, has historically been employed to substantiate patriarchal structures within ecclesiastical contexts (Homan & Burdette, 2021). The passage from 1 Corinthians asserts that women should remain silent within the church, urging submission in accordance with established law. The scripture in Timothy states: "A woman should learn in quietness and full submission. I do not permit a woman to teach or to have authority over a man; she must be silent." Together, these texts propagate the notion that women lack autonomy and agency, positioning them as subordinate to their husbands, who are viewed as their authoritative figures (Chernyak, 2016: 302). The central theme across these scriptures indicates a hierarchical paradigm that privileges male authority and delineates female subservience (Leburu & Kgadima, 2025:6).

The act of name change carries profound spiritual implications that symbolise the relationship between Christ and the Church, termed His bride (Galang, 2023). Believers are called to identify themselves through Christ Jesus, symbolising their admission into God's family and a new identity through faithful rebirth (Galang, 2023). This association reflects a commitment to Christ's teachings and signifies a transition that elevates the marital relationship beyond mere legal or social constructs to a deep spiritual union (Galang, 2023). The Bible often uses the analogy of marriage to illustrate the relationship between Christ and the Church. Hence, when a wife is admitted into the husband's family, she is automatically expected to be identified with the husband in the same way the church is identified with Christ.

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The normative position presented in Ephesians chapter 5 has however been the subject of egalitarian interpretations, particularly in relation to the text's opening verse (5:21), which instructs mutual submission between husbands and wives. This verse sets a framework for understanding the household code, suggesting that the entire passage is grounded in principles of mutuality and equality (Gatumu 2019: 17; Franklin 2016). Tousing (2020:91) argues that Ephesians 5:21 serves as the foundational premise for this household code, implying that all subsequent instructions are subordinate to the idea of mutual submission.

Unachukwu's (2024:3–4) socio-cultural analysis of Ephesians 5:21–33 posits that Paul was addressing marital issues prevalent in the Graeco-Roman context, characterised by a high incidence of domestic violence, divorce, and a pervasive patriarchal structure. In this light, Paul appears to be advocating for a restructured social order through an egalitarian lens, encouraging an environment where husbands and wives demonstrate love and submission to one another. Ephesians 5:22–33, focusing on the relationship between husband and wife, is particularly significant given the historical context where first-century Greco-Roman men typically held higher social status and authority (Mowczko 2025). Paul's introduction of an ethos of equality to the Ephesian community does not explicitly dismantle the traditional hierarchical structures, yet it promotes a form of reciprocal submission (Unachukwu 2024:5). This submission is construed as a voluntary acknowledgment of each partner's authority (Unachukwu 2024:6).

Low (2019:4) encourages an intertextual reading of Ephesians 5:21-22 alongside Genesis 2:24, asserting that this analysis enhances the understanding of the egalitarian nature of Ephesians. The reference to Genesis 2:24 in Ephesians 5:31 highlights the notion of mutual partnership: "For this reason a man will leave his father and mother and be joined to his wife, and two will become one flesh". The creation of woman from man's rib symbolises equality, as the Hebrew interpretation of a rib signifies a side, thereby portraying women as counterparts made to complement and support men (Low 2019:5).

The citation of Genesis 2:24 in Ephesians 5:31 is indicative of the egalitarian context in which the Ephesians text must be understood (Low 2019:6) Low concludes that Ephesians 5:21-33 advocates for mutual submission and repositions men as sources of support rather than authoritative figures. This reading suggests that a man's commitment to his wife establishes a new kinship unit, independent of his familial origins, and underscores that the creation narrative serves not to establish hierarchy but rather to reinforce marital unity without authority over one's spouse (Low 2019:10).

The model of mutuality in Ephesians 5:21 aligns with the transformative objectives sought in contemporary relational dynamics, as exemplified by the *Jordaan* case. This notion of reciprocity implies that what the husband offers to the wife should be equally expected in return, and vice versa. However, Tousing (2020:92) posits that this scriptural passage has introduced a layer of complexity to the interpretation of Ephesians 5:21-33, particularly in its perceived relationship to equality within Christian marriages. The Ephesian code, while attempting to mitigate the inherent dominance associated with male authority, simultaneously reinforces traditional hierarchies. This duality indicates that the Ephesian code contains both culturally compliant and egalitarian elements. Christ's love for the church models a self-sacrificial love rather than a dominating one. Nevertheless,

Tousing (2020:90) suggests that the dynamics between Christ and the church do not reflect a true equality. Consequently, this assumption extends to the relationship between husband and wife, reinforcing the notion of hierarchy: just as Christians submit to Christ, women are expected to submit to men. This hierarchy, according to Tousing, negates the possibility of women's emancipation as understood in modern contexts. Moreover, during the time of Paul's

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writings, the intention for women's emancipation could receive violent backlash from men (Tousing 2020:90).

Conversely, another interpretive approach emphasises that the essence of this passage is not to engage with contemporary concerns of equality or inequality but rather to address the spiritual lives of Christians in Ephesus (Franklin 2016). This theological view is derived from Ephesians 5:18b, which says that ' And do not be drunk with wine, in which is dissipation; but be filled with the Spirit'. Franklin (2016) argues that interpreting this passage as a guideline for godly relationships can lead to misapplication. Paul's letters were often directed towards specific issues within communities.

In Ephesus, there were concerns regarding women who were abusing their newfound freedom in Christ, prompting Paul to address this matter from a spiritual standpoint (Franklin 2016). In this context, men are instructed to love their wives with the same level of care that they would extend to themselves, a concept underscored by the use of a Christian form of love characterised by respect, rather than self-serving pleasure (Tousing 2020:90). The directive of "as they love themselves" serves to counteract male aggression (Tousing 2020:90), emphasising that husbands are to treat their wives with the utmost care, reflective of the love and respect they afford to themselves (Mowczko 2025).

Limitation of the right to religion through the husband's adoption of the wife's surname

The limitation of religious rights through the requirement for husbands to adopt their wives' surnames poses critical questions regarding the potential infringement on Christian practices, particularly concerning family hierarchy. In light of the judgement in the *Jordaan* case, there is a need to examine whether this imposition restricts Christians' ability to adhere to their religious tenets that advocate for a defined male headship within the family structure. This practice presents a stark conflict with the government's constitutional duty to uphold equality, a fundamental right and principled aspect of the South African constitution (1996:10). Nonetheless, the rights to freedom of religion and cultural expression are equally vital, as they enable individuals to uphold their beliefs and cultural identities (Essap, 2022:1).

The government must adopt a nuanced approach to ensure the simultaneous respect and protection of both equality rights and the rights to religious practice and cultural expression. In examining this tension, it is critical to apply Section 36 of the South African Constitution, which provides the framework for limitation of rights. The general limitation clause acknowledges the necessity of restrictions in certain contexts, acknowledging that not all rights can coexist in absolute terms. Therefore, an assessment of which right should preside becomes paramount. Particularly, the right to freedom of religion and the concept of equality are both significant yet non-absolute.

The only exception noted within the constitutional framework is the right to life, as delineated in Section 11 of the Constitution of South Africa (1996*: Sv Makwanya* 1996). To navigate the complexities surrounding the issue of surnames, one must conduct a rigorous Section 36 limitation analysis, which necessitates a two-stage inquiry. The two-stage inquiry is summarised in the graph below.

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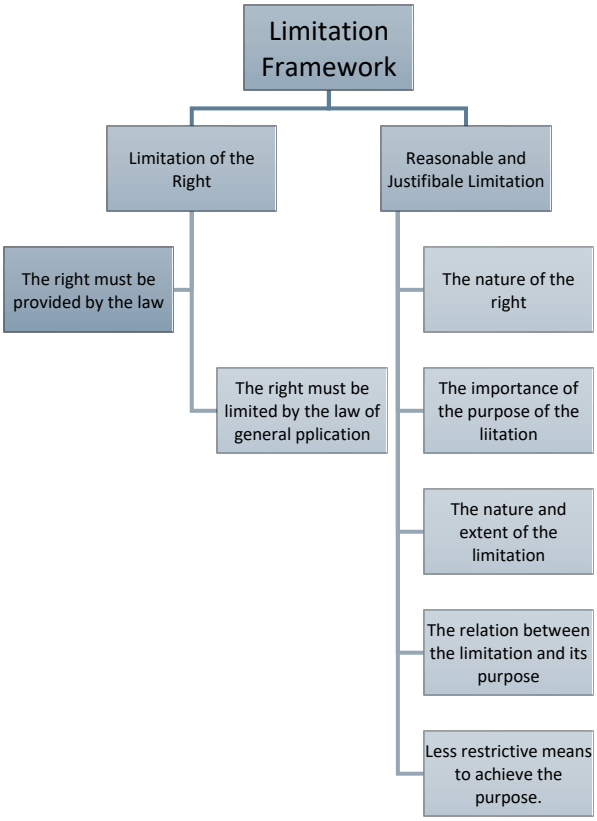

Figure 1. Limitation framework (Author's own)

The first stage requires that the right in question must be provided by the Constitution under the Bill of Rights and that the limitation of the right be in terms of the law of general application. The second stage of this inquiry requires that any limitation of a right must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom (Currie and De Waal 2017:153; De Vos and Freedman 2017:354: *Exparte Minister of Safety and Security and Others: In Re Sv Walters and Anothe*r 2002 paras 26-2).

Legislation, common law, and customary law are listed by Currie and De Waal (2017:156) as constituting law within the context of the limitation clause. De Vos and Freedman (2017:361) added other categories of the laws that can be permitted to limit rights, including subordinate legislation, municipal by-laws, domesticated international conventions and rules of court. Furthermore, any law that seeks to limit rights must be of general application; it must therefore be accessible, precise, and non-targeted, applying universally rather than singling out specific individuals (*President of the Republic of South Africa and Another v Hugo* 1997 para 102). In the discourse surrounding the right to adopt a spousal surname, the court highlighted the potential infringement of the right to equality if this right were not equally extended to husbands. Nonetheless, it must also be acknowledged that certain religious beliefs uphold the tradition of a wife adopting her husband's surname. For instance, Christianity's teachings often endorse this practice, and any deviation may be seen as a constitutional infringement on religious freedoms. Thus, upholding the equality principle could impose limitations on these religious beliefs. Such limitations would likely manifest through legislative action, whether by amending existing statutes like the Birth and Death Registration Act or through new Parliamentary enactments, thereby fulfilling the requirement for a law of general application. This analysis satisfies the inquiry's first stage within the limitation clause.

The second stage of the inquiry concerns the reasonableness and justifiability of the established limitations in the context of an open and democratic society that prioritises human

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dignity, equality, and freedom. This normative assessment is often referred to as the proportionality test (De Vos and Freedman 2017:363). This is a universally accepted approach to limiting rights, and it generally requires that the restricted right be weighed against the purpose of the limitation, that states align the methods employed with the specific objectives sought after, scrutinising the legitimacy of the aim motivating the limitation. (Rautenbach 2014:2230; Maja 2016:120; De Fazio 2021:197). The South African Constitution has established its own proportionality test, which requires consideration of the nature of the right in question, the importance of the limitation's purpose, the scope and extent of the limitation, and the relationship between the limitation and its intended objectives, while also exploring less restrictive means to achieve those objectives (Section 36 a-e). This proportionality test has been applied to a number of South Africa cases before the current Constitution (*S v Makwanyane* 1995) and after the Constitution, including the adjudication of the right to religion (*Christian Education* case, *Pillay*, and *Prince* case). The broad application of the proportionality test serves as testament to its acceptance and integration into the South African legal framework.

a) Nature of the right

To explore the nature of the right, it is essential to evaluate its contribution to an open and democratic society (De Vos and Freedman 2017:367). The 'court must therefore assess the importance of the particular right in the overall constitutional scheme' (Currie and De Waal 2017:164). The importance of the right to religion in South Africa's democratic society can be drawn from constitutional provisions, judicial precedents where such rights have been adjudicated, and in various policies on religion. The South African Constitution (1996:1) has stated that as a country it is constituted with diversity, which diversity includes differences in religious beliefs. Promoting religious rights necessitates an acknowledgement of South Africa's diverse landscape, which showcases a significant degree of tolerance towards various belief systems. Notable legal cases discussed above, such as the *Pillay* case and the *Prince* case, emphasise that the right to practice one's religion should not be arbitrarily limited in a democratic society. De Freitas (2024:3) posits that the importance of religious rights is not only embedded in South African legal policy but is also affirmed through the National Policy on Religion and Education (2003) and the South African Charter of Religious Rights and Freedoms.

b) The importance of the purpose of the limitation

The purpose that the limitation seeks to advance must be important in a democratic society (Currie and De Waal 2017:166). This implies that any limiting measure must align with a legitimate constitutional objective (De Vos and Freedman 2017:369). In this particular discussion, it is observed that the limitation of religious rights, in fact, serves to bolster equality rights for previously marginalised groups, thereby fostering inclusivity. The South African Constitution emphasises the importance of equality as a foundational principle in Section 3 and as a distinct right in Section 9. Consequently, South Africans who belong to religious or cultural groups allowing for the adoption of their wives' surnames can now do so without facing hierarchical repercussions. Thus, the Jordaan case, by limiting the religious belief of adopting the husband's surname upon marriage, serves a significant purpose in the South African community.

c) The nature and extent of the limitation

This analysis necessitates an evaluation of how the limitation affects the concerned right (Currie and De Waal 2017:168). The severity of the infringement has to be considered. Vorster (2021:1) posits that religious practices that result in harm to others should be curtailed. However, the religious practice examined here does not result in such harm and, therefore, ought to be permissible. The nature of the limitation is significant in assessing the extent of the violation of rights. The ruling in the *Jordaan* case allows husbands the option to adopt their wives' surnames voluntarily, without compelling Christian husbands to do so. Those who

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prefer to retain traditional practices of using the husband's surname are free to do so, indicating that the limitation does not directly infringe upon the rights of Christians to observe their customs concerning name changes. Thus, the nature and extent of the limitation is not arbitrary.

d) The relation between the limitation and its purpose

For a limitation to be deemed reasonable and justifiable, it must be accompanied by a valid rationale and should not cause more harm than the benefit it seeks to achieve (Currie and De Waal 2017:169). This necessitates a causal link between the limiting law and its intended purpose (Currie and De Waal 2017:169). The extension of the right to adopt a spouse's surname to husbands is rooted in the principles of gender equality, affecting both men and women. Men benefit by having the option to take their wives' surnames, while women are placed on equal footing with their husbands regarding surname adoption, thereby maintaining their identities post-marriage. The Jordaan case exposes the tension between constitutional equality and culturally embedded religious practices, while ultimately expanding individual freedom without coercing religious change. The case then also symbolically challenges traditional Christian-linked norms, rather than legally restricting them. Therefore, the limitation is reasonable and justified.

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e) Less restrictive measures

The assessment of less restrictive means entails investigating whether there are alternative approaches that could achieve the same objective without infringing rights (Currie and De Waal 2017:170). If less restrictive options exist, they should be prioritized; otherwise, the infringement may be deemed excessive and unacceptable (*Prince v President of the Law Society of the Cape of Good Hope* 2002: para 114) In the *Jordaan* case, the applicants had already been denied the right to adopt their wives' surnames. To rectify this denial, it is necessary to grant husbands the same right, thereby empowering them without imposing obligations. The *Jordaan* case facilitated a fair legal framework for couples, allowing them to choose their preferred surnames upon marriage. Thus, no less restrictive means could accomplish the same purpose effectively under the given circumstances.

This analysis indicates that while the constitutionally enshrined right to religion is notably impacted by the judgment in the *Jordaan* case, the overarching significance of the limitation serves a compelling interest, specifically addressing an overdue aspect of equality. The nature and extent of this limitation effectively advance its intended purpose of promoting equality, revealing a strong correlation between the limitation imposed and its overarching aim. Ultimately, the court determined that no alternative, less restrictive measures would achieve the same objectives. Therefore, it is asserted that the limitation on the right to religion resulting from the *Jordaan* case is reasonable and justified. This exploration posits that the judgment aims to foster an equitable society from which the Christian community can equally benefit. Despite its considerable effects on this community, the limitation adheres to the constitutional framework, as it remains within permissible boundaries.

Recommendation and Conclusion

The judgment in *Jordaan* case recognised Christianity's role in perpetuating women's subordination but did not delve into this issue substantively. This paper has elaborated on Christianity's influence in obscuring women's surnames and identities post-marriage, as drawn from the normative interpretation of selected texts from the Bible, including Ephesians 5:23, reflecting the necessity for Christian organisations to partake in legal proceedings where their religious practices are impacted. It was noted that the High Court, which initially adjudicated the matter, had the option to invite the Advocate Society of the Free State to provide legal

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insights. The High Court could have similarly included significant Christian entities such as the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, the South African Council of Churches, and the Evangelical Alliance of South Africa as *amici curiae*, facilitating an examination of pertinent religious concepts within the broader legal context. The church's engagement in the adjudication of the cases that have religious implications appeared to be underutilised.

Fortunately, established constitutional procedures allow for the formulation of pertinent laws via mechanisms such as parliamentary debates and public participation. It can be posited that many religious institutions can no longer claim ignorance regarding the tension between religious rights and equality(Leburu & Kgadima, 2025:6; Fortune, 2021). Thus, the engagement of religious institutions in the legislative process is imperative. It is recommended for key Christian organisations to actively engage with parliamentary processes. Despite varying interpretations of key texts regarding Christian marriages from both normative and egalitarian perspectives, the inclusion of the Christian community in legislative initiatives is vital to ensure their perspectives are articulated and, ultimately, influence the law-making process. This engagement empowers Christians to shape legal interpretations consistent with their values while promoting social justice aligned with Christian principles. . Similarly, Leburu and Kgadima (2025:8) advocate for the church's involvement in combating gender inequality, though they express concerns regarding the church's readiness for this challenge. Consequently, the church's active participation in the legislative process is recommended as the Parliament takes its mandate to revisit the surname change laws that were declared unconstitutional. However, the issue of spousal surname change remains inadequately explored in other marital contexts, such as same-sex marriages, polygyny, and polyandry. Consequently, further research is recommended to integrate same-sex marriages into this discourse and to evaluate the implications of adopting spousal surnames in polygamous settingss.

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