

**ON HUMAN RIGHTS AND THE HIJAB BAN IN FRANCE
& QUEBEC**



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Historical Overview

The French Republic was found on the basis of secularism which translates into three principles, i.e., separation of church and state, freedom of thought, and free exercise and organisation of worship. However, in practice, it is more ad hoc than following those principles. Despite the boasting of its concept of secularism or *laïcité*, France has always favoured Catholicism over any other religions which exist there.

Historically, the Catholic Church has always been entrenched with the daily life of the French Republic even after its founding. For instance, its education system in 1880 did not accommodate the needs of students of other religious backgrounds such as Muslims and Jews in term of the availability of halal and kosher foods respectively (Bouteldja, 2005).

The discussion about religious symbols in public sphere, particularly the hijab, was first started with an event well-known as *l'affaire de foulard* or the “hijab affair” in 1989. For the sake of upholding the *laïcité*, three Muslim girls were expelled from the class due to wearing the headscarf (Barnett, 2011; Pahl, 2019).

The case was brought to the *Conseil d'Etat* and it finally gave a verdict about the said case stating that students are not allowed to wear the hijab which:

“By ostentatious or campaigning nature, consisted as act of pressure, provocation, proselytism or propaganda, or which were aimed at the dignity or freedom of other pupils or members of the school community, or compromised their health or safety or disturbed good order and the peaceful running of the school” (Poulter, 1997 as cited in Welch, 2007, p. 201).

Since the case was in the limelight, many articles have been written on the debate.

Canada, on the other hand, does not have a specific regulation about the separation between church and state. It indeed has a different historical background compared to France where the concept of *laïcité* prevails. Moreover, Canada has always been celebrating multiculturalism as its national identity. It protects the freedom to practice ones' religion while being neutral – not promoting and taking sides with any particular religion.

However, Quebec, with its French historical legacy, has a different approach when it comes to dealing with the concept of freedom of religion. It has its own *Charte des droits et libertés de la personne* – literally means “Charter of Human Rights and Freedom”, which clearly has the spirit of French *laïcité* in it (Barnet, 2011). The Immigration Minister of Quebec, Simon Jolin-Barrette, argued that “it is legitimate for the Quebec nation to decide in which form secularism applies in its territory and in its institutions” (The Guardian, 2019).

The Hijab Ban Issue

There are a lot of causes for the fright of seeing Muslim women who wear the hijab, inter alia, perceiving them as being oppressed, excluding themselves from the society by being noticeably different, or even being related to terrorism. Whereas, those reasons are nowhere near true. Hijab is simply a built-in identity for those who wear it.

Muhajabat, a term for Muslim women who wear the hijab, choose to wear it voluntarily – even though there are minority of them who are forced to wear it. They wear the hijab because it is a symbol of faith. Last but not least, it is incorrect to say that Muslim women are associated with terrorism. They also suffer from the wound of terrorism (Rabia, 2006; Amiraux, 2007; Esposito & Mogahed, 2008).

In France, the official ban on perceptible religious symbols, particularly the hijab, happened after the parliament passed a new bill in 2004. The law was said to be important to help preserving one of the foundations of the French Republic, i.e., the *laïcité*, and to prevent those who do not wear it from the pressure of having to wear it. However, there is only about 1% of French students who wear the hijab. Thus, it is nonsense to say that those 1% can give pressure to an overwhelmingly majority students who do not wish to wear it (Welch, 2007; Maurin, 2019).

The law stated that “*Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit*” or “In public school, colleges and universities, the wearing of signs or behaviors by which pupils express openly a religious membership is prohibited” (LegiFrance, 2005, as cited in Croucher, 2008, p. 200).

In regard to the 2004 law on the ban of perceptible religious symbols, Walterick (2006, as cited in Pahl, 2019) suggested that:

“While the official purpose of the new law is to preserve the strict separation of church and state, to maintain the religious neutrality of public schools, and to uphold the long tradition of *laïcité*, the real purpose of the law is to prevent Muslim girls from wearing headscarves to school. The discussions among French politicians and the media, and the events leading up to the time when the law was enacted, reveal that the primary motivation behind the new law was the elimination of the Muslim hijab from public schools. Religious symbols like Christian crosses and Jewish yarmulkes were generally well-tolerated in French public schools until the increase of young Muslim girls wearing the hijab suddenly

made religious garb a major national controversy. The new French law has a disproportionately negative effect on Muslim students and is an unfortunate reaction against France's Muslim minority population" (p. 473).

Amiriaux (2007), Welch (2007), and Pahl (2019) opined that the 2004 ban on obvious religious symbols were mainly targeted at Muslims. There were no such bans previously even when there were many Jews and Catholics wearing their respective religious symbols. The bill was drafted only after there was an increase in the number of pupils wearing the hijab at school.

The government may deliberately target its Muslim citizens. Unfortunately, this claim cannot produce strong evidence as the French government has always stated that the law is for the sake of upholding the principle of *laïcité*. However, shall the discriminatory intention be able to be proven, it can be considered as breaching the provisions written in the European Convention on Human Rights Article 9 (1) on freedom of thought, conscience and religion (Welch, 2007; ECHR, 2013; Pahl, 2019).

In Quebec, the issue of the banning of religious symbol in workplaces, including the hijab, has just sparked attention quite recently. The ban was, in fact, one of the promises by the Coalition Avenir Québec during the provincial election (Uprichard, 2019). It was said to be for the sake of upholding the principle of secularism which has always been prevailed in Quebec. The ban was supported by 2/3 of the population of Quebec. It is due to the negative view of the Quebecois toward people who wear the hijab (Annaami, 2010; Uprichard, 2019).

However, there are many parties opposing the ban, among of them is Jagmeet Singh – the leader of New Democratic Party of Sikh origin. The main argument from the

opposing parties is that the ban excludes a segment of society by telling them to choose to either get a job or practice their religion (The Guardian, 2019; Uprichard, 2019).

In support of the opposing parties to the said law, the story of Zine (2009) about her experience as an immigrant in Quebec is noteworthy. She talks about her feeling that she is not Canadian enough even after having been there for such a long time – since she was 3 years old. Her experience was that her identity as a Muslim by religion and Pakistani by ethnicity can never be compatible with the identity of her surroundings, i.e., white and western.

The Premier of Quebec, François Legault, stated that Quebec as nation has the right to decide their destiny. He aims to annihilate visible religious symbols for the sake of internalisation of Quebecois values (Uprichard, 2019). However, Zine (2009) opined that the banning of the hijab will only make things worse as the feeling of being left out will definitely increase among people who are affected by the said law. The law is simply racist by its nature.

The Hijab Ban indeed breaches the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UN General assembly in 1979 and the Declaration on the Elimination of Violence Against Women (DEVAW) adopted in 2003. Both of them provided clear guidelines to help analysing laws restricting Muslim women's dress. However, article 29(1) requires to submit the dispute between states and CEDAW to arbitration and, if deemed necessary, to the International Court of Justice. It means that CEDAW is actually toothless. (Winter, 2006; Pahl, 2019).

How Does International Law View This Issue?

Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights (2013) provides that:

“1. 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 worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others (p. 11).

It is mentioned in Article 9(2) ECHR that the right to freely manifest one’s religion can only be restricted if these things are fulfilled: the restriction must be prescribed by law; must be necessary in a democratic society by fulfilling a pressing social need; must have a legitimate aim; and, the means used must be proportionate and necessary (Drgoncová, 2011; Howard, 2017).

However, despite the seemingly clear basis for their claim, it will be very difficult for the opposing parties to bring the case to the European Court of Human Rights because historically the court has always rejected similar cases because it perceives the cases to be inadmissible. The court has this view of tolerating the hijab ban for the sake of security-related reasons. Whereas, the hijab is nowhere connected to it. The court also tend to act in favour of seeing the hijab, among other religious symbols, as a hindrance to upholding the principle of secularism in various European countries (Ghanem, 2017).

Freedom of religion, including the freedom to profess it, as legislated by the European Convention of Human Rights, does not include every single action inspired by religion. Hence, it is not surprising that *l'affaire du foulard* or the hijab affair is handled on a case by case basis to ensure that its wearing is to be protected or not as mandated by the ECHR in particular situations (Squelch, 2010; McCrea, 2013).

Conclusion

France has a very strong background of separation of church and state hence the unsurprising law of prohibition of showing noticeable religious symbols in public schools. Despite its extreme background of secularism, there are many people who oppose the said ban saying that the state should not dictate what should and what should not be worn by its people – as long as it does not disturb social lives.

Canada does not have a similar understanding of secularism with France. However, in Quebec, they have a similar understanding due to its French legacy. The ban of the wearing of religious symbols in workplaces was supported by about 2/3 of its population. Despite being supported by majority of the people, there still are people who are against the ban – be they are either affected or unaffected by it.

The ban on perceptible religious symbols, including the hijab, for pupils in public schools in France and the ban of the wearing of religious symbols in workplaces in Quebec can actually be said as infringing upon the freedom of professing their faith which is guaranteed by the European Convention on Human Rights Article 9(1).

France may have their own reason saying that the intention for the passing of that bill is solely for the sake of upholding the *laïcité* – one of the principles on which the French Republic was built upon. Quebec may also provide their own reason which is not

that different of the French. However, they will be unable to deny that the legislation infringes the freedom of its citizen.

On the other hand, the European Court of Human Rights deals with this hijab matter on a case by case basis to ensure whether the right to wear the hijab is to be protected or not in particular situations. If it is deemed necessary, the Court will be in favour of restricting the freedom of religion for what it views as a greater good.

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