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**ENIGMA OF WOMEN'S RIGHTS IN INTERNATIONAL
LAW**
ABSTRACT

This article deals with the current problem in the modern world which is the religious extremism and its impact on women's human rights as per the international law which has recognised freedom of religion as a right, but the right to equality weighs far more in this aspect. But in the recent years, we can see that the manifestation of religion has caused quite some problems in terms of intolerance received and how limitations are imposed on manifestation of religion to protect the female populace's right to equality as religious manifestations have a huge impact on the society at large. France has been a major player in imposing limitations in such regard and Turkey has also imposed bans on headscarves in public places and this decision was upheld in the European Court of Human Rights stating that this was done to protect other women from pressures into conforming such practices. There were also bans on the face veil in certain countries which were disguised as obstructions to security and normal functioning of society. We must look into the aspect of how it is first obstructing equality and then look into the religion aspect. We must also look at secularism as a way of eliminating these disparities and reducing the gap at which men and women rights are placed.

INTRODUCTION

There has to be some analysis on the international law basis as to the legality of the head coverings which is claimed by the Muslim populace to be fundamental for the expression of religion by a Muslim woman. It has mostly been looked at from a religious and cultural perspective rather than a women rights angle which it actually is. Equality of the genders has to be reintegrated into this sensitive topic of discussion. To add human rights into freedom of religion and The European equality of the genders, we have to look into different aspects such as the women who are forced into it and the women who freely wear it and its effect on the other females who do not belong in that religion. There is also the angle of fascist organisations who target educational institutions on the excuse of these garments and on the other wide of the world, the western countries' growing Islamophobia. The veil is not rigid and is just on black and white terms, instead it comes in different shades of grey in between. There are results of the network between human rights and the restriction of the veil which is set in different places around the globe. Although, the western countries often see it as a sign of oppression, the haik (which is a female garment worn in North Africa) was used by Algeria in their nationalist movement to fight against the colonialism of the French people and it was fought vigorously against them when the French were advocating for its removal.

PRECEDENTS: THE WORLD

There have been cases where public schools around the planet have banned 'modest' garments. In *Leyla Sahin Vs Turkey*¹, Istanbul University of Turkey banned headscarves in the university. Leyla Sahin stated that this ban violated

¹Sahin Vs Turk App No. 44774/ 98

Art 9 and 14 of the European Convention on Human Rights which is largely based on the Universal Declaration of Human Rights (UDHR).² Due to the circular issued by the Chancellor, the lady was not allowed to sit for lectures, courses and exams. In this secular country, there has been a ban on wearing the headscarf in public places, which include educational institutions. It was suggested that women who do assent to wear it can possibly be rejected for jobs not only in public sectors, but in the private sector as well. Furthermore, the European Court of Human Rights (ECtHR) stated that this judgement did not violate any religious freedom to practice one's own religion. Under human rights law, the freedom of belief is completely allowed, on the other hand, expressing one's belief is subject to limitation. These limits are directed by law and for achieving such lawful aims as to protect others, it becomes necessary to prescribe them. The European Court of Human Rights (ECtHR) ruled that the Turkey government was doing this out of necessity so as to preserve the culture of its country which is rooted in secularism and to protect the right to equality of all the women in their country, not just the rights of the Muslim women who are in majority in the country. The decision was upheld 16 votes to 1. It was part of the ideology of the fundamentalist groups to target the young women's dress code so as to undo the secular nature of the country in the middle east, thus it had become a necessity for the court to ban them. But obviously thereafter, many human rights groups actively protested and criticised this judgement for failing to give women the choices to make their own decisions.

There was another case of *R Begum Vs Governors of Denbigh High School 2006*, where a young girl Shabina Begum challenged the school rules of wearing salwar kameez style uniform, and said she wanted to wear a long and

² Art 9 and Art 14 of the European Convention of Human Rights, 1953

loose Muslim gown because the former contradicted with the Sharia law. This case was filed under the Human Rights Act 1998. She was prohibited from wearing the jilbab, which is yet another modest piece of covering.³ She was restricted to do so in a Muslim majority school so as to protect the other girl's choices. If the families of the other girls were to see the modestly dressed girl at the school premises, they might force their daughters to wear the same; this was the reasoning taken behind this initiative. Although a weak analysis, it does hold true that these practices are indirectly peer pressured on by the outside world. It is important to resolve the disputes raised on the charges of overbearing authority making such decisions by addressing the context of them.

France has banned the Burkini and also the Niqab (veil for the full face with only opening slits for the eye area) in public places since an order passed in 2011 and has charged those caught wearing it with a fine of up to 150 Euros. The ECtHR has also upheld this ban. Even when a French woman aged 24 years brought up a case against the government for this ban saying that it violated her right to freedom of religion and expression, the court ruled against her favour and upheld the ban. It was also stated that it violated security and protection. Furthermore, the head covering is also banned in French schools and at places of work for public servants. Religious symbols are also banned in French schools under their law and this has raised serious concerns about ethnic discrimination to people in minority. Sometimes, secularism is a necessity to uphold certain human rights of women and defence of this thesis requires disagreement to the international human rights skeleton, even if the same is permitted by law of human rights. We have to heed forward in this regard with outmost care not only looking into the peculiarities of that particular case but also think about the outcome of our

³ R Begum Vs Governors of Denbigh High School 2006 UKHL 15 1 AC 100

perspective on women who themselves choose to dress in a particular way and on their fellow peers.

David Kennedy, son of prominent politician Robert Kennedy, had stated that the nature of secularism has become so enrooted in our culture that it no longer requires an explanation or defence as to why is it there and has become a necessity of sorts. Religion since time immemorial has had a massive impact on the common man's decisions in every aspect of life. When a man is standing up for a position of authority, he frequently claims that he has been given this privilege by the Almighty. Britain's longstanding massive kingdom spanning across the planet has defended its monarchy by asserting that it is given by God. Religious fundamentalist groups have been using women and degrading their rights for their own advantage in the political and economic spectrum. A few years ago, the Charlie Hebdo attacks showed us the sensitivity of reaction on media trial. This attack took place on the 7th of January, 2015 where two brothers forced themselves into the Charlie Hebdo newspaper office killing 12 people for drawing cartoons of prophet Mohamed. This brutal killing caused worldwide protests and sympathy and solidarity pore in for the victims. There is a global power of religion across the world where it is used for political and economic power. Hilary Charlesworth stated that the inequality between men and women has largely depended on the religious factors.⁴ This inequality becomes even more severe when the religious spectrum turns to the extreme right. It is nothing more than manipulating religion and distorting it to brainwash the victims and achieve their political and economic gains. This same language of fundamentalism crosses the traditional boundaries and is spoken about in many cultures and that is its undue advantage. Even in a report to the United Nations General

⁴ Hilary Charlesworth, The Challenges of Human Rights Law for Religious Traditions, in RELIGION AND INTERNATIONAL LAW

Assembly, the then-Secretary General stated that there has been a politicization of culture in religious extremism and this has become quite an obstacle for securing women's rights.⁵ In this day and age of information technology, according to experts, this has become one of the two major hindrances for women to get their basic rights.⁶ In order to prevent the current disparity of the rights between men and women, it has become important to separate law from religion to get there.⁷ Thus, to reach at such an amicable level, we have to put secularism out there as a fundamental human right and it will help in keeping extremist religious doctrinarians out of our law and court proceedings.⁸

WAY FORWARD

To implement this, we might have to put some restrictions on the expression of religion to aid women's rights according to standards prescribed by international human rights law. But nowadays secularism is frowned upon in the Western world due to the many extremist terrorist attacks and the views of the secularists who champion women's rights are not given much attention when they are making simple assertions. Anthropologist Mahfud Benoni advocated for the separation of the Church and the State as he argued that he had himself seen extremism in process and held that it is the only way democracy can run smoothly in a country. Tolerance and coexistence can only occur when there is a separation of powers. Many experts also agree with this view due to its rationality and rooted belief in the demarcation of powers. However, the current global scenario has become quite polarised and voices

5 Secretary General, In-Depth Study on All Forms of Violence Against Women, 81 (July 6, 2006)

6 BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 249 (2000).

7 Women's Human Rights and Religious Absolutism (May 10, 2006)

8 Sadiq J. Al-Azmi, Address on the Occasion of the 2004 Dr. Leopold Lucas Award, 2005

demanding human rights have grown timid, when it should go even stronger in the age of social media. In the legal process of law throughout the world, it has come to be that the freedom of religion has now gained more importance than freedom from religion. We must change this power balance by focusing on the permissible restrictions which are allowed in religion to strengthen opportunities given to women. We have to check and examine the impact of religion in each specific case according to its own unique circumstances and how the precedent which will be set in each judgement to be put forth will impact the female populace in religious and cultural aspects of life. Sex equality is a fundamental right granted across the globe from democracies to monarchies, but it is perfect only on paper. For each state has yet to achieve the ideal model which is still considered a dream and construed to become impossible in reality by the political leaders of many states. Roger Clark rightly stated that expression of religion is a fundamental aspect and focal point for the religion to continue in coming decades, but this very expression makes them a target by the antis of that particular faith who are intolerant of such expressions. It is also pertinent to note that these expressions can sometimes also interfere in the normal functioning of society because these manifestations impact the society on a large scale. Hence, a good social policy would be to set limits on such manifestations. Some of these limits can be justified under law, but some have to be carefully scrutinised out of necessity so that they are not abused. In human rights law, religious freedom and its manifestation, although similar topics, are treated in different manner as though they are distinct concepts. A broader discussion has to take place as to how right to equality, which is a much more fundamental and weighs more in comparison to freedom of religion, has downgraded in the recent years judgements where the religion aspect is given much more importance. We have to look into all the religions and their discussion on the subject matter of its manifestation and expression. This perspective will reduce the extremities found in recent years and will reduce the oppression of the weaker

sex in such regard. Even the non-believers and the atheists have to be included in this discussion. Islam is used as a scapegoat in the discussion of religion in the media across the world which leads to distorted and ignorant discussions surrounding such a sensitive topic. All the other religions also share the same aspects of manifestation and extremism and this has to be taken into account for a free talk and brainstorm of new ideas which would go a long way in making progress in a field which has remained stagnant for centuries gone.

