

RIGHT TO RELIGION IN FRANCE

Written by *Pavithra Jaidev*

4th Year B.B.A., LL.B Student, Jindal Global Law School of O.P Jindal Global University

INTRODUCTION

Art. 2¹ of the Universal Declaration of Human Rights (UDHR) states that, all human beings are entitled to the rights and freedoms laid down in the Declaration, and that they cannot be discriminated on the basis of their race, colour, sex, language, religion, political or other opinion. Yet, day in day out millions of people across the globe are discriminated on the basis of at least one of these factors. That being said, in modern times one of the most controversial issues which is hotly discussed and debated upon, is the factor 'Religion'².

The word religion is derived from the Latin term "religare", which means "to tie or to bind fast". Religion therefore, binds people's beliefs and practices with their obligation, to show reverence towards something that's as sacred as god. That being said, religion is not always, associated with a particular system of faith and worship of a transcendent deity.³ In fact in human rights discourse the term "religion" also includes support for the right to non-religious beliefs, such as atheism or agnosticism.⁴ In 1993 the Human Rights Committee described religion or belief as "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief."⁵ Therefore, both religious and non-religious beliefs provide

¹ Art. 2 UDHR - Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

² The anthropologist Clifford Geertz defined religion - as a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic. As written in - Geertz, C. (1993) Religion as a cultural system. In: *The interpretation of cultures: selected essays*, Geertz, Clifford, pp.87-125. Fontana Press

³ STUDY GUIDE: Freedom of Religion or Belief, University of Minnesota Human Rights Library, available at: <http://hrlibrary.umn.edu/edumat/studyguides/religion.html>, University of Minnesota Human Rights Center 2016, Copyright © 2003.

⁴ Id.

⁵ Id.

hope and comfort to billions of people across the globe, and hold great potential for peace and reconciliation.⁶ However, at the same time it goes without saying that, they have also been a source of great tension and conflict. Thus, the ongoing struggle for religious freedom has over the centuries led to numerous terrifying and appalling conflicts. Therefore, the subject of our study in this paper is one such conflict, which was brought into existence due to the religious intolerance shown by the Secular state of France, by way of banning manifestation of religious symbols, thereby causing widespread anger, agony and hatred amongst the minority groups against the French Republic.

FRANCE AND ITS RELIGIOUS INTOLERANCE

France is typically known as a secular state which does not officially recognize any one religion as the state religion. Though the French Republic does guarantee freedom of religion by virtue of certain constitutional rights which are enshrined in the 1789 Declaration of the Rights of Man and of the Citizen, at the same time it does not allow its policy based decisions to be influenced by religious sentiments⁷.

France's attitude towards religion has always been very complicated. The French government traditionally considered religion to be a private matter, as a result of which it never engaged in any serious religious discussions. But over the years, due to the increase in religious minorities⁸, the French Government changed its traditional stance, and instead started actively

⁶ Id.

⁷ The separation of religion from government power is legally referred to as the "laïcité", which as per the French constitution formally declares France as a secular republic. The "laïcité" has been in existence since the Jules Ferry laws passed at the end of the 19th century and since the 1905 French law on the Separation of the Churches and the State.

⁸ Immigrant population: Religious distribution of the immigrant population in France in 2010

Religion	Population	% of immigrant population
Islam	3,040,000	46
Christianity	2,750,000	41
No religion	400,000	6.0
Buddhism	190,000	3.0

participating in religious matters. An example of one such participation, is the banning of wearing conspicuous religious symbols, which was brought into existence under the governance of President Jacques Chirac on 2nd September 2004⁹.

The French law which bans wearing of conspicuous religious symbols in French public (i.e. government-operated) primary and secondary schools, is a law which bans all Christian (veil and oversized signs of cross), Muslim (skullcap, veil such as hijab, burqa and signs such as taveez), Sikh (turban and related signs) Jewish (kippah/yarmulke/skullcap) and other religious signs. Though, it is considered to be specifically targeting Muslim girls and women who wear headscarves as an obligatory article of faith and modesty (hijab). Therefore, in short France not only wants religion to be kept out of political decisions, it also wants religion to be separated from national identity. Human rights groups such as Human Rights Watch and Amnesty International have across the world heavily criticized this discriminatory move of the French government. To add to all of this, in August 2016 almost 15 towns in France banned the wearing of “Burkini” a swimwear for Muslim women which in keeping with their faith covers their head, torso and limbs much like a wetsuit with a hood. The reasons for banning the wearing of burkini were that it violated the principles of secularism, public order and public hygiene. These bans over the years have torn the French public into groups of for and against, which may in the upcoming days even provoke violence and further divide the society.

FREEDOM OF RELIGION

Hinduism	60,000	0.9
Judaism	10,000	0.1
Other	240,000	4.0
Total number of migrants	6,680,000	101

⁹ “loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics” (literally “Law no. 2004-228 of March 15, 2004, concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garb which show religious affiliation in public primary and secondary schools.”)

20th century saw the codification of values relating to freedom of religion and belief in various international treaties, declarations and conventions¹⁰. In the year 1948, the United Nations recognized the importance of freedom of religion and incorporated the same in the UDHR by virtue of Art. 18¹¹. Similarly, the International Covenant on Civil and Political Rights (ICCPR) also recognized the importance of freedom of religion and belief and therefore incorporated the same into the treaty by virtue of Art. 18¹² and Art. 27¹³. In fact, ICCPR brought religion under the ambit of non-derogable rights¹⁴ whereby though Art. 18 can be limited in scope during times of public emergency, it can never be derogated from, and in case it is derogated, it would constitute an illegal action on part of the state party which has ratified the treaty.

Thus stated, this understanding of how religion can be limited in scope, brings us to the question as to when all can it be limited? Firstly, religion can be limited in order to control specific environments such as parliaments and armies in order to prevent the obstruction of regulation of state functions. Secondly, it can be limited in order to stop its interference with public settings such as courts and police stations and lastly, it can be limited in order to stop its incidental interference with important interests such as public health, order and safety which has also been laid down in Art. 18 (3) of the ICCPR. As per France, apparently, its ban on religious manifestation and wearing of Burkini is in keeping with the third reason for limiting the scope of religious freedom. But what it failed to address is the fact that, these limitations in

¹⁰ *Supra* note 3

¹¹ Art. 18 UDHR - 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.

¹² Art. 18 ICCPR - 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

¹³ Art. 27 ICCPR - In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

¹⁴ Art. 4(2) ICCPR – No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

the form of restrictions to religious freedoms, must be nondiscriminatory in nature and proportionate to the situation at hand.

If wearing of a religious symbol or manifesting a religious belief is considered to be such a huge threat to the values of a Country, then why in the first place provide for such a freedom. Instead it should have been severely curtailed so as to make it virtually non-existent in nature. Therefore, limitations based on considerations for public order and safety are not convincing at all. Hence, in the first case, France saw the wearing of religious symbols by Muslims as a threat to public order and a link to increased risk of violence, whereby instead of trying to incorporate an understanding which would foster recognition of difference and tolerance for other religious groups amongst the majority and allow the minority groups to freely practice their religion, France in the name of islamophobia and xenophobia banned people's religious freedom, which is absolutely a disproportionate restriction to the situation at hand. Similarly, in the second case of Sikhs and Jews, instead of assuming that people who strictly comply with their religious obligations would be disloyal towards liberal institutions and would pose to be a threat to the liberal order, what France should have done ideally is to embrace these religious beliefs, and prove to the world that France infact is the perfect culmination of culture as well as religious diversity.¹⁵

In the third case, France states in support of these bans that wearing of religious symbols might pressure, provoke, proselytize or propagate violence towards other students. The author here fails to understand how a kippah worn by a Jewish student might provoke or propagate violence against other students, how can an attire alone pressure students into believing that the one who is manifesting his religious belief is infact a threat to their life and well-being.¹⁶ In the fourth case, France states that it banned wearing of veil because it wanted to protect girls and women from discrimination, because apparently coercing women and girls into wearing a veil, is a powerful symbol of their oppression and subjugation. There is no doubt about the fact that, coercing women to wear the veil is one kind of alarming gender-specific abuse, and that states have an obligation to eradicate violence and discrimination against women in public and in private by punishing those who are responsible for the same. But at the same time, state must

¹⁵ Danchin, P. "Suspect Symbols: Value Pluralism as a Theory of Religious Freedom in International Law," Yale Journal of International Law Vol 33, No.1 (2008). pp 1-66.

¹⁶ Id.

also accept the fact that these kinds of generalizations about women's oppression and subjugation, do a disservice to one of the basic tenets of gender equality, which is the right to self-determination and autonomy, the right to make decisions regarding one's life without interference of any kind from the state or others.¹⁷ Even if for a moment we consider, France was catering to the principles of substantive equality¹⁸ one cannot understand how the state failed to recognize and acknowledge the fact that veiling can also be a matter of choice, and therefore a ban against veiling for those women who chose to do the same, might force them to choose between their ability to participate fully in society and the manifestation of their religious faith, which is in fact the absolute form of curbing of their freedom of choice, where though on paper a choice is given to you, in practice you are left with no other option but to choose what the state directs you to choose, and in case you chose to disobey, you will have to face the consequences of your choices. There are thousands of women who are forced into wearing the veil, but at the same time there are many European Muslim women who believe that wearing of a veil is an expression of their faith coupled with a desire to prove their identity. For them veiling was their own decision, an expression of their personality, citing motivations such as societal, family or religious influences which they from their childhood have witnessed and have embraced as grown up adults, and therefore have absolutely no reason to do away with.¹⁹

Which brings us to the fifth and final case as to whether banning of religious symbols reflects upon the social consensus of a country. The answer to this argument is that, social consensus can be arrived at only if both the majority as well as the minority groups are in agreement with the decision at hand and that the decision does not cause legitimate prejudice to one of the groups. This is because the opinions of both the groups together would form the collective

¹⁷ *Supra* note 15

¹⁸It takes into account the inequalities of people based upon their social, economic and educational background and tries to eliminate discrimination aimed against disadvantaged groups by ensuring their full and equal participation in the society and helps them enjoy dignity, physical security, access to resources of the state and membership in the community - Kapur, R. '*Un-Veiling Equality: Disciplining the 'Other' Woman Through Human Rights Discourse*' as in Islamic Law and International Human Rights Law: Searching for Common Ground? Emon, A.M. Ellis, M.S. Glahn, B. (eds). OUP, Oxford (2012).

¹⁹ *Questions and Answers on Restrictions on Religious Dress and Symbols in Europe*, December 21, 2010 8:00PM EST, available at: <https://www.hrw.org/news/2010/12/21/questions-and-answers-restrictions-religious-dress-and-symbols-europe>

consensus, but in case it is proved that one group is being caused severe disadvantage in comparison to the other, then there clearly exists no ground for proving the existence of a social consensus. Also, considering the fact that though France is a secular nation, its majority population is made up of Christians who on very rare occasions openly manifest their religious beliefs, clearly banning the wearing of religious symbols would not affect their rights as much as it would affect the rights of those living in minority. Hence, though the treatment accorded to both the groups is the same, the outcome of this treatment heavily discriminates the people living in minority.²⁰

COURTS RULINGS ON RELIGIOUS MANIFESTATION

UNHRC has clarified that the concept of worship includes the displaying of symbols, and that its observance and practice can include the wearing of distinctive clothing or head coverings.²¹

The ECHR has upheld restrictions on students and teachers wearing headscarves and turbans in schools and universities. It has also upheld a newly-imposed requirement in France that a Sikh must remove his turban for his driver's license photograph. The court in these cases has failed to provide proper justifications for these restrictions, and has failed to acknowledge the impact these restrictions have on the lives of the people affected and the discriminatory impact of bans that predominantly affect women and girls wearing headscarves. In many of these cases the court has ruled without asking the government to provide a justification for its restrictions. Few important court decisions²² to be noted in this area are as follows:

²⁰ General Comment 22 adds to all of the above by stating that in accordance with Art. 20, no manifestation of religion or belief must amount to propagation of war or advocacy of national, racial or religious hatred, which includes incitement to discrimination, hostility or violence. In fact state parties are under the obligation to enact laws which prohibit such acts - As stated by the committee in its General Comment No. 11 [19]. Further it states that Art. 18.3 though permits restrictions on the freedom to manifest religion or belief, the limitations prescribed by law must be such that they are necessary to protect public safety, order health, or morals or the fundamental rights and freedom of others - **UN Human Rights Committee (HRC), CCPR - General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4, available at: <http://www.refworld.org/docid/453883fb22.html> [accessed 15 November 2016].**

²¹ *Supra* note 19

²² In the case of Leyla Sahin v. Turkey **EHCR 2005 ECHR 819 / (2007) 44 EHRR 5** the ECHR ruled that Leyla's rights and freedom under the Convention for the Protection of Human Rights and Fundamental Freedoms were not violated. The court observed that Turkey is a secular state which is founded upon the principles of equality without regard to distinctions based on sex and religion. In the year 1989, Turkey's constitutional court ruled that granting legal recognition to religious symbols such as the Islamic headscarf was

In the case of *Bikramjit Singh v. France*²³ the court found that for Sikh males, wearing a *keski* was not simply a religious symbol, but an essential component of their identity and a mandatory religious precept and obligation. The committee agreed that a state may restrict a person's freedom to manifest his religion, but only if it is detrimental to public order or the fundamental rights and freedoms of others. While the committee acknowledged that promoting secularism might protect overall religious freedom, it found that the state had not shown how wearing of a *keski* by Singh posed a threat to the rights and freedoms of other students and looking at his educational record it was also proved that Singh was not a threat to other students at school. The committee further held that Singh's expulsion from school was a punishment which was disproportionate in nature and that the same had serious effects on his education. Therefore, the limitation imposed was not necessary.

Whereas, in the case of *SAS v. France*²⁴ though by fifteen votes to two, the court found that the blanket ban was unnecessary for the protection of public safety, especially because less restrictive alternatives were available (e.g., requesting to show the face in particular situations). With regard to the second aim which was invoked, the court observed that the aim of "*vivre ensemble*" was to decide the manner in which a country organized its society whereby it fell within a wide margin of appreciation. As a result of which consequently, the court did not find a violation of the Convention. This judgment at the first instance provides a much more balanced and careful rational than what is usually put forth in cases relating to the right to manifest a religion. Though, in the end just like other cases it more or less rules upon the same rational that the ban did not violate any religious freedom. Two positive aspects of this ruling

not in keeping with the principles of secularism, and therefore state education must be neutral. The Vice Chancellor explained that the banning of the headscarf was not intended to infringe student's freedom of conscience or religion, but to comply with the laws and regulations in force. Hence, the ban did not prohibit Muslim students from manifesting their religion in accordance with habitual forms of Muslim observance and it was not specifically directed towards Muslim attire. Therefore, the court held that the interference here was justified in principle and proportionate to the aim pursued. Hence, Article 9 was not violated. Whereas in the case of *Raihon Hudoyberganova v. Uzbekistan* **CCPR/C/82/D/931/2000 (5 November 2004)** the UNHRC found that Hudoyberganova's rights under Article 18 of the ICCPR had been violated because, even though "the freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others," Uzbekistan had not provided any justification as to why the restriction in this case was necessary, therefore there had been a clear violation of violation of Art. 18 (2).

²³ *Bikramjit Singh v. France* CCPR/C/106/D/1852/2008 (4 February 2013)

²⁴ *S.A.S v. France* ECHR 2014

are the language used by the court while describing the issues relating to gender equality and the court's embracement of some aspects of procedural justice.²⁵

²⁵ In addition to these cases, I would also like to bring to your notice the recommendations put forth by international human rights authority and the special rapporteur:

The list of issues prepared by HRC in relation to the fifth periodic report submitted by France specifically asked the French government to explain how the ban on wearing religious symbols is considered "ostentatious"? and how the same is in keeping with the State party's obligations under Art's 18 and 26 of the ICCPR? It further asks what measures has it taken in order to combat racially and religiously motivated attacks against those who belong to the religious minority? and what specific measures has the government adopted in order to promote freedom of religion and respect for diversity? - **G1414112, List of issues in relation to the fifth periodic report of France, Human Rights Committee, CCPR/C/FRA/Q/5, 18 August 2014**. The French government till date has successfully failed to answer all of the questions mentioned above. As a result of which in its concluding observations the HRC has stated that these laws clearly infringe one's freedom to express one's religious belief and that they have a disproportionate impact on members of specific religions and on girls. It elaborates upon the effect of these laws on certain groups which struggle with the feelings of exclusion and marginalization. It further states that the state party must review Act No. 2004-228 of 15th March 2004 and Act No. 2010-1192 of 11th October 2010 in the light of its obligations under the covenant, in particular Art. 18 on freedom of conscience and religion and the principle of equality set out in Art. 26. The committee is also concerned about the resurfacing of racist and xenophobic discourse in both the public and political spheres, and is afraid that it may lead to the rise of intolerance and a feeling of rejection in some communities and might further result in upsurge in violent incidents of a racist, anti-Semitic or anti-Muslim conflicts. As a result of which it has asked the state party to regularly recall publicly any advocacy of hatred which constitutes incitement to discrimination, hostility or violence and which is prohibited by law in order to promptly bring perpetrators to justice. - **G1518265, Concluding observations on the fifth periodic report of France, Human Rights Committee, CCPR/C/FRA/Q/5, 17 August 2015**. The Human Rights Watch report suggests that the HRC must call on France to repeal the bans on ostentatious religious symbols in public schools and on clothing that is intended to conceal the face in public. It further suggests that the HRC must urge France to ensure that its laws are not applied in a way that discriminate against Muslim girls and women, and that no child is prevented from attending school on the grounds that their clothes are considered to be religious symbols -

INT_CCPR_CSS_FRA_20885_E, Human Rights Watch Concerns and Recommendations on France, Submitted to the UN Human Rights Committee in advance of its Review of France, June 2015

The special rapporteur Asma Jahangir on her visit to France put forth the following recommendations in her report. During her mission she observed that although the law is intended to apply equally to all persons, it has mainly affected certain religious minorities, and notably, people hailing from a Muslim background. She states in her report that, the wide political support in favour of the law banning religious manifestation has led to sending across of a message which is meant to demoralize the religious minorities in France. She observes that, though the law is appropriate insofar as it intends to protect the autonomy of minors who may be forced into wearing a headscarf or other religious symbols. The law however denies the right of those minors who have freely chosen to wear a religious symbol to school as part of their religious belief/faith. She is of the opinion that the direct and, in particular, the indirect consequences of this law may not have been thoroughly considered. Further she observed that the Jewish community and its members were continuous targets of a number of acts of religious intolerance. Though she also notes that the government takes all of these acts very seriously and rarely underestimates their importance. - **CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF RELIGIOUS INTOLERANCE - Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief, MISSION TO FRANCE (18 to 29 September 2005), E/CN.4/2006/5/Add.4 8 March**

CONCLUSION

Thus stated, the implementation of this law by educational institutions has led to abuses in a number of cases which has provoked humiliation and instances of religious intolerance amongst the religious minority. Therefore, at this stage the government must closely monitor the manner in which educational institutions are implementing this law. A flexible implementation of law must be brought into place, in order to accommodate the sentiments of children and to avoid feelings of humiliation amongst those for whom the display of religious symbols constitutes an essential part of their faith. Under all circumstances, the government must uphold the principle of the best interests of the child and must guarantee the fundamental right of access to education. Moreover, the government must take proper measures in order to better inform school authorities, and more importantly the French population, about the exact nature and purpose of the law. It should be made clear that the wearing of religious symbols is an essential part of the right to manifest one's religion and therefore can only be limited under restrictive conditions and as has been recommended by several United Nations treaty-monitoring bodies, the French government must also immediately provide redress in any situation where people have been the victims of discrimination or other act of religious intolerance because of manifestation of their religion via wearing of religious symbols.²⁶

2006, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/117/19/PDF/G0611719.pdf?OpenElement>

²⁶ The government must ensure that the religious groups which are affected by this law must deliver a message based on tolerance, freedom of religion and on the principle, that no one can be judged for his actions other than the appropriate judicial authorities. Lastly, the government must monitor more closely preventive actions and campaigns that are conducted via private initiatives or government-sponsored organizations, in particular within the school system in order to avoid children from being affected negatively.