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# **EDUCATIONAL INSTITUTES' RESTRICTIONS ON RELIGIOUS SYMBOLS: SAFEGUARDING SECULARISM OR CHOCKING RELIGIOUS FREEDOM?**

AUTHORED BY: MS. BHOOMI JAGDISH KOKATE & MR. NIMISH NITIN MORE

## **ABSTRACT:**

*The substance of this paper pertains to examining the liberty behind using religious symbols in educational institutes, and weigh the sentimental, social, cultural, economic, and idiosyncratic contexts. Excluding the ethnocentric projection of these symbols, this paper focuses on a comparative analysis of India and other Western countries to deliver a deep narrative to the topic, in pursuance of case laws. This paper places more emphasis on the Islamic chronicle, followed by other religions. While the acceptance of secular principles and the religious privacy of individuals is on the rise, there is a risk that secularism could turn into a rigid belief system, potentially infringing on people's religious freedoms. This paper aims to explore a practical approach to addressing this issue.*

**Keywords:** Religious symbols, secularism, institutes, convention

## **INTRODUCTION:**

This unique edition addresses two subjects: Religious Education & presence of religious symbols in educational institutes, which are often discussed independently by various fields – those focused on religion and education, and those on law and public policy. However, these subjects are interconnected in at least two aspects. Firstly, they both deal with the application of liberal democratic values of secularism and pluralism within the public institutions of societies that are becoming more diverse in terms of religions and worldviews. The institutions serve as a smaller version of the larger challenges of multicultural living and are a point of political debate. Therefore, the policies regarding these matters act as a lens through which we can understand current policies on religion and identify a range of ideological stances.

In the era of contemporary secularism and the diversification of the 21st century, the use of Christian symbols in school environments is no longer a given. At the same time, students (and to a lesser extent, teachers) are increasingly bringing their religious identities into educational

settings, such as Muslim girls and women wearing hijabs, which challenge the traditional view of a religiously uniform community and question the democratic principle of equality upheld by modern societies. Public schools across the globe are adapting to these new challenges in various ways: some, like France, have chosen to completely remove religious elements from public education, while others, such as Italy, have welcomed Christian symbols as a cultural aspect of their school walls, yet with more stringent regulations on religious symbols from minority groups.

There is a dearth of literature regarding religious symbols in educational settings. Malcolm D. Evans' work, "*Manual on the Wearing of Religious Symbols in Public Areas*," stands out as one of the few scholarly texts that directly addresses this issue, albeit within the context of a broader dialogue. This paper aims to enhance the existing research on religious symbols in public education & emphasize the significance of both academic and political attention on this frequently neglected intersection of religion and education.

### **UNDERSTANDING THE NOTION:**

#### ***Pettit's concept: freedom as freedom from control***

Pettit's concept of freedom from domination suggests that an individual or a team of individuals are not truly free if they are controlled by another individual or team of individuals (the government can be seen as a collective of these agents). Therefore, control exists between two entities, which can be either individuals or groups.<sup>1</sup>

Pettit uses the scenario of a slave and his owner to illustrate the concept. In this relationship, the owner and the slave share a close bond, to the extent that the owner permits the slave to make his own choices. Consequently, the slave is allowed to cultivate his own crops, choose his place of residence, and so on. Here, it is evident that the owner does not wish to meddle in the slave's affairs. If we adhere to the principle of "negative liberty" (liberty without interference), one could argue that slave is truly free, as he is able to act as he pleases without any external constraints. However, this intuition leads us to believe that slave is not truly free. This is due to the fact that the principle of negative liberty does not entirely correspond with our intuitive comprehension. On the other hand, if we adopt the theory of "liberty as non-domination," slaves are not truly free either. In reality, slave's freedom is dependent on the

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<sup>1</sup> Pettit 1997: 77.

owner's benevolence. The owner still retains the power to negatively impact the slave's life at any time. Furthermore, the owner could choose to revoke the freedoms granted to the slave, such as the right to grow his own food. In the case of the slave and his owner, it is clear that the slave's needs and desires are not considered. The focus is solely on the owner's interests: the owner can, at any given time, disregard the slave's well-being.

This situation exemplifies "domination without interference," where owner still has ability to arbitrarily worsen slave's condition. Pettit introduced concept of "arbitrariness" to clarify that an interference can still be considered domination if it is not based on the common good but rather on the whims of the interfering party. An interference is deemed arbitrary when it is based solely on the interfering party's goodwill and personal interests. In the case of the slave and his owner, it is apparent that the slave's interests are not a consideration. The focus remains on the owner's desires. Pettit suggests that for an interference to be non-arbitrary, it must consider the interests of all parties involved and strive to minimize the randomness of a law (domination). This involves state actively listening to & respecting input from all affected parties and considering and valuing the feedback provided when drafting laws.<sup>2</sup>

One might disagree with Pettit, arguing that a law inevitably leads to some form of state control and that ultimately, there will always be individuals who perceive themselves as controlled by the state. However, Pettit argues that the fact that some individuals feel controlled by a specific law does not justify labelling the state as an oppressive force. If the standard of non-arbitrariness has been met, meaning that everyone's interests have been considered, we find ourselves in situation of "interference without domination," though some individuals may feel controlled. Their concerns have been substantial, yet the concerns of others are equally important.<sup>3</sup>

### ***Laborde's panorama***

Laborde's argument is centred on demonstrating that allowing religious symbols in schools, under a laissez-faire policy, is more in line with the principle of freedom from domination than outright banning such symbols. She begins by asserting that the government should actively promote the value of non-domination within society, drawing from Pettit's theory of liberty as non-domination, as previously mentioned. To support her stance, Laborde points out that if the

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<sup>2</sup> Pettit 1997: 82, 247-252; Khaitan 2015: 101.

<sup>3</sup> Pettit 1997: 81f.

government is to champion non-domination, its policies, including laws, must not be capricious. They should consider the interests of all individuals to prevent the government from exerting control over its citizens.

Laborde identifies a significant issue with the current policy of banning religious symbols in schools, arguing that it fails to acknowledge the interests of those who choose to wear them, particularly girls who wear the hijab.<sup>4</sup> This oversight, she believes, makes the government a dominating force, as it overlooks the autonomy of these individuals. Her proposed solution advocates for a laissez-faire policy that allows religious symbols in educational institutions. This approach, she argues, addresses the problem identified above by ensuring that the ban does not disregard the interests of those who wear religious symbols, such as the hijab. By allowing these symbols, Laborde believes the government can better promote non-domination by fostering an education that empowers individuals to make their own choices, including how they live their religious lives. This approach also considers interests of those who are compelled to wear hijab by their families, offering them support rather than leaving them to face domination.<sup>5</sup>

In my view, Laborde overlooks the extent to which families or society at large can exert control. The crux of the issue is straightforward: by providing a young girl with the means to make her own choices, such as the option to remove her hijab, we empower her to lead her life as she sees fit. However, the challenge arises when an external force, like a middleman, stands in the way, blocking her access to these means. She desires independence and wishes to utilize the resources available to her, such as those offered by her school, to achieve this. Yet, her social surroundings or family may hinder her from doing so. Consequently, if a young girl is coerced into wearing a hijab by her family or society, providing her with the ability to make independent choices is unlikely to mitigate the control imposed upon her. She may find it difficult to remove her hijab due to the pressure from her family or society. Despite her desire to make her own choices, she might still feel constrained, unable to fully exercise her autonomy, including the decision to remove her hijab. This situation leaves her still under the control of her family, unable to fully live her life as she wishes. To conclude Pettit's and Laborde's view, basically, it is the state's responsibility to ensure that the law, whatever momentum it gains must not have an ill effect on the individual's right to express their religion, subject to exceptions as seen

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<sup>4</sup> Laborde 2010: 45ff, 54; Laborde 2008: 161, 165

<sup>5</sup> Laborde 2010: 51f

above.

### **INDIA'S SIMILITUDE WITH WESTERN COUNTRIES:**

Students, teachers, or professors adhering to religious dress codes, such as Islamic headscarves & Sikh turbans, have faced expulsion from educational institutions, denial of access to higher education, job suspensions, and other restrictions in some countries. Parents and children looking for exemptions from religious classes are compelled to disclose their lack thereof or religious beliefs, raising concerns about correct application of Article 9 ECHR & Article 2 of Protocol No.1 of the European Convention on Human Rights (hereinafter ECHR or Convention). Thus, the European Court of Human Rights (hereinafter ECtHR or Court) has addressed various varieties of religious symbols. Recent applications that raise new issues about the wearing and displaying of religious symbols serve to emphasize the significance of this issue. As indicated by the President of Strasbourg Court, Sir Nicolas Bratza, this issue might not be Court's final verdict on religious dress or symbols. Rather than exploring the nuances of the situation in Karnataka, discussions on the hijab controversy have frequently been oversimplified since it first surfaced, putting it under the general heading of discrimination against a particular religious minority. The problem at hand is very different from, or even incomparable to, France's ban on the hijab, so before looking at what has actually transpired on the ground, it's critical to understand what Karnataka's educational institutions are legally permitted to do.

The debate over uniforms in educational institutions in Karnataka has intensified. At the start of 2022, the Karnataka government mandated that all government educational institutions adopt a uniform policy for their schools. This directive emphasized that uniforms that disrupted public order, equality, & integrity within schools would be forbidden. The directive pointed out that government had observed pattern among students wearing religious attire instead of prescribed uniforms, which it argued disrupted equality & public order within educational environment. This directive was used by the administrations of colleges in Karnataka to prevent Muslim women wearing Hijabs from entering institutions. In some instances, these women were allowed entry but were segregated and attended classes separately from other students.

At first glance, the situation seems to revolve around the right to religion, as outlined in Article 25. It could be argued that wearing Hijabs is a fundamental part of Islam, and by prohibiting Muslim women from attending schools to wear Hijabs, their religious freedom is being violated

by the government. Although the idea of freedom of religion is appealing, and indeed, it was the argument presented by the Muslim women in the Karnataka High Court, it elevates several concerns. This essay argues that instead of focusing on freedom of religion, court should consider the issue from the perspective of freedom of expression.

Karnataka's educational institutions are governed by the Karnataka Education Act of 1983, which went into force on January 20, 1995. Under Section 133, the state government has the authority to give any direction to any educational institution to achieve Act's objectives. When it comes to limited role of courts in interfering with internal management of educational institutions, here is a point made by the Madras High Court in the case of *Sir M. Venkata Subba Rao vs Sir M. Venkata Subba Rao*<sup>6</sup> regarding a dress code for teachers set by a school:

Considering above clauses, it's clear that Board of Matriculation Schools has full authority over school's maintenance & can issue directions to teachers. These directions must be followed by the teachers. The school's management's power to issue the circular that prohibits the wearing of certain clothes, including the Hijab, can be traced back to clause 6 of Annexure VIII (Agreement). Therefore, there is no basis for the argument made by the appellant's counsel that respondent school administration lacks the authority to circulate such circulars.

Students have worn saffron scarves in protest of the state government's granting of permission for Muslim women and girls to wear hijabs in classrooms before the aforementioned notice was issued. This issue grew more intense, leading to protests across Karnataka. Given these circumstances, the notice was issued. In light of these events, there was a concern that public order might be disrupted. Therefore, the notice was issued.

In a different scenario, the High Court of Kerala determined that collective rights of an institution should take precedence over individual rights of the petitioner. 2 young girls, aged 12 & 8, were involved in this case; their father was their attorney. They wished for their daughters to be allowed to wear a headscarf & a full-sleeved shirt, which schools that opposed the headscarf denied to permit. The school, owned & operated by Carmelites of Mary Immaculate (CMI) under CMI St Joseph Province, was one at centre of dispute. Court ruled in school's favour, stating that petitioners were not entitled to demand the enforcement of their rights over the broader rights of the institution. The petitioners' ability to attend classes while

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<sup>6</sup> *Sir M. Venkata Subba Rao vs Sir M. Venkata Subba Rao* on 10 February, 2004

donning the full-sleeved shirt and headscarf was up to the institution. The court emphasized that institution had the sole authority to establish its dress code, and it was not within its purview to direct institution to take such requests into consideration.

Current legal question is whether State or any educational establishment could forbid female students who identify as Muslim from donning a hijab, niqab, or any other clothing that deviates from the required school uniform. It is noteworthy that comparable prohibitions on such clothing being enforced & upheld by constitutional courts in a number of other nations.

The European Court on Human Rights, for example, backed French law that forbade wearing of full-face veils in public settings. A Muslim woman challenged this ban, claiming it violated her right to privacy and her freedom of religion. On the grounds of human dignity, gender equality, public safety, & fundamental needs of society, French government defended the ban. The prohibition, the court ruled, was only warranted to ensure that "minimum requirements of living together in society" were fulfilled.

Parents of young Muslim girls have repeatedly challenged the mandatory mixed swimming lessons for girls in German schools in court. These requirements were consistently upheld by the courts, which cited mixed swimming lessons as a social norm and an integral part of German culture. The Federal Supreme Court of Switzerland defended the continuation of mixed swimming lessons after being presented with similar issues.

There are claims that, in contrast to a number of European nations that practice negative secularism, India adheres to positive secularism. Additionally, it has been argued that Supreme Court recognizes the right to privacy, which includes the right to choose one's attire. However, it would be overreaching to assert that this right encompasses ability to choose one's attire in educational settings.

The right to practice religion freely has been safeguarded in the United States through the First Amendment<sup>7</sup>, which encompasses the right to free speech, the right to freely practice one's religion, & the prohibition of the government from establishing a religion. Since students are permitted to wear religious apparel in schools, they cannot be subjected to discrimination

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<sup>7</sup> First Amendment: An Overview, [http://www.law.cornell.edu/wex/first\\_amendment](http://www.law.cornell.edu/wex/first_amendment)

because of their religious convictions, according to a well-established principle in U.S. law. The U.S. Federal Court ruled in *Tinker v. Des Moines Independent School District* that students' constitutional rights to free speech & expression are upheld even in educational settings.

However, schools are allowed to limit speech & expression related to religion only if it significantly upsets the school's discipline. Nevertheless, when it comes to the religious clothing teachers are allowed to wear, the U.S. courts have generally favoured the schools. In *United States v. Board of Education*, the court rejected a Muslim teacher's claim who was prohibited by the school board from wearing religious attire. In states like Oregon and Pennsylvania, there are laws that explicitly prohibit teachers from wearing any religious symbols or attire in public schools<sup>8</sup>. Yet, these laws have been consistently upheld on the basis of the state's neutrality towards religion. This does not, however, imply that teachers are banned from wearing religious symbols or attire across the U.S. In fact, in states like Arkansas & Tennessee, there are laws that overtly permit teachers to wear religious symbols and attire in public schools. Teachers have generally been permitted by the courts to wear religious symbols and clothing in states without such legislation.<sup>9</sup>

To conclude, the law prohibiting religious symbols in schools may be more in line with the theory of liberty as non-domination than the *laissez-faire*/"autonomy-facilitating" approach to education because the former may better maximize liberty as non-domination in society without the state resorting to an instance of domination through the implementation of this law.

### CONCLUSION:

When kids start attending public schools, they begin to understand the role of religion in their nation and community through various means. This includes not just the Religious Education classes or subjects like History and Literature that cover religious topics, but also seeing how religious beliefs and affiliations are handled by those in positions of authority. Even in countries without a specific Religious Education curriculum, they still indirectly teach their students what religious expressions are considered acceptable and normal in society, and which ones are seen as inappropriate and marginalized. Furthermore, in the 21<sup>st</sup> century, we are no

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<sup>8</sup> *Cooper v. Eugene Sch. Dist. No. 41*, 301 Ore. 358 (1986), app. dismissed, 480 U.S. 942 (1987); *U.S. v. Bd. of Education*, 911 F.2d 882 (3rd Cir. 1990).

<sup>9</sup> *Moore v. Bd. of Education*, 212 N.E. 2d 833 (Ohio 1965)

longer living in deserts where all women are veiled and are supposed to extremely obey men. Concerns regarding the Hijab/other head garments protecting the modesty of a woman; no sexual assault or no molestation is ever done specifically noting a female who has ‘shealed herself’ and a female who has not. Therefore, it is asserted that ‘what is not religiously made obligatory therefore cannot be made a quintessential aspect of the religion.’

Therefore, it is crucial that we, whether we are educators, policymakers, or concerned individuals, seriously consider the issue of religious symbols in schools when discussing, planning, and managing children's education. In this paper, we have explored the different reactions to a specific religious symbol (the Muslim veil) and a particular policy proposal from Slovenia on managing religious symbols in schools more broadly.

After looking into various aspects of the topic, I aim to highlight some key takeaways from the discussion and the implications of these findings to underscore the significance of the issue and the complexity of addressing it. Primarily, the management of religious symbols in public schools is largely influenced by overall political climate and the policies set by the government. Whether the policies lean towards liberalism or restriction, the overarching national policies regarding religion also shape the local context of public schools. Additionally, the presence and management of religious symbols in schools are significantly influenced by the specific social and cultural characteristics of a country. The religious and cultural makeup of a nation & its society are essential in determining acceptance and management of religious symbols in educational settings.