

Hijab, Human Rights and Western Feminism: A Comparative Analysis Between France and Iran

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Abstract

For many, the hijab is a symbol of freedom and self-identity while others view it as oppressive. Irrespective of how one views the hijab, its use must be a personal choice all over the world. Laws dictating women over their decision to don or to forego the hijab lead to human rights implications. This essay analyzes France and Iran's laws concerning the hijab and how these laws breach the basic human rights of females, while also viewing these laws through the lens of Western feminism while touching upon issues of autonomy, equality, and non-discrimination.

Keywords: *Hijab, Human Rights, Western Feminism, Iran, France.*

1. Introduction:

"For no matter what one thinks about the veil, forcing women to take it off is no better than forcing them to wear it, both ways are discriminatory and undemocratic." (Habti, 2004)

The controversial subject of Muslim women's choice of clothing has always been a topic of debate. Following the 1979 Islamic revolution, it became mandatory in Iran for women to cover their heads by wearing a headscarf, commonly known as a *hijab*. On the contrary many European countries such as France have now banned 'conspicuously worn' religious symbols in schools, thus prohibiting Muslim girls from wearing a headscarf at school and have banned donning a veil commonly known as a *niqab* in public places. These legal requirements pose thought-provoking questions concerning women's rights. The wearing of a *hijab* carries multifaceted meanings that touch upon religious identity, autonomy, women's agency, and equality. This essay will analyze the intersectionality between the human rights of Muslim women in Iran and France, state policy, and the stance of Western feminism on the *hijab/niqab* debate.

2. The History of Hijab

Islam has placed a special emphasis on upholding both men's and women's modesty and protecting privacy from onlookers, hence women covering themselves is regarded as essential to the faith (Hamdan 2007). The holy Quran emphasizes the value of chastity and modesty, and in addition to advising women to cover themselves, it also urges them to walk with dignity, use modesty in their speech, and even in their appearance to put an end to community moral and sexual deviation.

Islam as a religion can be understood by interpreting the Quran and the Sunnah (teachings of the Holy Prophet Muhammad). Both the Quran and Sunnah dictate that women must dress decently and are forbidden from flaunting their beauty. The Quran in Surah An Noor states:

(24:31) *“And enjoin believing women to cast down their looks and guard their private parts and not reveal their adornment except that which is revealed of itself, and to draw their veils over their bosoms, and not to reveal their adornment save to their husbands, or their fathers, or the fathers of their husbands, or of their own sons, or the sons of their husbands, or their brothers, or the sons of their brothers, or the sons of their sisters, or the women with whom they associate, or those that are in their bondage, or the male attendants in their service free of sexual interest, or boys that are yet unaware of illicit matters pertaining to women. Nor should they stamp their feet on the ground in such manner that their hidden ornament becomes revealed. Believers, turn together, all of you, to Allah in repentance that you may attain true success.”* (An Noor, 24:31)

Similarly, it has been reported by Ayesha (R) that Abu Bakr’s (R) daughter once visited the Holy Prophet Muhammad while donning thin clothes to which he said *“O Asma! When a girl reaches menstrual age, it is not proper that anything should remain exposed except this and this.”* He then pointed to the face and hands. (Dawud, 4104)

These two examples from the Quran and Sunnah amongst many other texts are sources that Muslims in the world rely on to justify that Islam dictates women must wear a *hijab*. However, several scholars argue that the term *hijab* itself has not been mentioned in the Quran. The Quran in 33:55 directs that the Holy Prophet’s wives must maintain a separation from men who fall outside the permissible degree of relation without observing the *hijab* first. Thus, certain interpretations reveal that observing the *hijab* was meant to be mandatory only for the wives of the Prophet (Al-Ahzab 33:55). Therefore, a literal interpretation of Islam indicates that it does not specifically dictate wearing a *hijab* or a *niqab* but rather calls for humility and dignity in women’s choice of clothing so that they are not sexualized in any way and do not experience harassment (Hamdan 2007). However, for a Muslim woman wearing a headscarf or veil is closely connected to her obedience to the word of God, her independence, and modesty. Islam, however, only dictates that Muslim women must cover themselves as a sign of modesty and not display their beauty in public.

Islam as a religion did not introduce the headscarf or veil. The practice of wearing a *hijab* or *niqab* dates to pre-Islamic times (Slininger, 2014). Donning a headscarf reflected piety and status in society. Greek women covered their heads as a symbol of high status whereas nuns covered their heads as a symbol of respect (Slininger, 2014). Thus, the practice of wearing a *hijab/niqab* can be traced back to not the beginning of Islam but rather before that, and Muslim women adopted the practice as a way of submission to God. This practice is thus more cultural and social than strictly religious. Yet the exercise of wearing a *hijab/niqab* is predominantly attached to Muslim women.

Today the words *hijab/niqab* have an extremely negative connotation attached to them by the West. For them, the practice represents female subjugation and pressure from male members of their family. Islam is viewed as a patriarchal religion that is regressive and oppressive towards women. Post 9/11 Islamophobia spread rapidly leading to many nationals feeling threatened by Islamic practices and implementing laws to deal with the threats (Halley, 2022). One such step was the banning of wearing a headscarf or veil in public spaces. France, a prominent state banned the headscarf in educational institutions in 2004 and the veil in public spaces in 2010 (Aliyev, 2018). It was believed that the

practice was against the idea of secularity (*Laïcité*). The French had criticized the coercive practice for many years and advocated that the ban be implemented as a measure to help oppressed Muslim women (Aliyev, 2018).

On the contrary, some Muslim states such as Iran are staunch believers of Islamic values and with the ongoing erosion of Islamic principles believe that they must safeguard the morals of their citizens. After the Islamic revolution, it became mandatory in Iran for all females to wear a *hijab* (Dahre & Ohlsson, 2023). Thus since 1983, the Government of Iran has tried to control the way women choose to dress themselves in the public sphere. The hijab is seen as a symbol of obedience to Islam and a rejection of Western ideology. Despite many women objecting to this new law, the Parliament legislated that any female refusing to adhere to the dress code would be punished with 74 lashes (Article 102, Islamic Republic Penal Code).

The main underlying issue with both sets of mandating laws is that these laws strip women of their agency to choose. Any law that dictated women what to wear under the disguise of religion or secularism interferes with their rights to religion, their right to an education, and their right to employment. Ultimately pushing women to the brim of social exclusion and expulsion from participating in social activities.

3. France and the *hijab* ban:

Three centuries ago, after nearly three decades of religious conflict in France between the years 1502 and 1556 C.E., the protestant Christians were finally permitted to practice their faith freely although the privileged status of the Catholic Church remained in place (Aliyev, 2018). It is extremely important to posit that the Catholic Church at this time held a specialized position within the French state (Aliyev, 2018). It was not until the French Revolution that relations between the French state and the Catholic Church took a drastically different turn, even though the church managed to survive as an institution. The newly developed French Republic developed the idea of secularism, known in French as *Laïcité*, which embodied a separation between the church and state (Aliyev, 2018). Secularism represented a battle against an all-powerful church that was dominant in France's legislative, judicial, and political spheres. The church also regulated the private affairs of the people of the country. *Laïcité* promoted state neutrality in the face of interference by the Church. Religion was restricted to the private domain and considered a personal matter. It appealed to foster civic values and was rooted in the principles of liberalism, a concept that views religion as illogical and emotional (Madeleine, 2003).

The 1789 French Revolution which led to the introduction of The *Declaration of Rights of Man and Citizen* (*Declaration 1789*) and the 1905 statute distinguishing the church and government are deeply ingrained in modern efforts to maintain liberty and secularism (Law on Separation between Church and State, 1905). The general effect of secularism was that it led to a decline in church powers not only in France but also in many Western nations.

The French democracy faced a new dilemma in the 20th century with the inflow of Muslim migrants on its shores who started arriving in the 1950s and 1960s in search of work (Ellen, 2007). After World War II France looked to its former colonies Algeria, Tunisia, and Morocco to fill its labor shortage. These migrant laborers also brought Islamic values and beliefs to French soil. As Islam is a religion that does not hold a division between one's personal and public life, it was not long before Islam and its teachings became a threat to *Laïcité*. Olivier Roy labels Islam as a barrier to secularization, he

claimed that a theological reformation was necessary when Islam's compatibility with modernity was in question (Roy et al, 2007).

The unease surrounding the *hijab* grew gradually. Initially in 1989 three Muslim girls were expelled from a French school for refusing to take off their *hijab*, which was termed by the principal as a “*social garbage pail*” (Joan, 2007). This unease reached a critical point in 1998 when Francois Bayrou, France's Minister of Culture, called for banning the *hijab* as an “ostentatious religious symbol.” (G and D, 2000). Again in 1999, more than a dozen schoolgirls were expelled for donning a *hijab* at school and refusing to remove it. A dislike for the *hijab*, anti-migrant sentiments, and rising Islamophobia led to the government taking stricter actions (Amani, 2007).

In 2003 the Stasi Commission was formed to work out the application of *Laïcité* in practice (Amani, 2007). The final report by the Commission which was submitted in the same year identified that secularism in France was under great threat (Stasi Commission, 2003). It commented that as schools are perceived to be neutral entities the display of religious signs could affect their neutrality. It urged that the government could not turn a deaf ear to the pleas of Muslim girls who needed state protection from gender inequality (Stasi Commission, 2003).

In 2004 by adopting Law No. 2004-228 France introduced a contentious piece of legislation banning ‘conspicuously worn’ religious symbols in schools, which included all forms of religious symbols thus affecting Christians, Jews, Muslims, and Sikhs alike, however, it was specifically targeted at banning the headscarf to protect young Muslims girls (Loi n° 2004-228 du 15 mars 2004).

The new ban in place was criticized worldwide by Muslims who saw it as an attack on their religious beliefs. Amnesty International condemned the new law by stating:

“Muslims should be given the possibility to make independent choices in relation to the expression of their cultural and religious backgrounds. Such choices include the way in which Muslims manifest their cultural and religious background by, for instance, wearing or not wearing specific forms of dress or by worshipping or not worshipping with other members of their community. Muslims should be able to make these choices free from any pressure or coercion from family or community and any form of stereotype and prejudice from other private citizens or state institutions” (Bazian 2015).

Rim Sarah Alouane, a French legal scholar expressed her disapproval of the ban by expressing, “*We are seeing a justification of a breach of freedom and fundamental rights in the name of security – a weaponisation of secularism. It’s a deformed legal monster, which aims not only to contain Muslims but to erase them from the public sphere*” (Daily Chatter 2021).

On the contrary proponents of the *hijab* ban praised the new law as a shield that would protect girls from coercive patriarchal practices and pressure from male members of the family. Therese Duplaix, a French policy maker defended the new law by commenting that it allowed for the preservation of *Laïcité* and upholding French democratic values (Aliyev, 2018).

Prominent French Politicians vehemently contend that Islam interferes with the ‘Enlightenment principle of Reason’ (Tourkochoriti, 2012). This meant that to uphold *Laïcité* the public realm had to be free of religion. Schools supporting the new ban presented themselves as feminists helping young girls oppose elements of regression and subjugation (Tourkochoriti, 2012).

France did not stop targeting Muslim females with the *hijab* ban in schools. In 2010 it passed legislation banning the covering of the face in public (Loi 2010-1192 du 11 octobre 2010). This law was specifically discriminatory to Muslim women who practiced donning a veil. It introduced a nationwide ban on public places including streets, parks, and transit, becoming the first nation in Europe to do so, and even creating a government campaign that disclosed, "The Republic is lived with an uncovered face" (Claire, 2015).

Again, in the year 2021, it was proposed by Senators to further amend the law by making it against the law for girls under the age of 18 to wear a hijab in public. This proposal, however, was opposed and did not come through (Lang, 2021).

4. Iran and the *hijab* compulsion:

In Iran, the practice of wearing a hijab has always been a conundrum for the government. In 1936 the Shah of Iran passed a directive to forgo the headscarf. This was done to modernize Iran. The law forbade women from wearing a chaddar or *hijab* in public but received robust opposition from Iranian women who strongly associated the practice with being God-fearing Muslims (Justice for Iran 2014). The clergy challenged the decree which resulted in making the practice of wearing a *hijab* optional. This attempt to Westernize Iran came to a standstill when in 1979 the monarchy was toppled, and the Iranian revolution gave birth to the Islamic Republic of Iran. Imam Khomeini, the new Supreme Leader of Iran announced:

"At Islamic ministries, women should not appear naked. Women can be present so long as they are with hijab. They face no barrier to work as long as they observe Islamic hijab" (Kayhan newspaper, 1979).

The issue of female choice did not matter before the 1979 revolution. Women who chose to wear a headscarf did so to set themselves apart from Westerners who had set camp in Iran to handle and maintain highly sophisticated military equipment which Reza Shah had sourced from America (Justice for Iran, 2014). Yet it did not mean that women were willing to be forced to adhere to dress codes. Soon after the revolution, women found their identity reduced to their gender only. Any woman opposing this new requirement was labeled as polluted with Western ideology.

The question of wearing a hijab was no longer a religious one, it was now political. Ironically Khomeini's announcement mandating the hijab was made on Women's Day. Even though thousands of women came out of their homes to demonstrate their opposition, it did not affect the new government. In the following decade, all women were required to wear a hijab in government and public office. All Iranian women over the age of nine had to wear the *hijab* by the year 1981 (Justice for Iran, 2014). The separation of the sexes in the workplace, as well as at sporting events, beaches, and schools, was another development. In addition, several new laws were passed that discriminate against women in the areas of divorce, child custody, inheritance, citizenship, and marriage. In 1983 the Iranian Parliament passed a law that any disobedience to the law on *hijab* would lead to 74 lashes as a punishment (Article 102 of the Islamic Penal Code 1983). 'Anti-vice' komiteh patrols were tasked with the responsibility of traversing cities to catch women who rebelled against wearing a *hijab*. When these komiteh patrols were later dispersed, the responsibility was taken over by the moral police (Kayhan Newspaper, 1979).

As a result of continuous protests against the discriminatory law, in 1995, attention was drawn to Article 139 of the Islamic Criminal Code which reiterated governmental punishment by requiring 10 to 60 days of imprisonment against individuals who publicly disobeyed the *hijab* (Article 139 of the Islamic Republic Penal Code 1983). To further suppress female opposition, the term improper *hijab* started to surface in the state lexicon (Justice for Iran, 2014). Disciplinary authorities were instructed to detain women who were either wearing the hijab loosely or who were not adhering to a proper Islamic dress code.

In 2005 the Cultural Council, which was linked with the Ministry of Islamic Guidance charged the disciplinary agencies with the duty of taking action against those who were seen donning improper *hijabs* (Justice for Iran, 2014). These forces were also tasked with the responsibility of proposing recommendations to lawmakers regarding female attire in public places such as beaches, parks, recreational areas, and airports. Additionally, according to the rules, the forces were also in charge of limits of chastity in residential complexes.

Irrespective of these strict rules the resistance of Iranian women to the *hijab* compulsion persists. They continue to protest against the discriminatory hijab laws as a unified force. Arrests and police brutality have failed to convince Iranian women to abandon their fight for their right to personal autonomy and choice.

In December 2017, Gen Hossein Rahimi, the head of Tehran police declared that the police would stop detaining females for violating the clothing code. However, following the widespread anti-regime protests this decision was overturned. During these protests, Iranian women publicly removed their *hijabs* as a sign of resistance. As a response a zero-tolerance policy was adopted by the police, anyone inciting others to remove their *hijab* was to be imprisoned for up to 10 years (Justice for Iran, 2014).

As a result, the Morality police became more vigilant, resulting in arbitrary arrests and physical assault, videos of which started circulating online. These human rights violations reached a tipping point when 22-year-old Mahsa Amini was taken into police custody for improper hijab and died three days later under mysterious circumstances on 16th September 2022 (Subramaniam et al., 2023). The police claim that she had suffered a heart attack and brain seizure while in custody. Her family, however, contended that Amini had a swollen face and bruised legs while she was being transported to the hospital. This incident led to widespread demonstrations against the government where females in an act of defiance not only took off their scarves but also burnt them and many cut their hair (Subramaniam et al., 2023).

Even though the protests have now subsided more and more women are choosing not to cover their heads, which poses a new threat to Iran's theocracy. Women believe that the fight is no longer restricted to a choice of clothing but rather a struggle to hold control over their own identity.

5. Mandatory *hijab* laws and human rights violations:

5.1. The right to freedom of thought conscience and religion

5.1.1. France:

The French ban on the *hijab* affects the right to religious freedom, which is entrenched in a wide variety of human rights laws. These include the European Convention on Human Rights, (ECHR) The Universal Declaration on Human Rights, (UDHR), and The International Covenant on Civil and

Political Rights (ICCPR).

Regarding the perception of the *hijab* in France, the report by the Stasi Commission was of the view that young Muslim women are forced to wear religious symbols due to pressure from their families, as well as religious and societal expectations (Stasi Commission Report submitted to the President of the Republic, December 11, 2003). This viewpoint led to the French law which was established to “free” young Muslim women from the force exerted upon them by their families and societies. This opinion is also held by Elisabeth Badinter, who is a French feminist writer (N.C, 1994). Her perspective is that it was a symbol of oppression upon women and that it was a lifelong burden for them (N.C, 1994).

However, this restrictive interpretation is problematic as the report from the Stasi Commission considers only one perspective, while the reality is that the *hijab* and its use have a different value for the Muslim women who wear it. This contradiction is also seen in the report itself where the Stasi Commission states that it must showcase the different opinions of witnesses, and how the *hijab's* significance widely varies.

Ultimately, the Commission adopted a singular, narrow-minded approach when they depicted the *hijab* as a symbol of oppression and injustice. Questions can instead be raised on the reason behind donning the *hijab* itself, and why Muslim females are inspired by it and struggle for the right to wear it. The narrow-prejudiced, one-dimensional belief adopted by the Commission only creates misunderstandings and confusion, and instead, it must be acknowledged that all over the world, young Muslims are wearing the *hijab* to express their religion (Lang, 2021).

The case of *Dogru and Others v. France* was determined by the European Court of Human Rights (ECtHR) on December 4th, 2008. French citizens Belgin Dogru and Esma-Nur Kervanci were expelled from school for donning a headscarf in physical education and sports classes. They filed a lawsuit under Protocol Number 1's Article 2 (protection of the right to education) and Article 9 (protection of freedom of thought, conscience, and religion). According to the Court, there was no infringement of Article 9 and no justification for looking into Protocol 1, Article 2.

The case judgment demonstrates that France was given a wide margin of appreciation by the Strasbourg Court which failed to consider the viewpoint of Muslim women and their right to autonomy.

5.1.2. Iran:

Shia Islam is the state religion of Iran. The constitution of Iran declares that all laws and rules must

emanate from the sharia. It further states that the people of Iran are entitled to human, political, and economic rights in compliance with Islam and its teachings thus, any human rights provisions in Iran must be according to Islam (Justice for Iran, 2014). Apart from its domestic laws Iran has also ratified some International Human Rights Instruments. Iran is a signatory to the UDHR which along with other human rights guarantees a right to freedom of thought conscience and religion.

The UDHR under Article 18 expresses 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.” (UDHR, 1948)

Each person has a right to participate in their religious activities in a manner they see fit. Any legal compulsion may appear to be an interference with the way they express their beliefs. Iran is customarily bound to this article. A *hijab* compulsion is a violation of the basic right to practice one’s religion as one sees fit. Though this is not an absolute right, the interference with it should be justified. Thus, any limitation on the exercise of religious freedom for the exceptions listed in Article 18(3) of the UDHR must be based on principles that are not limited to one tradition or interpretation. When viewed through the prism of a single interpretation the rigorous Islamic tradition of the *hijab* requirement can be viewed as arbitrary. The *hijab* laws must be justified for the intrusion into the freedom to practice one’s religion however, Iran fails to provide a defensible reason. As discussed earlier the true place of *hijab* in Islam itself is contentious and so a compulsion to wear it is associated more with patriarchy than Islam as a religion.

5.2. Freedom from torture and harassment

5.2.1. France:

It has been argued that by banning conspicuously worn religious symbols at schools and the face veil in public, France is specifically targeting Muslims (Daniel, 2012). The State wishes to treat Muslim women differently by virtually outlawing the wearing of a *niqab* and *hijab* in the French Republic. This is blatantly a kind of degrading treatment under the prohibition of torture principles that have been laid out in multiple Human Rights Instruments such as the ECHR. Muslim women and girls are singled out and left isolated. Instead of social integration, these women are unable to enjoy a social life by not being able to attend schools, work, or participate in public activities. Prohibitory laws can thus be deemed as a form of harassment for Muslim females who are coerced into accepting French culture.

5.2.2. Iran:

Under the Constitution of Iran, torture is prohibited. The ICCPR, to which Iran is a party, under Article 10 states:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” (International Covenant on Civil and Political Rights)

However, these rights are not conferred to women who are arrested for disobeying the *hijab* laws. They

are often detained with defendants accused of drug trafficking and other violent crimes. Also, the measures taken against these women are never restricted to incarceration and legal proceedings (Justice for Iran, 2014). In most cases, the Iranian police resort to physical and sexual violence against the women to teach them a lesson (Justice for Iran, 2014).

Human rights advocate Narges Mohammadi claimed that she suffered assault at the hands of prison guards while incarcerated (Jailed Activist Mohammadi Beaten in Prison Hospital, 2023). She sought an investigation of the sexual assault of jailed women in a letter to Javid Rahman, the UN Special Reporter on Iran Affairs (Narges Mohammadi's Letter to Javid Rahman: The Human Rights Situation in Iran Is Dire, n.d.). In another incident, a 20-year-old woman was brought to the hospital after being raped by government forces, who had been detained by the government after objecting to the requirement that women must wear the *hijab*. The medical certificate was ordered to state that the rapes occurred before her arrest by government forces (Justice for Iran, 2014).

Sexual and physical violence, intimidation, and harassment have always been tools used by forces to exert pressure on women. In recent years Iranian women have been subjected to extreme torture for showing defiance to the country's hijab laws. These actions by state officials are in complete violation of the rights of these women as they stand in contradiction to Article 10 of the ICCPR and Article 5 of the UDHR which state that no one should be subjected to torture, inhumane and degrading treatment. Arbitrary arrests, torture in police custody, and lashes as a form of punishment are breaches of human rights that target particularly women. Iran's *hijab* laws are thus often viewed as discriminatory laws representing gender-based persecution.

5.3. Right to work

5.3.1. France:

Data from complaints made to the HALDE show that Muslims are more affected by discrimination based on religion or belief (Amensty.org, 2012). Even though France has not banned the hijab in the workplace, it is banned in government offices, and private employers are allowed to formulate policies against it. Public officials such as teachers, firefighters, or police officers are also barred from wearing any overt symbol of their religion while they are at work (Justice for Iran, 2014). Thus, policies and rules banning the wearing of religious symbols and traditional dress in the workplace have a disproportionately negative impact on Muslim women who wear these symbols.

French civil law only partially protects against discrimination based on religion or belief, and it only applies to the workplace (Ohchr.org,--). Disparities in treatment based on religion or belief in the workplace are not considered discrimination under domestic law if they are based on a defining occupational need. However, the French government does not make sure that its internal laws are applied to global norms (Justice for Iran, 2014).

France allows employers to ban any clothing attire involving religious symbols if they consider it to be incompatible with the requirements of their workplace, as long as it is carried out with a legitimate purpose. However, this is contrary to the French Equal Opportunities and Anti-Discrimination Commission, which made it expressly certain that employers cannot force employees to remove religious symbols. This is also in contradiction to Article 6 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

An important development occurred in the *Baby-Loup case* 2014 (Mme Fatima X, épouse Y v Association Baby Loup:No 11-28.845) where an employee at a daycare center for children was wearing a *hijab* and was then dismissed from employment. The Cour de Cassation, which is the highest French Court about private law, stated that due to the young age of the children at the nursery and its secular nature, the prohibition on the *hijab* was justified. This case also led to the development of a law that stated that employers could prescribe the principle of neutrality within their workplaces and could decide any workplace rules.

Furthermore, the French *niqab* ban which was introduced in 2010 restricts veil-practicing women from holding down a job (Cohen-Almagor, 2021). As women cannot appear in public while donning a veil this prevents them from participating in activities in the public sector. France imposed the veil ban in the hope of integrating Muslim women into the community however the law has had the opposite effect by pushing these Muslim women into further isolation.

5.3.2. Iran:

Gender equality dictates that women should have an equal right to employment. However, a mandatory dress code may cause a hindrance in achieving this right. Enforcing dress codes can be reflective of a mindset to control women's sexuality and deny them their autonomy. Women should not be denied their right to participate in the workforce by mandating them to dress in a specific manner. Since the Iranian Revolution, women have been required to observe the *hijab* at their workplace. Any woman unwilling to accept the law is either denied her right to work or is simply dismissed from her employment.

Additionally, some women were forced to wear the hijab for their husbands to continue working at their positions (Dahre & Ohlsson, 2023). The "Workforce Restructuring in Government Ministries and Public Institutions Act" was approved by Parliament in September 1981. Expulsion of women for "failure to observe hijab" was now permitted under Articles 18, 19, and 20 of this Act. Hijab law violators were subject to a range of repercussions, including warning and expulsion.

Threats, arrests, lashes, and employment dismissal are all forms of measures used against women to coerce them into wearing the *hijab*. Deputy Minister of Education Hossein Hojabri declared in June 2012 that the *chador* is a requirement for selecting principals for Iranian girls' schools. In truth, the same standard has always been used by numerous schools in Iran. According to reports 35 nurses of Imam Khomeini hospital were expelled for failing to wear the *hijab* (Justice for Iran, 2014).

According to Article 6 of the ICESCR:

"The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and will take appropriate steps to safeguard this right" (International Covenant on Economic, Social and Cultural Rights).

Forcing women to observe the hijab to gain employment restricts their right to work by implementing conditions on it. This is an evident breach of their right to employment. Many women have reported that they have been rejected from being hired.

5.4. Right to an education

5.4.1. France:

The French ban on the *hijab* also affects the right to education, which is notably protected by the first protocol of the European Convention, as well as other Human Rights Conventions. These conventions ask for the state to respect the right of parents to ensure that any teaching done for their children is consistent with their religion. Therefore, preventing young Muslim girls from wearing a hijab while attending their public schooling system would deprive such a right, and the ramifications of such measures are severe, as it would lead to segregation which is forbidden by Human Rights Conventions as well.

It is also concerning, however, that in France, having Muslim religious customs or traditions is leading to conflict and oppression of Muslim women. It is also important to note that the Quran, explicitly states that male and female children must gather knowledge, which therefore makes education and knowledge vital for Muslim children. The author Fatima Mernissi also noted in her book '*Beyond the Veil*', that education is of vital importance for Muslim women and that it also leads to their self-empowerment (Fatima, 1987).

The writer Schirin Amir-Moazami noted in his writings that there is a sacred right to acquire education and knowledge which affects all aspects of a Muslim woman's life (Jeanette and Schirin, 2006).

The desire and importance of education for Muslim women is seen in France through the controversy regarding the *hijab* ban. Ultimately, they believe that to change the system, they need to educate themselves to allow for a true interpretation of Islam, where there is no gender inequality but in fact, the two genders complement each other (Jeanette and Schirin, 2006).

A compulsory dress code interferes with an individual's right to education. Many females drop out of school if they feel they have a lack of control over their bodies. In the case of *Décision du Conseil d'État* (Decision of the Council of State) (2014) a student was denied access to her high school's premises due to her refusal to remove her Islamic headscarf (*Décision du Conseil d'État*, 2014). The Conseil d'État confirmed that the school's decision to deny access was lawful under the 2004 law banning conspicuous religious symbols in public schools (*Décision du Conseil d'État*, 2014). Yet such laws force women into seclusion rather than amalgamation within society.

The desire for French Muslim women to find a place for themselves in the social and political sphere is of great importance for them as they seek to create change. It is important to note that the young Muslim women in France are grateful for the lifestyle and opportunities they possess there, and since they care about their country, they believe that the *hijab* ban would set a bad example for their nation, as it would infringe upon their rights and freedoms which are of vital importance to democratic societies (Hebh, 2023). The ban would also lead to France becoming a nation that is contrary to democratic principles and would infringe on human rights, as the *hijab* ban would be oppressive to the Muslim communities. It is also vital to note that the equality of citizens is also highlighted in the French Constitution as it guarantees equality to every citizen without any distinction for origin, race, or religion.

5.4.2. Iran:

In the Islamic Republic of Iran several tactics are employed to coerce women into adhering to *hijab* laws, these include but are not limited to depriving women of their right to education by expelling them

from schools and universities, by removing them from campus and residential halls, summoning them to disciplinary committees and contacting their parents (Justice for Iran, 2014).

15 female students were denied registration for the fall semester at the Technical University of Tehran in September 2011 because they did not show up for the required courses on modesty and the headscarf. The Dean of the Faculty of Civil Engineering and the Dean of Academic Affairs at the Technical University announced that these students would also not be able to sign up for the following term (Tahkim Vahdat's Women's Committee, 2012). More than 20 students at this university faced a term-long suspension in March of that same year as a result of their failure to adhere to the Islamic dress code.

In addition to the restrictions placed on students and the governmental harassment of students, unofficial forces frequently harass female students under the pretense of student organizations. For instance, several Baseeji students at Tehran University harassed numerous female students in April 2010 concurrent with the announcement by intelligence forces at the Ministry of Science, Research and Technology that they would be "combating improper *hijab*" at universities (Tahkim Vahdat's Women's Committee, 2012). They excused their actions by claiming that the attacks were motivated by the improper *hijab*. Additionally, a report by Tahkim Vahdat mentions that in September 2010, some students at Rasht Open University were physically assaulted by intelligence and disciplinary personnel (Tahkim Vahdat's Women's Committee, 2012).

The aforementioned incidents constitute an infringement of the rights of female students under Articles 26 and 21. b of the UDHR. According to Article 26, "Higher education shall be equally accessible to all based on merit, and technical and professional education shall be made generally available" (UDHR, 1948). Additionally, it is against women's right to use public services to deny them access to education based only on what they are wearing, as "everyone has the right of equal access to public service in his country" (UDHR, 1948).

6. Western feminism and the right to choose:

Since the dawn of time, there is no doubt that women have been oppressed and marginalized (Al-Islam.org, 2015). In time, this led to women's movements, which were aimed at turning the tide against oppression and discrimination. These movements, such as feminism, aimed to tackle the repression and prejudice that women faced, while also aiming to advance gender equality in society (Al-Islam.org, 2015). It is to be noted however, that the goals of feminism and how they are achieved, greatly vary due to the different socioeconomic conditions of societies, as well as the differing cultures within them.

Feminism is a social and political movement that is aimed at the advancement of women's rights in a multitude of areas of life (IWDA, 2023). This includes and is not limited to, the workplace, relationships, politics, and education. Feminism also aims to end oppression and prejudice towards women in all aspects of life. Therefore, feminism is considered to be both a political and social movement that emphasizes women's rights (IWDA, 2023).

Feminism or gender equality does not have a precise definition that can be applied to all women, or even to Muslim women. Irrespective of this lack of definition, however, the primary aim of feminism is to achieve gender equality and to empower women to make their own choices, and decisions, and rise against discrimination, to achieve freedom.

The issue with feminism is that the movement originated from the West and thus does not view religious practices as favorable. Before the twentieth century, the Western understanding of Islam was fairly limited. This is due to conflicts and misunderstandings which occurred during the Crusades (Amira, 2022). This also included propaganda and misinformation by the Europeans during the Crusades, which was related to gender within Islam. As a result, Islam was misunderstood. However, Muslims were also misunderstood due to the use of the veil for women, and the practice of polygamy in Islam. In addition, it is important to note that in the 18th century, it was generally believed that Muslim women did not possess souls (Al-Islam.org, 2015).

The initial encounters between the European powers and the Muslim world which occurred in the colonial era, led to the perception of Muslim women being oppressed and suffering under their patriarchal society, and that they needed freedom (Al-Islam.org, 2015). This depiction has unfortunately progressed to the modern day. The primary viewpoint of Western feminism is the view that women are oppressed under male authorities, and this leads to injustices and a restriction on the way they dress (Al-Islam.org, 2015). To combat the injustice and oppression against women, Western feminists believe that women need to escape the authority of men and achieve freedom by getting rid of practices that the West considers distasteful. This also affects the perception and interaction between Islam and Western feminism, as it leads to discussions that state that their ideals and viewpoints cannot coexist alongside each other.

However, researchers have also stated that Muslim women and their perspectives, opinions, and viewpoints, widely vary. Their societies, views, and identities vary, which means that they are not a homogenous group. Therefore, their perspective on gender equality and feminism, differ from person to person.

Western Feminists actively advocate against the mandatory *hijab* practice in Iran calling it a 'gender apartheid' (Mitchell and Chris, 2023). Women all over the world are angered by Iran's ruthless policies against any woman who defies the law on headscarves and calls it a form of oppression and violation of human rights. Yet little has been said about France's ban on wearing a *hijab/niqab* in public places.

Pro-ban feminists in France have argued that ordinarily Muslim women do not have a choice over the way they dress due to the patriarchal family structure, and it is the male members of their family who force them to cover themselves (Emma, 2022). For them, the image of a woman in a veil is a prime example of gender inequality and for them, these women need saving. Many French feminists are in favor of banning the *hijab* and *niqab*, but their purported liberal universalism is Eurocentric. The broader feminist movement aims to provide women the freedom to express themselves however they see fit. Some Muslim women use the *hijab* as a means of self-expression. Even if the *hijab* and *niqab* are not considered to be liberal Western clothing, not everyone must adhere to the same dress code. Women's rights activists like Young and McCall support cultural, racial, and religious diversity (IM et al, 2008). The *niqab* and *hijab* are examples of the numerous ways in which women can express themselves. Leila Ahmad writes that even in the absence of any compulsory laws in many Muslim states a resurgence of the *hijab* has been observed as it is women themselves who are choosing to wear it (Laila, 2011).

For pro-ban feminists, the use of the *hijab* disrupts the emancipatory values of France. These feminists appeal to a fundamental Republican freedom principle—*liberté*—by claiming that face veils and headscarves endanger a woman's capacity for individuality (IM et al, 2008). Another argument posed

against the *hijab* by these feminists is that the *hijab* weakens the social order and thus constitutes a violation of the rights of others. Considering the opposing viewpoints, it is clear how tension arises between women who find the *hijab* freeing and those who insist the *hijab* is oppressive. Pro-ban feminists situate people as subjects of society's collective gaze, and Muslim females wearing the *hijab* run counter-current to this ideal.

However, Western feminism in its bid to free the Muslim woman forgets the concept of agency. Weir reinterprets freedom as the capacity to participate completely in our interactions with one another, which would entail "being supported in our care for one another" (Ranjbar, 2021). As a result, the servitude of women to *Indivisibility*, *Sécurité*, and *Lacités* is criticized by many Islamic feminists (Cohen-Almagor, 2021). They deny the existence of a single ideal of freedom. They take issue with what they see as a highly sexualized public setting where women are criticized for how they seem and how they are dressed (Cohen-Almagor, 2021). Western feminists would have likely praised women for wearing various types of veils for nonreligious reasons. Before trying to free women and instead enslave them to the Western, liberal form of liberty, feminists like Fadela Amara, the founder of the feminism group Ni Putes Ni Soumises and a former French Minister for Urban Regeneration, states that Western feminists must address their own biases and preconceptions (Murray, 2011). Intervention is appropriate for good reason only which in the case of a *hijab* ban is missing.

The actual problem with secular or Western feminism is its incapacity to theorize female agency in any other form than its confrontation with patriarchy and a total rejection of female subjugation (Mahmood, 2005). This includes the fight against the *hijab/niqab* as it is seen as a way of controlling the female gender. Thus, female agency linked to any other form of freedom seems invalid (Mahmood, 2005). These "well-intentioned" bans have the drawback of confining women to the private sphere when they would otherwise function robustly as veiled individuals with agency. Limitations that restrict a marginalized woman's ability to choose her clothing do not advance her rights. Instead, the rules significantly undervalue her individuality and undermine the collective autonomy of women. A strike against one woman's agency is a strike against all women. Although feminists who support the ban would probably concur with the aforementioned remark, they would phrase it in the context of the notion that French Muslim women should assimilate into French society by refusing to wear veils to respect the rights of other women.

This mindset is troubling because as important as it is to free women of the shackles of the *hijab* in countries like Iran it is equally important to allow women their right to choose to wear the *hijab* out of free will and the law should not be discriminatory in any form.

On the contrary, women's struggle in Iran against the draconian *hijab* laws is not a fight against Islam but rather a fight for autonomy (Khozema, 2022). It is evident that even if Iran in the future gets rid of its *hijab* laws, women may continue to wear the *hijab* however, it is a decision they wish to make for themselves. It must be reiterated here that feminism should not be misconstrued as an ideology against patriarchy and subjugation alone. It should focus on the concept of agency and empowerment. Iranian women do not wish to be policed about their bodies and wish to gain authority to have control over them. Feminists argue that demanding justice and defending fundamental human rights is not a straightforward task, particularly when dealing with a government that exploits religion as an excuse for mistreatment. No aspect of Islam supports the use of torture or murder to achieve what tyrant men view as modesty.

Iranian women have been seen to come out on the streets and protest despite being well aware of the consequences. Incidents of torture, and physical and sexual assault have not deterred these women from fighting for their cause. Their demands include a right to choose, personal autonomy, and agency, the exact demands made by Muslim women in France. Iranian women have shown courage and valor by choosing to ignore laws that control their existence.

Removing their hijab is an act of rebellion, a way of showing dissent, against discrimination and gender inequality, Islamic feminists argue that Iranian women wish to be seen and treated equally (Rafiah et al, 2022). They view the hijab laws as a politically motivated move to suppress women and are not linked to religious reasons. Thus, their quest is one of freedom relevant to their struggle rather than a singular definition of emancipation promoted by Western feminism.

For many years now, there has been debate within Western feminism on the appropriateness of sensitivity to cultural distinctiveness and difference. The awareness that context and difference are all essential to a successful feminism is one of the dilemmas of Western feminism. The only way to respect women as persons, if feminism is committed to respect for women, and if women, like men, are situated in a variety of different circumstances, is to identify and respect those contexts as they shape them. The cultural imperialism that almost invariably follows a Western location should be resisted by Western feminists.

7. Autonomy, equality, non-discrimination:

The debate surrounding *hijab* laws is primarily premised on the principle of autonomy. Muslim women around the world do not need saving, not from patriarchy and neither from the sins of the world in the name of religion. What they need is the agency to make their own choices about their bodies. Though discriminatory laws may affect men too, it is women who are left worse off as they are much more likely to have their decisions dictated to them, their choices limited, and even their physical integrity and lives put in danger by official and societal standards of propriety. Dress regulations can be an indication of underlying discriminatory beliefs and show a desire to restrict women's agency, objectifying women, and rejecting their right to personal autonomy (Agni, 2022).

The Human Rights Watch opposes both forms of forced dress codes as disproportionate and discriminatory interference with women's fundamental rights ((Human Rights Watch, 2022). Imposing heavy fines for wearing a *hijab* in France and criminalizing a failure to wear it in Iran are both forms of breaches of an individual's right to freedom of expression. If women are unable to express themselves in a manner, they see fit, their right to choose is also taken away from them.

Mandating laws surrounding the *hijab* not only strip a woman of her autonomy it affects almost all other areas of her life as well such as her civil, political, and economic rights. Any form of discrimination based on religion is inconsistent with international human rights law. France under the guise of secularism is targeting Muslim women. These women have to face discrimination in schools, at their workplace, and in public. This is a form of indirect discrimination. that the law is in appearance neutral when in fact it has a disproportionate effect on specific individuals. France believes that making these women forgo the *hijab* and *niqab*, is helping these women integrate into society and participate as full-functioning citizens of the state. However, the effects of these laws are quite the contrary. These women experience further isolation and experience more difficulty participating in the public sphere. These women are thus unable to enjoy a quality life based on equality and are discriminated against

based on their beliefs.

Similarly, Iranian laws are discriminatory and promote gender inequality. These degrading laws allow men to control the choices of women and dictate their lives. The female population of Iran is under constant surveillance. Their freedom is dictated by a handful of men in power, who regulate their rights to education, employment, and freedom of religion.

As a result of laws that regulate the choice of clothing women have unequal access to opportunities. They live their lives in the shadow of other people, who are not subjected to the same standards, whether it is men or other religious groups. Their economic and political growth is curtailed and their rights to autonomy and choice are breached.

8. Conclusion:

Muslim women's autonomy must be protected. While their difference in choice must be celebrated. Any laws dictating women on how they must dress should be deemed discriminatory and be repealed. Their cause for freedom must be supported by feminists globally in an attempt to empower these women. Muslim women fighting for control over their bodies are not separatists, in fact they wish to integrate into society but on their terms. State laws need to facilitate women in becoming active members of society rather than policing them, this can only be done if the concept of female agency is understood and respected.

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