

The paradoxical relationship between ‘new laïcité’ and the French discriminatory representation of the Hijab

By Coralie Crabeil

In a letter to the Financial Times (FT), Emmanuel Macron expressed ‘I will not allow anybody to claim that France, or its government, is fostering racism against Muslims. France is as secular for Muslims as for [...] all believers. The neutrality of the state, [non-intervention] in religious affairs, is a guarantee of freedom of worship’ (Macron, 2020). This came after the FT website accused Macron of being anti-Islam. In recent decades, the French government implemented controversial laws related to religion, frequently understood by the public and foreign audiences as restricting the freedom of religion and agency of Muslim women wearing the Hijab in particular. This article will argue that the fundamental principles of *laïcité* (secularism) and the laws stemming from it in France discriminate against Muslim Hijabis. Furthermore, it shall prove how new conceptions of *laïcité* and restrictive laws aim to frame the Hijab as inherently opposed to secular values, which contradicts international human rights conventions.

The debate between the original laïcité and the new laïcité

Laïcité and secularism came to life in France in 1905 with the Law on the Separation of the Churches and State (1905). Article 1 specifies that ‘The Republic ensures the freedom of conscience, [ensuring] freedom of worship limited... by the following rules in the interest of public order’ (Loi du 9 décembre 1905). This vision of secularism and *laïcité* as freedom of worship have also been affirmed in the first article of the French Constitution of 1958, which states that France guarantees ‘that all citizens regardless of their origin, race or religion are treated as equals before the law and respecting all religious beliefs’ (France Diplomacy, 2022).

In recent years, the interpretation of the term *laïcité* has evolved within political debate and ultimately strayed from its original definition. Indeed, the original concept of *laïcité* has been challenged as a result of the diversification of faiths in France that has come with migration, and the rise of extremism and communitarian claims (Colosimo, 2017). This new vision of *laïcité* is defined as the state's obligation of neutrality. As Hennette-Vauchez and Valentin (2014) note, this new interpretation of *laïcité* "goes from a principle of guaranteeing freedom of worship, to the basis of restrictions to religious freedom. By doing so, *laïcité* comes to limit not only the State's action but also the freedom of individuals". Through this new conception of *laïcité*, individual liberties and human rights are openly defied.

Secular principles in the French law as discriminatory against Muslim women

In the name of this new *laïcité*, several laws have been adopted and restrict freedom of religion, the first one being the Law of March 2004 on 'ostentatious religious signs' (2004) forbidding pupils to wear religious sign such as the Hijab or the Kippa, in public primary, middle, and high schools. The 2010 Law 'forbidding the covering of the face in the public space' went further by banning the Burqa and the Niqab in all public spaces. The French government justified that it 'could constitute a danger for public security' (Law 2004-228, 2010), with support from the European Court of Human Rights (ECHR), explaining it would maintain 'public safety' and the 'protection of the rights and freedoms of others' (ECHR 191 (2014)).

In 2021, the 'Law against separatism' (2021), was adopted and widely criticised. While some assert it is against the 1905 law, others affirm the respect of a strict *laïcité* is further needed. The provisional law planned to ban the Hijab for under 18 year-old girls in all public spaces, forbidding the exposure of religious signs for parents on school trips, and

prohibiting the Burkini in swimming pools. Such extensive provisions were rejected by the Conseil Constitutionnel, however, the final adopted law still reinforces the necessary neutrality for workers within public services. The text is described by the President of the Special Commission as having ‘a general scope’, and ‘does not deal with the relationships to a single religion’ (Le Monde, 2021). Although Islam is not explicitly mentioned, in practice, these laws directly discriminate against Muslim women wearing the Hijab. In 2022, the French government and the *Sénat* also discussed censoring religious signs during sport competitions, explaining that French sport federations represent the State and, thus, need to apply to the principle of *laïcité*. Although this segment of the law was abandoned, since 2014, the rules of the French Federation of Football forbid showing off any ‘political, philosophical, religious or syndical sign of belonging’ (FFF, 2022). The French federation of Basketball adopted a similar rule forbidding ‘hair accessories’ (FFBB, 2019). These two cases highlight France’s discriminatory motives as the international football and basketball associations do not apply or require such restrictions.

French secular laws contra international human rights conventions

According to Article 18 of the Universal Declaration of Human Rights (UDHR), ‘Everyone has the right to freedom of thought, conscience and religion (...), either alone or in community with others and in public or private, to manifest his religion or belief’ (UDHR, 1948). The ECHR (2021) further reassesses freedom of thought, conscience and religion (Article 9), the prohibition of discrimination (Article 14) and the restrictions on political activity of aliens (Article 16). France, however, is not faithful to its commitments and has been condemned for it on several occasions. The 2004 law for pupils led to the condemnation of France in 2012 by the United Nations Human Rights Committee (UNHRC) and to get this law framed as ‘an indirect discrimination’ by the European Commission against Racism and

Intolerance (Dhume et al, 2020, 141). The 2010 law forbidding the Niqab and Burqa in all public spaces also consequently violated rights to freedom of belief (Article 18) and to equality (Article 26) of the International Covenant on Civil and Political Rights according to the UNHRC (UNHRC, 2018). Moreover, the 2021 law against separatism was criticised both within France and abroad for limiting free speech, religious belief and stigmatising the French Muslim community. As a consequence, a British journalist of the newspaper the Telegraph mentioned that ‘By introducing this ban – whether intentionally or not – the government is forcing hijab-wearing Muslim women to live indoors’ (Olow, 2021).

What ways forward?

Framing women wearing the Hijab as contradictory to the principles of *laïcité*, with their religious dress implied to be as a sign of oppression and as a tool for political Islamism, actively stigmatises and excludes them from all aspects of society. France’s laws have been acknowledged by the international community as discriminatory, yet France continues to obstruct freedom of religion and the stigmatisation of its Muslim community. Banning the Burqa and Niqab in all spaces, and the Hijab in some, has not made France more peaceful nor secular. The case of the forbidding of the Hijab within sport competitions should ignite more critical discussion. This discrimination is further problematic as France gets ready to host the 2024 Olympic Games in Paris. Will France forbid Muslim women from international teams to wear their Hijab in the name of the French so-called new *laïcité*?

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