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**‘Not an Issue?’
The Muslim Headscarf in Irish Post-Primary Schools:
An International Feminist Perspective**

Nóirín Clancy



Gender, Empowerment and Globalisation Research Cluster

School of Political Science and Sociology

National University of Ireland, Galway

<http://www.nuigalway.ie/soc/>

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CHAPTER I

INTRODUCTION AND METHODOLOGY

1.1 Introduction

In May 2008, the parents of a fourteen year old girl in Wexford, Ireland, requested that she be allowed to wear the Muslim headscarf¹ to school. The Board of Management granted permission but the principal sought guidance on the matter from the Department of Education. This led to a consultation process with schools and key stakeholders which was carried out by the Office of the Minister for Integration.² The outcome of this process was a report with recommendations which ultimately left the issue of the Muslim headscarf to be decided by each school. This first chapter makes some introductory remarks concerning the Muslim headscarf in the Irish context and this is followed by an outline of the methodology used in this study.

This issue of the Muslim headscarf may not have come to the public's attention were it not for the publication in the Irish Times of correspondence between the Department of Education and Science and the Principal of the school in Co. Wexford. This sparked off public controversy and extensive media coverage. An opinion poll by the same paper highlighted divisions on the issue. Columnists argued for and against – those against claiming it was a symbol of gender oppression and imposed on women while others argued for religious tolerance. Some were puzzled, why all the fuss about a 'piece of cloth' given the host of other more serious issues concerning women's human rights. Many within the education sector argued that 'it's not an issue' claiming that it was the media who made it an issue.

In contrast to Ireland, the Muslim headscarf has been a hotly debated issue in other European countries where there is significant variance in how states have dealt with it. It is banned in France while the United Kingdom has adopted a more laissez-faire approach. Cases challenging restrictions on the headscarf have come before the European Court of Human Rights where controversial judgements have reflected the tensions between gender equality on the one hand and the right to freedom of religion on the other.

¹ There is a variety of terms for the Muslim headscarf – the hijab and veil being some of them. In this study, the Muslim headscarf is the term used, unless other terms are used in quotations. This study does not address issues about the burka or other forms of Islamic dress.

² The Office of the Minister for Integration (OMI) was set up in 2007 to develop, drive and co-ordinate integration policy across other government departments. www.ria.gov.ie

It is not that long ago that women in Ireland were obliged to wear headscarves or 'mantillas' to church and sit on one side of the church, segregated from the men and nuns teaching in schools wore veils and were dressed from head to toe in black. Today, Ireland is very different. With the rapid increase in immigration in a very short space of time, Irish society has become much more culturally diverse. This diversity is reflected in schools where it is now common to have pupils from ten, twenty or more nationalities of different religions. Now, instead of the nuns wearing veils, it is young Muslim girls who are wearing headscarves.

This issue is a particular challenge for schools given the unique education system in Ireland where 92% of schools are under the patronage of one religion – the Catholic Church. However, despite the increasing presence of children of minority religions, few issues have been raised. Since the controversy arose in the Wexford School, there has been little or no debate and public attention paid to the issue.

1.1.2 Aim of this study

This study aims to explore the response of schools and their experiences regarding the Muslim headscarf. The frequently stated comment - 'it's not an issue' begs further investigation and little research has been carried out on this matter to date. My interest in this subject stems from my being a feminist and having a long-standing passion and commitment to women's human rights. It also stems from a wish to gain a more in-depth understanding of the debates surrounding this complex issue, be challenged on my assumptions and clarify my own position on the issue.

Debates on the headscarf reflect the tensions between gender equality and women's human rights on the one hand and the protection of minority, religious and cultural rights on the other. These debates are discussed from a feminist and human rights perspectives, drawing on arguments from liberal, post-colonial and multicultural feminists. Since the Muslim headscarf concerns the governing of religious difference at the intersection of gender with race and ethnicity, a number of concepts are discussed to help explain states' responses - church-state relations, gender equality and citizenship regimes.

The core question being addressed in this study is: what factors influence some Irish post primary schools in accommodating pupils to wear the Muslim headscarf? A secondary question explores whether the human rights framework is the best tool with which to address the complexity of this issue.

The study shows that schools had no difficulty with Muslim girls wearing the Muslim headscarf in their schools, allowing it 'in the spirit of religious tolerance.' While none had a formal policy on cultural diversity, there was an emphasis on 'sameness' with everyone, including Muslim girls, being treated equally. The Muslim headscarf 'not being an issue' in schools was a consistent refrain. However, teachers referred to instances where schools were not 'openly' welcoming of the Muslim headscarf; thus highlighting the precarious nature of the rights of minority children and their parents. There was consensus that decisions regarding the Muslim headscarf are best left at the

discretion of each school rather than have regulation by the State; instead, schools stating it was an opportunity to have a ‘dialogue’ with parents of minority religions. The resistance to State interference highlights the peculiar nature of Irish education which is mainly a denominational private system. The willingness of most schools to accommodate the Muslim headscarf and not regard it as ‘an issue’ could be explained, in part, by some schools not wishing to draw attention to the inherent discriminatory and contradictory policies within the education system. The decision being left to each school complies with the recommendations of the Special Rapporteur on Freedom of Religion who suggests contentious situations be evaluated on a case by case basis. However, the Muslim headscarf is a microcosm of a much wider debate in Ireland between the church and state.

1.1.3 Structure of this study

Chapter two presents an overview of the feminist discourse on cultural, religious and women’s human rights, examining debates from liberal, post-colonial and multicultural feminist perspectives. The concept of culture is critiqued and a politics of difference explored. Chapter three summarises the practises across Europe regarding the Muslim headscarf before examining leading cases that have come before the European Court of Human Rights and international human rights bodies. Chapter four presents the current context within which the debate is taking place in Ireland, paying particular attention to church-state relations and the denominational nature of the education system. Chapter five focuses on the current situation regarding the Muslim headscarf, conducting a discourse analysis of the government’s response to the issue. The findings from the interviews with the three school principals and the submissions from the teaching bodies are summarised under key themes.

1.2 The Methodology

This study set out to explore how a number of post-primary schools deal with the issue of the Muslim headscarf. The methodology comprises data gathered from the Office of the Minister for Integration (OMI) which includes submissions from teaching bodies as part of a consultation process the final report following this process produced by the OMI for the Department of Education (DES). Interviews were also conducted with three school principals.

1.2.1 Research design

The research design was informed by a feminist approach. Naming myself as a feminist, such a methodology is most appropriate, and particularly since women’s lives is the focus of this study. With regard to feminist methodologies, it is not the method which makes methodologies feminist but rather the commitment to feminist principles, one of which centres on the researcher-researched relationship and the deconstruction of power

relationships in the process.³ Feminists challenged the conventional approach to interviewing, calling for an alternative approach, the conventional one being where the researcher collects the data from the respondent without giving anything back.⁴ Critical of the one-sided approach, the process is about a ‘dialogue.’⁵ Regarded as political research, feminist research attempts to bring about social change while at the same time developing a relationship with those who are being studied.⁶

Both quantitative and qualitative techniques were implemented in this study. Feminist research methodologies are more commonly associated with qualitative, interpretative approaches, however, quantitative methods are also used.⁷ Qualitative methods are the most effective way to get rich and in-depth insights into the researched person’s perspective, by allowing them to speak in their own words.⁸ The qualitative approach was used in interviews with the three school principals and the quantitative approach was used in the collection of data.

As the interviews were of an open-ended nature, the permission from the respondents to use a dictaphone greatly facilitated the recording of an accurate account of the conversation. Confidentiality was guaranteed. The open questions led to a multiplicity of responses comprising a number of themes which demanded careful examination.

1.2.2 Choice of sample

School principals play a key leadership role in schools in terms of influencing policy. It was therefore decided to interview three school principals. The key criteria in selecting the schools centred on the presence of Muslim girls wearing the Muslim headscarf and the willingness of principals to participate. Another factor was to get a mix of schools within the sector, denominational and non-denominational. Of the three schools involved in the research, one was a secondary school for girls (run by a Catholic order) and two were multi-denominational, co-educational community schools. The schools were located in the west and south of Ireland. Two of the principals were male and the third, the principal of the convent school, was female. Each of the schools had a small number of religious minorities; the number of girls wearing the Muslim headscarf varied varying from three to six girls in each school.

³ Byrne, Anne, and Lentin, Ronit. 2000. Introduction: feminist research methodologies in the social sciences. In *(Re)searching Women: Feminist Research Methodologies in the Social Sciences in Ireland*, edited by A. Byrne and R. Lentin. Dublin: Institute of Public Administration. p.8

⁴ Harvey, L. and MacDonald, M. 1993. *Doing Sociology, A Practical Introduction*. Hampshire, The Macmillan Press p.42

⁵ Oakley, A. 1992. *Social Support and Motherhood*. Oxford, Blackwell Publishers

⁶ Byrne, Anne, and Lentin, Ronit. 2000. Introduction: feminist research methodologies in the social sciences. In *(Re)searching Women: Feminist Research Methodologies in the Social Sciences in Ireland*, edited by A. Byrne and R. Lentin. Dublin: Institute of Public Administration.p.8

⁷ Ibid, p.8

⁸ Dey, I. 1993. Qualitative Data Analysis: A User Friendly Guide for Social Scientists. London: Routledge. p.20

A list of schools was first gathered⁹ and from this list phone calls were made in order to identify schools which had Muslim girls attending and who wore the Muslim headscarf. When a number of schools were identified, calls were made to principals to identify their interest in participating in the study. On the first phone calls, after explaining the purpose of the research, all three principals were willing to be involved. This phone call was then followed up with letters to each principal outlining the purpose of the research and methodology being used. (See Appendix I for a copy of the letters.)

1.2.3 Collection of submissions

The OMI conducted a consultation process among key education stakeholders to identify their views on the wearing of the Muslim headscarf in schools. Apart from surveying over 4,000 primary and post-primary schools on the need for guidelines on the issue, key stakeholders such as teachers' unions and management and parent bodies participated in a consultation process. These organisations included the Association of Secondary Teachers of Ireland (ASTI); the Association of Community and Comprehensive Schools (ACCS); the Joint Managerial Body (JMB);¹⁰ Educate Together; the Catholic Primary School Managers' Association (CPSMA); An Foras Patrúnachta an Scoileanna; Church of Ireland Board of Education; Islamic Foundation of Ireland and the National Parents' Council Post Primary.¹¹

Emails were sent to each of the organisations requesting copies of their submissions, followed up by phone calls. Of the ten submissions requested, five were received from ASTI, JMB, Educate Together, Gaelscoileanna and An Foras Patrúnachta an Scoileanna. Those organisations that stated they did not make a submission included the Islamic Foundation of Ireland and the ACCS. For the remainder of the organisations, after several follow-up phone calls, their submissions were not received. While the Church of Ireland Board of Education did make a submission, they stated it was not available publicly but since an FOI (freedom of information) had been made on it, it was available through the Office of the Minister for Integration (OMI). However, on contacting OMI, it was still not possible to receive a copy since the organisation itself did not wish to make it available.

1.2.4 Interviews

The letter to principals indicated a number of themes for discussion which included questions regarding the ethos of the school; the number of religious minorities, particularly Muslims girls wearing the Muslim headscarf; the policy of the school on religious and cultural diversity; the role of the Department of Education and Science (DES) in responding to the issue; and any issues that have arisen in the school regarding

⁹ Using Ireland's Online Resource for Teachers and Parents. www.schooldays.ie accessed 11.6.2009

¹⁰ The Joint Managerial Body is the representative organisation for boards of management in voluntary secondary schools; the voluntary secondary school sector is made up of schools under the trusteeship of either Catholic trustees or those of the Protestant tradition.

¹¹ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms

the Muslim headscarf. The letter emphasised confidentiality and asked for permission to record the conversation.

The interviews were carried out in an informal, conversational way, leaving space for the respondents to bring up issues with the questions being prompted by the issues highlighted in the letters sent to the principals. Two interviews were conducted face to face in offices on the school premises and one was over the telephone. Each interview took approximately forty minutes. All of the interviews were taped and transcribed. The data was analysed thematically. An account of each interview was forwarded to the interviewees to check that it was an accurate account of their comments and to give them an opportunity to make any amendments. The interviews were carried out at the end of June 2009, after the examinations and before the principals went on holidays.

1.2.5 Secondary sources

A range of secondary sources have been used in this study which includes international legal and social science journals; case law from the European Court of Human Rights; data from the United Nations treaty bodies including human rights treaties, concluding comments, general comments and recommendations, universal periodic reviews and reports from special rapporteurs. Books, theses and newspaper articles were also used as well as a host of relevant reports and policy documents.

This first chapter presented an introduction to the study and outlined the methodology. The theoretical framework within which the Muslim headscarf is located is discussed in this next chapter.

CHAPTER 2

THEORETICAL DEBATES

2.1 Introduction

The controversies surrounding the Muslim headscarf reflect age old debates concerning the tensions between gender equality and women's human rights on the one hand and the protection of religious, cultural and minority rights on the other.¹² The Muslim headscarf is a complex issue which can involve multiple discriminations comprising gender, religious and race.¹³ An appropriate theoretical framework to approach this discourse is, therefore, intersectionality. An intersectional approach emphasises the need to think about issues of gender in conjunction with issues of class, race, ethnicity and sexual orientation and argues that such issues cannot be treated separately when they all have an impact on women's lives simultaneously.¹⁴ All too often, sweeping generalisations are made about women's lives which tend to represent the privileged, white, western, middle-class heterosexual woman.¹⁵ This becomes very evident in the discussions which follow.

This chapter begins with an overview of the feminist debates on cultural, religious and women's human rights. These themes are examined from the liberal, post-colonial and multicultural feminist perspectives, drawing out the divisions and commonalities; the concept of culture is critiqued and a politics of difference explored. Before outlining the debates, it is useful to first get a picture of the issues regarding Muslim women wearing the Muslim headscarf, explore some of the myths and summarise the feminist debates specifically relating to the Muslim headscarf.

2.2 Why Muslim women wear the Muslim headscarf

In the global public discourse about Muslim headscarves, what is extraordinary is the extent to which those not wearing them have felt it their place to criticise those who wear them, no matter what the context or different circumstances of the wearer.¹⁶ In a similar vein, extensive discussion focuses on the interpretation of the texts of 'others', in this case the sacred texts of the Koran; however, it is important to note, in keeping with

¹² Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. P.30

¹³ Ibid. p.30

¹⁴ Anthias, Floya. 2008. Thinking through the lens of translocational positionality: an intersectionality frame for understanding identity and belonging. *Translocations: Migration and Social Change.* P.5

¹⁵ Ibid. p.5

¹⁶ Saul, Ben. 2008. Wearing Thin: Restrictions on Islamic Headscarves and Other Religious Symbols. In *Forced Migration, Human Rights and Security*, edited by J. McAdam: Hart Publishing. P. 182

freedom of religion, groups have the right to interpret their own religious texts and consequently, there is an unwillingness to engage in debates on the religious texts of 'others' whatever their religion.¹⁷

There are various reasons why women wear the Headscarf. For some women, the headscarf is empowering – it enables them to take control of their bodies, it makes their identities distinct and it gives them a sense of belonging to a wider Muslim world.¹⁸ The headscarf as a mark of identity is a consistent theme which confers status and dignity on its wearers.¹⁹ Importantly, it is considered as 'a device to negotiate spaces within the Muslim community, as well as in the dominant western culture.'²⁰ However, these multiple identities are often ignored in debates.²¹ While the practice holds multiple meanings for Muslim women, many mainstream societies in the West have a perception of the headscarf that is negative and it is often presented without proper cultural and historical reference.²²

The representation of the headscarf is intimately related to issues of voice in the West, which has been expressed through the colonial relationship between the 'Occident' and the 'Orient'; this relationship is one of power, domination and varying degrees of complex hegemony, where the Occident spoke for and represented the Orient.²³ As a result, there are many myths about Muslim women created by the Occident one of which is that Muslim women are passive victims of their societies and their religion.²⁴ The failure to fully understand why Muslim women wear the Muslim headscarf results in an easy denunciation of the Muslim religion and Islamic societies as patriarchal.²⁵ There is an increasing gap between dominant understandings of the Muslim headscarf as a symbol of Muslim women's oppression and the positive experience for Muslim women in wearing it.²⁶

¹⁷ McGoldrick, Dominic. 2006. *Human Rights and Religion - The Islamic Headscarf Debate in Europe*: Hart Publishing. P. 9

¹⁸ Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.54

¹⁹ Ibid. p.64

²⁰ Ibid. p.64

²¹ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. P.41

²² Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.63

²³ Said, Edward. 1978. *Orientalism*. Penguin Group

²⁴ Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.64

²⁵ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. P.40

²⁶ Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.54

2.3 'A highly complex autonomous act'²⁷

Among Muslim women themselves there is no unanimity regarding the headscarf. Freedman 40; Even within families different members and generations can have different opinions on it and may choose to wear it or not.²⁸ However, a common view of Muslim women wearing the Muslim headscarf is that it is 'imposed' and while this is the situation for some women, it is not the case for all.²⁹ As, in France and the Netherlands

Muslim women freely opted for the hijab, partly to reassure their conservative parents that they will not be corrupted by the liberal culture of the school and partly to reshape the latter by indicating to both white and Muslim boys that they were not available for certain kinds of activities. The hijab was in their case a highly complex autonomous act intended both to remain within the tradition and to challenge it, to accept the cultural inequality and to create a space for equality. To see it merely as a symbol of their subordination, as many French feminists did, is to miss the subtle dialectic of cultural contestation.³⁰

2.4 The feminist arguments

Over the past two decades, the Muslim headscarf, particularly in public schools, has been the subject of intense debates in France.³¹ Since the French government banned 'signs and dress that conspicuously show the religious affiliation of students' the issue has become more hotly debated in other European countries.³² To illustrate the feminist arguments, the French case is briefly discussed.

Opponents, many of which are feminists, contend that the Muslim headscarf is a symbol of oppression and so should be outlawed in defence of women's human rights, arguing Muslim women need to be protected from Islamic patriarchy which requires them to cover their heads.³³ The events of 9/11 further fuelled hostility with those wearing the headscarf being regarded as agents of 'fundamentalism' and a further indication of their incapacity to assimilate into French society.³⁴ Those few who supported the Muslim girls wearing the headscarf to school argued it would help the girls integrate and so 'liberate'

²⁷ Parekh, Bhikhu. 1999. A Varied Moral World. In *Is Multiculturalism Bad for Women?* Susan Moller Okin with Respondents, edited by J. Cohen, M. Howard and M. C. Nussbaum: Princeton University Press. p.73

²⁸ McGoldrick, Dominic. 2009. Extreme Religious Dress: Perspectives on Veiling Controversies. In *Extreme Speech and Democracy*, edited by I. Hare and J. Weinstein. Oxford: Oxford University Press. p.425

²⁹ Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.65

³⁰ Parekh, Bhikhu. 1999. A Varied Moral World. In *Is Multiculturalism Bad for Women?* Susan Moller Okin with Respondents, edited by J. Cohen, M. Howard and M. C. Nussbaum: Princeton University Press. p.73

³¹ Saul, Ben. 2008. Wearing Thin: Restrictions on Islamic Headscarves and Other Religious Symbols. In *Forced Migration, Human Rights and Security*, edited by J. McAdam: Hart Publishing. p.183

³² Ibid. p.183

³³ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33.

³⁴ Ibid. p.37

them from Islamic pressure within their families and communities, reflecting a superiority of western society over Muslim society.³⁵ Yet, at the same time, it is interesting to note those same supporters ignore the gender inequalities within their own society.³⁶

Those opposing the ban on the Muslim headscarf argue it gets confused with the burqa³⁷ and the fact that women who wear this garment have few rights in comparison to those who choose to wear the Muslim headscarf.³⁸ The few feminists, who opposed the ban, arguing it would lead to greater exclusion for Muslim girls, were condemned by other feminists for cooperating with Muslim fundamentalists in their subjugation of women.³⁹ International human rights bodies have been critical of the French ban.⁴⁰

The debates and conflicting opinions are explored in this next section in an attempt to understand the complex issues as to why an article of women's clothing arouses such emotive responses.

2.5 More than just a piece of cloth – a public / private issue

The Muslim headscarf is not only a piece of cloth but is used as a signifier for cultural, religious and ethnic differences.⁴¹ Rather than be seen as a symbol of change, women are constructed in the role of 'carriers of the tradition', the site upon which human societies inscript their moral order'⁴² This construction stems from women's sexual reproductive capacities which give them power to control moments of the greatest vulnerability - at birth and sometimes at death.⁴³ Such vulnerability leads to ambivalent attitudes towards females, regarded as the 'gatekeepers' of these passages.⁴⁴ The public/private divide has its roots in these passages – the private sphere, encountered at the formative stages of life leaves deep marks of ambivalence thereby closely connected to core identity issues. In the modern liberal democracy, boundaries between private and public are strictly drawn; the public is considered the political and economic sphere while the private is

³⁵ Ibid. p.37

³⁶ Ibid. p.37

³⁷ The burqa is an almost complete covering of the female form.

³⁸ McGoldrick, Dominic. 2009. Extreme Religious Dress: Perspectives on Veiling Controversies. In *Extreme Speech and Democracy*, edited by I. Hare and J. Weinstein. Oxford: Oxford University Press. p.423

³⁹ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. p.39

⁴⁰ UN Human Rights Council. 2008. Universal Periodic Review. Report of the Working Group on the Universal Periodic Review: France. UN Doc A/HRC/8/47. Canada noted that France prohibits wearing the veil, be it religious or not, in its public schools while tolerating wearing crucifixes and recommended the removal of the prohibition. Canada is of the view that wearing the veil is part of freedom of religion. Para 21.

⁴¹ Kilic, Sevgi, Saharso, Sawitri, and Sauer, Birgit. 2008. Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity. *Social Politics: International Studies in Gender, State and Society* 15 (4). p.404

⁴² Benhabib, Seyla. 2002. The Claims of Culture: Princeton University Press. p.84

⁴³ Ibid.

⁴⁴ Ibid. p.84-5

concerned with the household and the strict regulation of access through kinship and marriage.⁴⁵ In liberal societies institutional arrangements to regulate public and private are underpinned by additional assumptions – that the privacy of the household be respected with no state regulation concerning religious, cultural and aesthetic belief; however, it is not that simple, the boundaries between public and private are always in dispute.⁴⁶ Much of these contestations are focused on women’s bodies, hence the reason why intercultural conflicts challenging the symbolic order to these spheres is more likely to generate emotive responses.⁴⁷ The body of women is used to illustrate the “clash of civilisation”, the threat of religious fundamentalism and the pitfalls and failures of multiculturalism.”⁴⁸ It is interesting to note that of twelve practices most frequently associated with intercultural conflicts, seven relate to the status of women in distinct cultural communities.⁴⁹

2.6 A feminist-multicultural critique

Contemporary feminist discourse on religious and cultural issues is strongly polarised, some feminists concerned about women’s rights in multicultural contexts are accused of being ‘Eurocentric’ while those who promote religious and cultural pluralism are charged with cultural relativism and compromising on women’s human rights.⁵⁰ Three distinct variants of the feminist-multicultural critique – liberal, post-colonial and multicultural positions⁵¹ are summarised in this next section where differences and similarities are examined.

2.6.1 “women’s rights must trump cultural diversity”

Liberal feminism highlights the potential gendered impacts of respecting cultural diversity and questions the granting of group rights to minorities when major gender inequalities within such groups are being ignored and since ‘most cultures have as one of their principal aims the control of women by men.’⁵² Those advocating this approach

⁴⁵ Ibid. p.85

⁴⁶ Ibid. p.86

⁴⁷ Ibid. p.86

⁴⁸ Kilic, Sevgi, Saharso, Sawitri, and Sauer, Birgit. 2008. Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity. *Social Politics: International Studies in Gender, State and Society* 15 (4). 404

⁴⁹ Parekh, Bhikhu. 2000. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. Hampshire: Palgrave. p.264-5 The twelve practices listed are: female circumcision; polygamy; Muslim and Jewish methods of animal slaughter, arranged marriages, marriages within prohibited degrees of relationships, scarring children’s cheeks or parts of the body, Muslim withdrawal of girls from coeducational practices such as sports and swimming lessons; Muslim insistence that girls wear the headscarf, Sikh insistence on wearing or taking off turbans, Gypsy and Amish refusal to send their children to public schools either altogether or after a certain age, Hindu requests to be allowed to cremate their deceased, the subordinate status of women and all that entails. p.264-5

⁵⁰ Benhabib, Seyla. 2002. *The Claims of Culture*: Princeton University Press. p.101

⁵¹ Shachar, Ayelet. 2007. Feminism and multiculturalism: mapping the terrain. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press.

⁵² Moller Okin, Susan. 1999. Is Multiculturalism Bad for Women? In *Is Multiculturalism Bad for Women?* Susan Moller Okin with Respondents, edited by J. Cohen, M. Howard and M. C. Nussbaum. New Jersey: Princeton University Press. p.13

argue that association with cultural identity, as opposed to universalist notions of individual rights is bad for women so women's rights are likely to be violated in the process of validating group rights.⁵³ Opponents of this approach accuse it of being about the 'false comfort of imposing secular and state norms on those deemed to be 'different.'⁵⁴ The liberal feminist approach is representative of much of the debate over women, religion, culture and human rights as it has been played out over the last two decades.⁵⁵

2.6.2 "west knows best"

Post colonial feminists oppose the approach of liberal feminists arguing that it is an over simplification of culture and religion, producing a pattern of dual opposites – 'us' versus 'barbaric others' and presenting degrading and stereotypical perceptions of non-white, non-Western cultures and peoples.⁵⁶ Women are seen as a 'monolithic', homogenised group, having a shared oppression – a view particularly of third world women who are presented as poor, uneducated and oppressed by Third World men.⁵⁷ Post-colonialist feminists criticise liberal feminism for their failure to take into account the social, economic and political differences among women, thereby reproducing an ethnocentric⁵⁸ and western model of rights which supports the idea of Western cultural superiority.⁵⁹ Such a view is clearly illustrated by French feminists who wish to 'liberate' Muslim women from patriarchy.⁶⁰

Pleas were made for western feminists to acknowledge the complexity and specificity of each individual non-western culture and society pointing out the dangers of simplistic generalizations about women which are both 'reductive and ineffectual in designing strategies to combat oppressions.⁶¹ Instead, post-colonialist feminists argued for a focus on the common context of political struggles against race, class, gender and imperialist hierarchies arguing for an intersection model which constructs women 'in a variety of political contexts that often exists simultaneously and overlaid on top on one another.'⁶² This approach is highly context- specific, making links between women and groups of

⁵³ Winter, B. 2006. Religion, culture and women's human rights: Some general political and theoretical considerations. 29 *Women's Studies International Forum*.p.381 Okin was the key proponent of this approach and started the debate with her book, 'Is Multiculturalism Bad for Women'?

⁵⁴ Shachar, Ayelet. 2007. Feminism and multiculturalism: mapping the terrain. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press. PAGE

⁵⁵ Winter?? P.381

⁵⁶ Shachar, Ayelet. 2007. Feminism and multiculturalism: mapping the terrain. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press. p.124

⁵⁷ Mohanty, Chandra Talpade. 2003. Feminism Without Borders. Durham, NC: Duke University Press. p.34

⁵⁸ Ethnocentric means belief in the superiority of one's own ethnic group

⁵⁹ Mohanty, Chandra Talpade. 2003. Feminism Without Borders. Durham, NC: Duke University Press. p.34

⁶⁰ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. P.32

⁶¹ Mohanty, Chandra Talpade. 2003. Feminism Without Borders. Durham, NC: Duke University Press.

⁶² Ibid. P.65

women without falling into the trap of generalisations and acknowledging the contradictions as well as the commonalities in women's experiences.⁶³

2.6.3 Women as 'culture bearers and rights bearers'⁶⁴

Similar to post-colonial feminism, multicultural feminists highlight the multidimensional aspect of women lives calling for a multicultural citizenship but they take a more explicit political approach.⁶⁵ Advocates of this approach do not believe in a culture-blind society as a solution to address the intersections of gender and group-based identities and believe in treating women as both 'rights bearers and culture bearers'.⁶⁶ While agreeing with liberal feminism on unequal power relations within minority communities, they reject their notion that the only way to promote women's human rights is to minimise the effect of religion; they believe in 'freeing up space' for internal diversity to flourish within minority communities through generating legal-institutional conditions that promote such openness.⁶⁷ Multicultural feminists also rely on granting more authority to minority women's agency and a voice in navigating the complex intersection of gender and culture in their lives.⁶⁸ They try to reframe the debate from an 'either-your-culture-or-your rights dilemma' to an opportunity for dialogue.⁶⁹

2.7 'Faulty understandings of culture'⁷⁰

Despite the evident polarisation between liberal and post-colonial feminist, they both share common ground in their misunderstanding of culture as 'unified, holistic and self-consistent wholes.' This results in the interests of women members of minorities being ignored, and confines them to their communities of origin against their will.⁷¹ This view of culture is from the 'outside' by the 'observer' who seeks to control and represent the culture to others and leads to the silencing of dissenters.⁷² While for the participants or actors, culture represents accounts which are both competitive and about fitting in.⁷³ Debates on feminism and multiculturalism get quickly polarised because so little attention is paid to this aspect of cultures as 'riven by internal contestation.' For liberals, there is no difference between cultures – they get mapped on to nation states.⁷⁴ A more common understanding of culture equates it with food, religion, costumes and rituals which results in diversity equating with celebrating religious festivals rather than

⁶³ Ibid. p.65

⁶⁴ Shachar, Ayelet. 2007. Feminism and multiculturalism: mapping the terrain. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press. p.127

⁶⁵ Shachar, Ayelet. 2007. Feminism and multiculturalism: mapping the terrain. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press.

⁶⁶ Ibid. p.127

⁶⁷ Ibid. 127

⁶⁸ Ibid. 127

⁶⁹ Ibid. p.142

⁷⁰ Benhabib, Seyla. 2002. The Claims of Culture: Princeton University Press. p.86

⁷¹ Ibid. p.86

⁷² Ibid. P.86

⁷³ Ibid. p.103

⁷⁴ Ibid. p.103

recognising differences within religion or cultural beliefs.⁷⁵ Multiculturalism tends to see ‘cultural differences as non-threatening, complementary and enriching rather than depicting conflicting views of human relations – more like international cuisine than a ‘clash of civilisations.’⁷⁶

In contrast to a multiculturalism’ where groups co-exist and are defined by firm boundaries, an ‘inter-cultural ‘justice between human groups could be supported which ‘views human cultures as constant creations, recreations, and negotiations of imaginary boundaries between ‘we’ and the ‘other(s) ... the ‘other’ is always also within us and is one or more often than not the imagined, ‘other.’⁷⁷ Battles for recognition among individuals and groups often deny the status of ‘otherness’ insofar as ‘otherness’ is taken to comprise disrespect, domination, and inequality.⁷⁸ Individuals and groups fight to realise respect, self-worth, freedom, and equality while also holding on to some sense of selfhood; whether in the consciousness of the individual or the imagined community of a nation, it is very difficult to accept the ‘other’ as deeply different while recognising their fundamental human equality and dignity; therefore, it is vital to have impartial institutions in the public space and civil society where cultural differences are acknowledged and competing stories can take place without domination.⁷⁹

2.8 Equality and a politics of difference

A justice perspective model is a ‘politics of difference’ approach.⁸⁰ Advocates for this approach argued that structural inequalities of gender, race, and sexuality did not fit with the dominant model of equality and inclusion.⁸¹ This model applied the same principles of evaluation and distribution to all persons regardless of their particular position or background; they maintain that identifying equality with equal treatment ignored the deep material differences in social position, division of labour and ways of living that disadvantaged excluded groups; a commitment to substantial equality on the other hand acknowledges such differences.⁸²

Two approaches are identified with the politics of difference - a politics of positional difference and a politics of cultural difference, the former mainly concerns issues of structural inequalities - where a group’s opportunities for development and well being are limited; while the latter focuses on issues of liberty and obscures inequalities in

⁷⁵ Sahgal, Gita. 2002. Two Cheers for Multiculturalism. Paper read at Warning Signs of Fundamentalism, at London. P.54

⁷⁶ Ibid. p.54

⁷⁷ Benhabib, Seyla. 2002. The Claims of Culture: Princeton University Press. p.8

⁷⁸ Ibid. p.8

⁷⁹ Ibid. p.8

⁸⁰ Young, Iris Marion. 2007. Structural injustice and the politics of difference. In *Multiculturalism and Political Theory*, edited by A. S. Laden and D. Owen: Cambridge University Press. p.63

⁸¹ Ibid p.63

⁸² Ibid p.63

opportunities structured by the division of labour, hierarchies of decision-making and the standards that institutions apply to reward success.⁸³

Over past two decades there's been a shift from a politics of positional difference to a politics of cultural difference which means a narrow focus on ethnic, national, and religious group, limiting the issues of social justice to those concerned with freedom and autonomy.⁸⁴ While law can provide a framework for equality, a politics of positional difference recommends that clubs, associations, universities, churches and enterprises all investigate their own policies and practices to reflect on ways they contribute to unjust structures and follow up with action to change the situation.⁸⁵ Putting 'dialogue among cultures at the centre' is of key importance where members of different cultural groups can influence each other and engage in a productive exchange with such interaction contributing to resolving intercultural conflicts.⁸⁶

2.9 Universal women's rights, should we abandon it?

The issue over whether Muslim women should or should not be allowed to wear the Muslim headscarf publicly illustrates the conflict between the universality of women's human rights on the one hand and protecting minority or cultural rights on the other.⁸⁷ A limitation of universalism is that it views women as a 'group', disguising their social, political, religious and economic differences, thereby assuming too much commonality.⁸⁸ However, it is contended universal women's human rights should not be abandoned as arguments against it in defence of culture may be employed against women's rights since claims to defend traditional cultures often involve control of areas such as family life.⁸⁹

The debates over the Muslim headscarf illustrates the universalist/culturalist divide, a divide which has posed challenges for feminists with few having a clear strategy to address the conflict between gender equality and the demands of culture; thus distracting them from the important material and socioeconomic inequalities which underlie both positions.⁹⁰ Therefore, rather than presenting this divide as a clash between universal and particular rights it is more constructive to focus on the context in which these rights are played out and listen to the voice of the women to whom the rights pertain.⁹¹ Furthermore, feminists agreeing with the wearing of the Muslim headscarf do not mean

⁸³ . Ibid p.63

⁸⁴ Ibid. p.88

⁸⁵ Ibid. p.84

⁸⁶ Ibid. p.78

⁸⁷ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. P.31

⁸⁸ Ibid. p.31

⁸⁹ Ibid. p.32

⁹⁰ Ibid. p.33

⁹¹ Ibid. p.43

they support cultural relativism and adopt such an approach to other issues such as female genital mutilation.⁹² Instead, understandings of culture needs to be adapted, rejecting cultural holism and having more faith in ordinary people to negotiate their own accounts of identity and difference through multicultural encounters in a democratic civil society.⁹³

The importance of context is conveyed in the Vienna Declaration:

While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.⁹⁴

Therefore, compromises are made between universal norms and national contexts. Such compromises and balancing of rights are illustrated in the next chapter which discusses the legal frameworks.

2.10 Conclusion

This chapter presented an overview of the feminist debates on cultural, religious and women's human rights, specifically exploring arguments for and against the Muslim headscarf. It attempted to unpack the reasoning as to why the constant focus on women's bodies. Three variants of the feminist-multicultural critique were discussed where differences and similarities were examined. The dangers were highlighted of viewing women as a homogenous group, particularly 'third world women' and ignoring the context and specificities of their lives. Misunderstandings of culture reduce it to simplistic notions controlled by the 'observer.' Space is needed for dialogue and a recognition of cultural difference while taking into account structural inequalities. The Muslim headscarf illustrates the universalistic/cultural relativist divide but rather than emphasising the divide, the focus should be on compromises and a balancing of rights. The debates in this chapter are echoed in the next one as conflicts and tensions surrounding the Muslim headscarf get debated in the context of international case law.

⁹² Ibid. p.43

⁹³ Ibid p.104

⁹⁴ UNGA. 1993. Vienna Declaration and Programme of Action.. UN Doc A/CONF.157/23.Para 5

CHAPTER 3

LEGAL FRAMEWORKS AT REGIONAL & INTERNATIONAL LEVELS

The wearing of the headscarf is a complex and multi-faceted issue that is often raised in public debate in most European countries during recent years particularly in the areas of education and employment. It is in these areas that the issue of the headscarf has become controversial, as it is seen as a symbol of female oppression and gender inequality.⁹⁵

3.1 Introduction

The debates about the headscarf are taking place in a global context of fear of Islamic fundamentalism and shifts in immigration policies of many European countries.⁹⁶ European states grapple with whether women's wearing headscarves is a legally protected freedom or the very essence of gender oppression.⁹⁷ While there exists constitutional protection of religion within the private sphere across Europe, when it comes to the public square the practice of this 'other', non-European religion is at its most vulnerable.⁹⁸

This chapter presents the legal framework and examines leading cases which have come before the European Court of Human Rights (ECtHR) and international human rights bodies. The regulation of the Muslim headscarf involves the intersection of a number of international human rights which include freedom of religion, freedom of expression, identity, privacy, non-discrimination, gender equality, privacy and minority rights.⁹⁹ The cases are analysed from the perspective of gender and religious discrimination. Before this discussion, a summary of the various models employed by states in their response to the Muslim headscarf and the factors that determine such responses is presented.

⁹⁵ Ssenyonjo, Manisuli. 2007. The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases. *Chinese Journal of International Law* 6 (3). p.654

⁹⁶ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. p.29

⁹⁷ Rottmann, Susa B, and Ferree, Myra Marx. 2008. Citizenship and Intersectionality: German Feminist Debates about Headscarf and Antidiscrimination Laws. *Social Politics: International Studies in Gender, State and Society* 15 (4). p.501

⁹⁸ Cavanaugh, Kathleen. 2007. Islam and the European Project. *Muslim World Journal of Human Rights* 4 (1). p.18

⁹⁹ McGoldrick, Dominic. 2006. Human Rights and Religion - The Islamic Headscarf Debate in Europe: Hart Publishing. p.32

3.2 Variation across Europe

There are three distinct models within public institutions regarding the headscarf - the prohibitive model, the selective model and the non-restrictive or tolerant model.¹⁰⁰ The prohibitive approach which bans all forms of Muslim head/body gear, is implemented in France, Turkey and some German federal states; the “selective” model applies only to certain bodily covering, such as the niqab and burqa¹⁰¹ and this model is adopted in Finland, Sweden, and the Netherlands; the non-restrictive, tolerant model allows for the practice of all forms of covering (hijab, jilbab, burqa, and niqab) and this is adopted in Denmark, the United Kingdom, Greece, and Austria.¹⁰² While the majority of European countries appear to allow religious attire in educational institutions, a new demarcation is emerging regarding the niqab or jilbab with guidelines differentiating between what is acceptable and not acceptable.¹⁰³

3.2.1 Citizenship models

The governing of religious differences by states can be explained by a number of factors – church-state relationship, citizenship regime and equality legislation.¹⁰⁴ Regarding citizenship models, for example, civic assimilationism, as practised in France, attributes little recognition to cultural and religious difference resulting in easy access to citizenship as long as you ‘fit in.’¹⁰⁵ In an ethno-cultural citizenship model like Austria which is regarded as a national culturally homogenous society, there are strict requirements regarding citizenship based on descent.¹⁰⁶ The multicultural model, in stark contrast to the above two, promotes cultural and religious diversity and provides easier access to citizenship, as practised in the Netherlands and the United Kingdom.¹⁰⁷ Ireland is closer to the United Kingdom model; however, the Irish situation is examined more closely in the next chapter.

¹⁰⁰ Skjeie, Hege. 2007. Headscarves in Schools: European Comparisons. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.137

¹⁰¹ The burka is the term used to describe the full veil covering the whole of the body and the face, and the niqab covers all the upper body with the exception of the eyes. See Skjeie, p. 138.

¹⁰² Kilic, Sevgi, Saharso, Sawitri, and Sauer, Birgit. 2008. Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity. *Social Politics: International Studies in Gender, State and Society* 15 (4). p.398

¹⁰³ Skjeie, Hege. 2007. Headscarves in Schools: European Comparisons. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.144

¹⁰⁴ Gresch, Nora, Hadj-Abdou, Leila, Rosenberger, Sieglinde, and Sauer, Birgit. 2002. Tu felix Austria? The Headscarf and the Politics of 'Non-issues'. Paper read at Warning Signs of Fundamentalism, 2004. p.414

¹⁰⁵ Ibid. p.414

¹⁰⁶ Ibid. p.414

¹⁰⁷ Ibid. p.415

3.2.2 Church-state relations

Church-state relations also play a factor in policies on religious pluralism.¹⁰⁸ While secular states such as France ban religion from the public sphere, those with strong ties between mainly Christian churches and state institutions are more tolerant.¹⁰⁹ Different models include – the secularist approach (France and Turkey), the mixed or co-operative system or ‘pluralistic inclusion (Germany and Austria) and the state-church model (UK, Scotland, and Denmark).¹¹⁰ Ireland’s model is similar to that of the United Kingdom which will be discussed in more details in the next chapter.

3.3.3 Equality legislation

Equality legislation and anti-discrimination policies also shed light on the accommodation of religious diversity in that it is argued countries with strong equality traditions are less inclined to ban the Muslim headscarf since it is likely to be viewed as infringing on Muslim women’s rights.¹¹¹ Conflicts over the Muslim headscarf in the United Kingdom and the Netherlands showed that gender equality commissions framed the headscarf as an equal opportunity issue and so supported Muslim women to wear such attire while countries such as Turkey and Austria have weak institutions enforcing gender equality policies.¹¹² Many European countries with gender equality laws such as Norway found a ban on Muslim headscarves to be in breach of their domestic equality legislation.¹¹³

3.3.4 Austria – bucking the trend

Austria has one of the most tolerant models on freedom of religious beliefs, arguing ‘schools should reflect social reality in all its pluralism’.¹¹⁴ However, while tolerant on religion, it has an exclusionary ethno-cultural, anti-immigrant model and ‘Christian cultural monism is hegemonic’.¹¹⁵ With such factors one would not expect accommodation of the Islamic headscarf; yet Austria is one of the few countries where conflict over the Muslim headscarf is virtually absent and has an inclusive policy towards Islam, despite the presence of right-wing populist parties and the xenophobic

¹⁰⁸ Skjeie, Hege. 2007. *Headscarves in Schools: European Comparisons*. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.131-2

¹⁰⁹ Gresch, Nora, Hadj-Abdou, Leila, Rosenberger, Sieglinde, and Sauer, Birgit. 2002. *Tu felix Austria? The Headscarf and the Politics of 'Non-issues'*. Paper read at Warning Signs of Fundamentalism, 2004. p.417

¹¹⁰ Ibid. p.417

¹¹¹ Skjeie, Hege. 2007. *Headscarves in Schools: European Comparisons*. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.402

¹¹² Ibid. 402

¹¹³ Ibid. pp.130-1

¹¹⁴ Dustin, Moira. 2007. *Gender equality, cultural diversity: European comparisons and lessons*. Gender Institute, London School of Economics and Political Science. p.24

¹¹⁵ Ibid. p.24

nature of its population.¹¹⁶ Hence, it is bucking the trend and not fitting the suggested theoretical model.

3.4 The right to freedom of religion

The heart of religious freedom is that of internal religious conviction.¹¹⁷ The key provision in the ECHR with respect to freedom of religion is article 9 which states:

9.1 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 worship, teaching, practice and observance.

9.2 Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.¹¹⁸

The key provisions regarding freedom of religion under the International Covenant on Civil and Political Rights, article 18 states:

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 freedom of others.¹¹⁹

Most controversy centres on the articles concerning restrictions, ECHR 9 (2) and ICCPR 18 (3) since states seek to prohibit or compel the wearing of the Muslim headscarf.¹²⁰ There is an onus on states to justify any limitations.¹²¹

¹¹⁶ Kilic, Sevgi, Saharso, Sawitri, and Sauer, Birgit. 2008. Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity. *Social Politics: International Studies in Gender, State and Society* 15 (4). p.401

¹¹⁷ McGoldrick, Dominic. 2006. Human Rights and Religion - The Islamic Headscarf Debate in Europe: Hart Publishing. p.407

¹¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms. (entered into force 3 September 1953) 213 UNTS 221. (ECHR).

¹¹⁹ International Covenant on Civil and Political Rights. (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹²⁰ 2006. Human Rights and Religion - The Islamic Headscarf Debate in Europe: Hart Publishing. p.27

¹²¹ Ibid. p.29

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief specifies the freedom ‘to make, acquire and use to an adequate extent the necessary articles and materials related to rites or customs of a religion or belief.’¹²² According to the Human Rights Committee, ‘the observance and practice of religion or belief may include not only ceremonial acts but also such customs as ... the wearing of distinctive clothing.’¹²³

This next section examines cases which have come before the ECtHR and international human rights bodies, highlighting the differences in approach from the perspective of religious and gender discrimination.

3.5 The European Court of Human Rights (ECtHR)

Ms. Dahlab and Ms Sahin went to the ECtHR to claim they were not some symbols of oppression in need of rescue, nor aggressive proselytisers in need of restraining...but hoped their rights might be upheld when there was no sign that they had done any harm and asked for fulfilment of the promise of the ECHR – equality, freedom and dignity.¹²⁴

The above cases reflect the position taken by the ECtHR in its rulings, a general perception that the Muslim headscarf controversy is one of a clash between hostile value systems – the religious gender hierarchy within Islam versus secular gender equality rights.¹²⁵ Before discussing the cases, some background is first outlined.

The case of Dahlab v. Switzerland involved a teacher who was banned from teaching in a primary school because she wore the Muslim headscarf.¹²⁶ She relied on articles 9 and 14¹²⁷ of the ECHR alleging discrimination on the grounds of sex.¹²⁸ The Court held that a teacher, wearing a ‘powerful external symbol’ (imposed on women by a religious) precept was ‘hard to square with the principle of gender equality;’ furthermore, it might have some kind of proselytizing effect on young children so the Court concurred with views of the Swiss Federal Court that the prohibition of wearing a Muslim headscarf was

¹²² Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981. G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981).

¹²³ Human Rights Committee. 2004. 'General Comment No 22' in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies. Note by the Secretariat. UN Doc HRI/GEN/1/Rev.7. para 4

¹²⁴ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. p.73

¹²⁵ Skjeie, Hege. 2007. Headscarves in Schools: European Comparisons. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.130

¹²⁶ Evans, Carolyn. 2006. The 'Islamic Scarf' In The European Court of Human Rights. *Melbourne Journal of International Law* 52. p.53

¹²⁷ Article 14 contains a provision on discrimination on grounds of sex, race, colour, language, religion and several other criteria

¹²⁸ Ibid

justified on grounds of neutrality and gender equality.¹²⁹ The case was dismissed by the ECtHR at the admissibility stage.¹³⁰

The case of *Sahin v. Turkey* concerned a student who was denied entry to Istanbul University as she defied a ban on wearing the headscarf; she took her case to the ECtHRs arguing it violated her rights under article 9.¹³¹ The Court found that the university had not breached its obligation under article 9 and while acknowledging measures had interfered with the applicant's right to manifest her religion, found such interference was justified in principle and proportion to the aims pursued.¹³²

3.5.1 Gender discrimination – a clash of values?

Most cases dealing with Islamic dress highlight gender equality as an important consideration in justifying restrictions on women's clothing.¹³³ In the *Dahlab* case, the Court noted the headscarf:

... appears to be imposed on women by a precept which is laid down in the Koran and which . . . is hard to square with the principle of gender equality. It therefore appears difficult to reconcile the wearing of an Islamic headscarf with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils.¹³⁴

However, the Court's statement is at odds with *Dahlab's* own argument who contended that, under article 14 of the ECHR, the requirement that she stop wearing the headscarf discriminated against her as a woman.¹³⁵ *Dahlab's* gender discrimination complaint was dismissed by the Court as it applied a distinctly 'formal equality' comparator-based type of reasoning, arguing that the measure was not aimed at her directly but applied to men as well.¹³⁶ This response illustrates the limitations of a formal non-discrimination discourse – while the Court is factually correct, it ignores the reality on the ground for women which is very different from men since they do not experience the same problems.¹³⁷

A similar opinion was upheld in *Sahin* case regarding the headscarf being incompatible with gender equality.

¹²⁹ *Dahlab v Switzerland v European Court of Human Rights*. . 2001. In (*App no.42393/09*) ECtHR.

¹³⁰ *Ibid.*

¹³¹ *Sahin v Turkey* 2005. In (*App no 44774/98*): ECtHR.

¹³² *Ibid.*

¹³³ McGoldrick, Dominic. 2006. *Human Rights and Religion - The Islamic Headscarf Debate in Europe*: Hart Publishing. p.263

¹³⁴ *Dahlab v Switzerland v European Court of Human Rights*. . 2001. In (*App no.42393/09*) ECtHR.

¹³⁵ McGoldrick, Dominic. 2006. *Human Rights and Religion - The Islamic Headscarf Debate in Europe*: Hart Publishing. p.263

¹³⁶ *Ibid.* p.263

¹³⁷ *Ibid.* p.263

However, one of the two dissenting judges strongly disagreed:

... what in fact is the connection between the ban and sexual equality? The judgement (of the majority) does not say. Indeed, what is the signification of wearing the headscarf? ... it is a practise that is engaged in for a variety of reasons. It does not necessarily symbolise the submission of women to men and there are those who maintain that, in certain cases, it can be a means of emancipating women. What is lacking in this debate is the opinion of women, both those who wear the headscarf and those who choose not to.¹³⁸

Judge Tulkens, in this last sentence, notes the absence of women's voice in the process; thus, the gender imbalance of the Court is unsurprising - 12 male and 5 female judges (one of whom dissented) which simply accepts the assertions of gender inequality by a male-dominated government and is giving little consideration to the views of women.¹³⁹

The justification for banning the Islamic headscarf based on the principle of equality suggests it is synonymous with inequality and discrimination against women.¹⁴⁰ As highlighted in the previous chapter, it is not only "analytically reductive" as it presupposes a homogeneity within Muslim women, but it also fails to take into account the complex reasons why some Muslim women wear the Muslim headscarf.¹⁴¹ The decisions in *Sahin & Dahlab* relied on contradictory stereotypes of Muslim women as passive and 'victims' of gender oppression or as 'aggressors', or fundamentalists who force their positions onto the unwilling and undefended; such stereotypes are used by ECtHR with little recognition of the conflict between the two images.¹⁴²

In contrast to the ECtHR's view of gender equality, many European countries with gender based discrimination legislation have not regarded the headscarf as one of conflicting rights; Norway found a ban on headscarves to be in breach of their domestic equality legislation.¹⁴³

3.5.2 Religious discrimination and Islamic fundamentalism

Apart from being regarded as incompatible with gender equality, the Court also views the headscarf as contrary to a tolerant, secular society that respects the rights and freedoms of others.¹⁴⁴ In the *Dahlab & Sahin* cases, there was no evidence that they were

¹³⁸ *Sahin v Turkey* 2005. In (*App no 44774/98 (Unreported, ECHR, Grand Chamber, 10 November 2005)* [12] (*Dissenting Opinion of Judge Tulkens*): ECtHR.

¹³⁹ Evans, Carolyn. 2006. *The 'Islamic Scarf' In The European Court of Human Rights*. *Melbourne Journal of International Law* 52. p.67

¹⁴⁰ Ssenyonjo, Manisuli. 2007. *The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases*. *Chinese Journal of International Law* 6 (3). p.667

¹⁴¹ *Ibid.* 667

¹⁴² Evans, Carolyn. 2006. *The 'Islamic Scarf' In The European Court of Human Rights*. *Melbourne Journal of International Law* 52. p.72

¹⁴³ Skjeie, Hege. 2007. *Headscarves in Schools: European Comparisons*. In *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, edited by J. E. Goldschmidt and M. L. P. Loenen. Oxford: Hart Publishing. p.130-1

¹⁴⁴ Evans, Carolyn. 2006. *The 'Islamic Scarf' In The European Court of Human Rights*. *Melbourne Journal of International Law* 52. p.69

intolerant of the views of others since neither applicant forced their views on to others; however, though not stating it explicitly there appears to be an equation of Islam with intolerance.¹⁴⁵ An underlying fear running throughout Sahin judgement was the fear that the ‘headscarf will breed Islamic fundamentalism’, however, as disputed in the dissenting opinion by Judge Tulkens with respect to Article 9: ‘Merely wearing the headscarf cannot be associated with fundamentalism and it is vital to distinguish between those who wear the headscarf and “extremists” who seek to impose the headscarf as they do other religious symbols.’¹⁴⁶

The readiness of the Court to see the headscarf as a ‘dangerous signifier of intolerance and anti-secular fundamentalism’ is particularly alarming in light of the outcome of an earlier judgment.¹⁴⁷ In this case, a religious leader in Turkey was found guilty by a state court of inciting people to hatred, fiercely criticising secular and democratic principles and openly calling for the introduction of Sharia Law.¹⁴⁸ When convicted, the applicant complained his right to freedom of expression under Article 10 was violated¹⁴⁹ the ECtHR found in his favour.¹⁵⁰ One can conclude from this outcome that a religious leader can be blatantly intolerant because it is about his freedom of expression while a woman, who never criticised secularism and for whom there was never any proof of intolerance, was held not to be in violation of rights.¹⁵¹ Therefore, an offensive public statement can be tolerated but:

...the control of women is a signifier of success in the culture war between secular governments and Muslim subcultures in those societies. The women in these cases cease to be individuals with their own personalities, histories and concerns. Instead they become a symbol of the tension between the imagined West (secular, rational, egalitarian, human rights respecting) and imagined Islam (religious fundamentalist, irrational, discriminatory and violative of human rights. Having accepted such a world view, it is little wonder that the Court opts for the West.¹⁵²

Unlike the United States of America, Europe is strongly influenced by a single dominant Christian denomination, illustrated by the reluctance of Court members to move outside the religious concepts most common in Europe (Christian and secular) and deal with non-Christian religions in a manner that is respectful and culturally sensitive; they also demonstrate how the Court is prepared to rely on government statements about Islam and the headscarf which are not substantiated by any evidence or reasoning.¹⁵³ The

¹⁴⁵ Ibid. p.69

¹⁴⁶ Sahin v Turkey 2005. In (App no 44774/98 (Unreported, ECHR, Grand Chamber, 10 November 2005) [12] (Dissenting Opinion of Judge Tulkens): ECtHR.

¹⁴⁷ Evans, Carolyn. 2006. The 'Islamic Scarf' In The European Court of Human Rights. *Melbourne Journal of International Law* 52. p.70

¹⁴⁸ Ibid. p.70

¹⁴⁹ ECHR art 10

¹⁵⁰ Evans, Carolyn. 2006. The 'Islamic Scarf' In The European Court of Human Rights. *Melbourne Journal of International Law* 52. p.70

¹⁵¹ Ibid. p.70

¹⁵² Ibid. p.71

¹⁵³ Ibid. p.54

Court's reluctance to engage with the complexity of the debate and the reality of Muslim women's lives is a major weakness.¹⁵⁴

3.6 Balancing of rights and the margin of appreciation

The ECtHR, in the Sahin case, noted the need for a 'balancing of rights 'based on dialogue and a spirit of compromise' arguing rights sometimes had to be restricted to protect others.¹⁵⁵ This consideration is for church-state relations – since there is no uniformity in Europe, rules in this sphere will consequently vary from one country to another according to national traditions.'¹⁵⁶ This is where the doctrine of 'margin of appreciation' is used and where universal norms take national contexts into account.¹⁵⁷ However, the margin of appreciation doctrine is disputed by some human rights advocates as it is seen as a 'get out' clause since it can uphold national laws at the expense of minority practices; justifiably, human rights law could be rightly criticised for being weak as national states are protected rather than human rights being upheld; so, an issue is how to achieve a balance between universal human rights and particular contexts when the differences are within a state.¹⁵⁸

3.7 International Human Rights Bodies

The rulings of the ECtHR are in stark contrast to the clear-cut findings of human rights bodies.¹⁵⁹ Two cases brought before the Human Rights Committee (HRC) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) illustrates this contrast and are analysed from the perspective of religious and gender discrimination. This section also discussed recommendations of the Special Rapporteur on the Freedom of Religion.

3.7.1 Religious discrimination and the Human Rights Council

The Hudoyberganova v Uzbekistan case concerned a female Muslim student claiming her right to manifest her religion under Article 18 of the ICCPR was being breached as she was prohibited from wearing the Muslim headscarf at an educational institute.¹⁶⁰ As the State Party had put forward no particular justification for the ban, simply noting that

¹⁵⁴ Ibid. p.67

¹⁵⁵ O'Connell, R. 2008. *Let's Talk: Dealing with Difference in Human Rights Law*. In *The Tension Between Group Rights and Human Rights: A Multidisciplinary Approach* edited by K. De Feyter and G. Pavlakos. Portland, USA: Hart Publishing. p.154

¹⁵⁶ Ibid. p.139

¹⁵⁷ Ibid. p.139

¹⁵⁸ Ibid. p.139

¹⁵⁹ Evans, Carolyn. 2006. *The 'Islamic Scarf' In The European Court of Human Rights*. *Melbourne Journal of International Law* 52. p.56

¹⁶⁰ Ibid. p.56

the relevant regulation prohibited the wearing of clothes that attracted ‘undue attention’, the majority of the HRC found in favour of the complainant.¹⁶¹

The Committee also confirmed that:

the freedom to manifest one’s religion encompasses the right to wear clothes or attire in public which is in conformity with the individual’s faith or religion ... that to prevent a person from wearing religious clothing in public or private may constitute a violation of article 18, paragraph 2, which prohibits any coercion that would impair the individual’s freedom to have or adopt a religion.¹⁶²

Given the lack of clarity on this case, especially the State Party’s failure to explain the reasoning behind the university’s ban on the headscarf, the case may have negligible precedent value on this critical issue.¹⁶³

3.7.2 Gender discrimination and CEDAW

While the Convention on the Elimination of All Form of Discrimination against Women (CEDAW) has been widely ratified, it also has much more reservations than other major treaties, many by Islamic states who claim the obligations of the treaty are inconsistent with Sharia Law.¹⁶⁴

CEDAW’s Optional Protocol was used by a Turkish teacher, Rahime Kayhan, to challenge the prohibition of the Headscarf in Turkey claiming it violated her right to work under Article 11 of CEDAW.¹⁶⁵ Turkey claimed that the regulations on Islamic dress did not constitute discrimination against women since they applied to males and females and emphasised that those wishing to join the civil service knew of the rules regarding dress code.¹⁶⁶ However, the CEDAW Committee declared the application inadmissible for failure to raise the issue of discrimination based on sex during the exhaustion of domestic remedies.¹⁶⁷ Women’s human rights advocates were critical of the Committee’s decision in this case which deprived the sector of having better jurisprudence about the issue of wearing a headscarf.¹⁶⁸

¹⁶¹ Raihon Hudoyberganova v Uzbekistan 2004. In *Human Rights Committee*: Communication No. 931/2000.

¹⁶² Ibid.

¹⁶³ Joseph, Sarah. 2006. United Nations Human Rights Committee: Recent Cases. *Human Rights Law Review* 6 (2). p.369. See this article for the views of the three dissenting members and more complex reasons for the applicant’s exclusion from the Institute.

¹⁶⁴ McGoldrick, Dominic. 2006. Human Rights and Religion - The Islamic Headscarf Debate in Europe: Hart Publishing. p.261

¹⁶⁵ Kayhan v Turkey 2006. CEDAW Communication No 8/2005.

¹⁶⁶ ———. 2006. Human Rights and Religion - The Islamic Headscarf Debate in Europe: Hart Publishing. p.262 (McGoldrick)

¹⁶⁷ Ibid. p.262

¹⁶⁸ Facio, Alda. 2008. The OP-CEDAW as a Mechanism for Implementing Women's Human Rights: An Analysis of the First Five Cases under the Communications Procedure of the OP-CEDAW. edited by International Women's Rights Action Watch Asia-Pacific. p.43

3.8 The Special Rapporteur on Freedom of Religion

The Special Rapporteur recommended that:

contentious situations should be evaluated on a case-by-case basis, e.g. by weighing the right of a teacher to manifest his or her religion against the need to protect pupils by preserving religious harmony according to the circumstances of a given case.¹⁶⁹

In a United Kingdom report concerning religious symbols and school uniforms, the Special Rapporteur welcomed the case-by-case approach by the authorities and courts.¹⁷⁰ The United Kingdom's Department for Children, Schools and Families produced non-statutory "guidance" on school uniform which strongly recommended wide consultations with community leaders representing minority ethnic and religious groups and calling on schools to act 'reasonably' in accommodating religious requirements.¹⁷¹ The guidance also emphasizes that each case will depend on the circumstances of the particular school and that it is for a school to determine what sort of uniform policy is appropriate for it.¹⁷²

The Special Rapporteur developed a set of general criteria to assist national and international bodies in their review of laws regarding the freedom of religion and to help them balance competing human rights when dealing with the prohibition of religious symbols.¹⁷³ It was suggested that the following two questions be always kept in mind; firstly, what is the significance of wearing a religious symbol and its relationship with competing public interests, and especially with the principles of secularism and equality; secondly, who is to decide ultimately on these issues, whether it should be up to the individuals themselves, religious authorities, the national administration and courts, or international human rights mechanisms?

The Special Rapporteur referred to the doctrine of 'margin of appreciation', a practice discussed earlier in relation to the ECtHR, she warned that it should not lead to

¹⁶⁹ ECOSOC. 2006. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. E/CN.4/2006/5. para 51

¹⁷⁰ UN Human Rights Council. 2008. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. Mission to the United Kingdom of Great Britain and Northern Ireland. UN Doc A/HRC/7/10/Add.3. para 46

¹⁷¹ *Ibid.* para 46

¹⁷² *Ibid.* para 46

¹⁷³ ECOSOC. 2006. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. E/CN.4/2006/5. para 59

questioning the international consensus that ‘all human rights are universal, indivisible, indivisible and interdependent and interrelated’.¹⁷⁴

3.9 Conclusion

This chapter highlights the variations across Europe in how the Muslim headscarf is dealt with depending on a range of factors within each state. In an analysis of leading cases from the perspectives of religious and gender discrimination, the ECtHR clearly sees the Muslim headscarf as a clash of values - incompatible with gender equality and the values of the European Union. It is a Court which is male dominated, gender and culture blind and appears reluctant to engage with the complexities of modern religious pluralism. Thus, the limits of the judicial approach in resolving disputes concerning gender, religion and culture are evident.

In contrast, the human rights bodies take a different approach with an emphasis on the right to manifest ones religion and recommending that issues should be considered on a case by case basis, welcoming in particular the approach being taken by the United Kingdom. Ultimately;

The fundamental objective should be to safeguard both the positive freedom of religion or belief as manifested in observance and practice by voluntarily wearing or displaying religious symbols, and also the negative freedom from being forced to wear or display religious symbols. At the same time the competing human rights need to be balanced and public interest limitations should be applied restrictively.¹⁷⁵

¹⁷⁴ UNGA. 1993. Vienna Declaration and Programme of Action. UN Doc A/CONF.157/23. Para 5

¹⁷⁵ ECOSOC. 2006. Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir. E/CN.4/2006/5. para 59

CHAPTER 4

IRELAND - THE CONTEXT

4.1 Introduction

Ireland can take some lessons from other European countries on the Muslim headscarf issue; however, their experiences do not provide straightforward answers since each state has evolved an individualised approach to match their own conditions.¹⁷⁶ As highlighted in the last chapter, the factors which can help to explain a state's response to religious diversity includes gender equality legislation, church-state relationships and citizenship regimes.¹⁷⁷ This chapter presents the context in Ireland within which the Muslim headscarf is being debated. Under church-state relations, significant attention is given to education since it is an area where the Catholic Church has exerted enormous influence and which also impacts on minority children. Multiculturalism in Ireland is briefly discussed and finally, the current situation regarding the Muslim headscarf in Ireland is presented. Before discussing these factors, it is useful to get a picture of the changing demographics in Ireland.

4.2 Changing demographics

The debates on the Muslim headscarf reflect the enormous changes Ireland has witnessed over the past 10-15 years. For the first time, the country has experienced more inward than outward migration which has resulted in significant demographic changes; foreign nationals resident in the State increased by 87% over the four year period from 2002 -2006, representing 166 nationalities.¹⁷⁸ The last census also revealed an increase in the numbers professing minority and secular beliefs with Muslims now representing the third largest religious category.¹⁷⁹

¹⁷⁶ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms. Para 1.3

¹⁷⁷ Kilic, Sevgi, Saharso, Sawitri, and Sauer, Birgit. 2008. Introduction: The Veil: Debating Citizenship, Gender and Religious Diversity. *Social Politics: International Studies in Gender, State and Society* 15 (4). P.402

¹⁷⁸ Central Statistics Office. 2007. Census 2006 - Volume 5 - Ethnic or Cultural Background (including the Irish Traveller Community). Dublin.

¹⁷⁹ Ibid. The numbers increased from 13,400 in 2002 to just over 32,500 in 2006, up nearly 70 per cent and with 30.7 per cent having Irish nationality.

4.3 Gender equality

As outlined in the last chapter, countries with strong equality traditions are less inclined to ban the headscarf since it may be viewed as infringing on Muslim women's rights. In Ireland in the 1990s, significant progress was achieved with new legislation on equality and new structures such as the Equality Authority and the Human Rights Commission.¹⁸⁰ The Equal Status acts prohibits discrimination in the workplace and in the provisions of goods and services on the basis of gender; however, the approach adopted in legislation is based upon a formal concept of equality, thus providing for the removal of discrimination rather than for the adoption of positive action policies.¹⁸¹ The CEDAW Committee raised several concerns regarding equality – the absence of a detailed definition of discrimination covering all areas of life in accordance with the Convention, the lack of understanding of 'substantive equality', the persistence of traditional stereotypical views of the social roles and responsibilities of women and men in the family as portrayed in the Irish Constitution and the government's failure to incorporate all provisions of the Convention into domestic law.¹⁸² A significant divide between men and women in the public and private sphere persists with only 13% of women represented in parliament.¹⁸³

The influence Catholic Church on gender issues is clearly illustrated in the Irish Constitution where women are defined in a profoundly patriarchal way, thus acting to preserve the gendered roles within the family and their distinct cultural identity.¹⁸⁴ Despite a theoretical separation between church and state, in practice a Catholic ethos continues to influence key areas of public life and nowhere is this influence more evident than in the Irish education system.¹⁸⁵

4.4 The denominational nature of post primary schools

The level of change in Ireland's religious profile has significant implications for the largely denominational Irish education system. This diversity is reflected in schools where foreign nationals comprised an increase of 24% in post primary schools in 2007/8,

¹⁸⁰ Barry, Ursula. 2008. *Changing Economic and Social Worlds of Irish Women*. In *Where Are We Now? New Feminist Perspectives on Women in Contemporary Ireland*, edited by U. Barry. Dublin: Tasc at New Island. p.22

¹⁸¹ Bacik, Ivana. 2004. *Kicking and Screaming: Dragging Ireland into the 21st Century*. Dublin: The O'Brien Press. p.90

¹⁸² UN Committee on the Elimination of Discrimination against Women. 2005. *Convention on the Elimination of All Forms of Discrimination Against Women, Concluding Comments: Ireland*. In *CEDAW/C/IRL/CO/4-5*.

¹⁸³ Beetham, David, Clancy, Paula, Harris, Clodagh, and Hughes, Ian. 2007. *Power to the People? Assessing Democracy in Ireland*. Dublin: TASC at New Island. p.457

¹⁸⁴ Article 41.2. 'In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.' Irish Constitution

¹⁸⁵ Beetham, David, Clancy, Paula, Harris, Clodagh, and Hughes, Ian. 2007. *Power to the People? Assessing Democracy in Ireland*. Dublin: TASC at New Island. p.38

representing over 160 nationalities.¹⁸⁶ In order to understand the issues for minority students in Irish schools, a critical look is taken at the denominational nature of the education system.

4.4.1 Funding and control of post-primary schools

Within the post-primary sector, over half (57%) of all schools are denominational, free-scheme or fee paying privately owned institutions.¹⁸⁷ The majority are owned and controlled by the Catholic Church while the remainder is under Protestant management.¹⁸⁸ Vocational schools and community colleges, while defined as multid denominational, in practice are Roman Catholic in ethos; while community schools are officially described as interdenominational, the terms of the deeds of trust mean that denominational bodies form part of their management structure.¹⁸⁹ All comprehensive schools are denominationally managed.¹⁹⁰

4.4.2 Exemptions from equality legislation

A key example of the influence of the Catholic Church in education is the exemptions from equality legislation for religious-run institutions where schools can refuse admission based on ethos.¹⁹¹ Despite outlawing discrimination on the grounds of religion, the Employment Equality Act 1998 also contains a provision which allows employees to be discriminated against.¹⁹² These provisions copper fasten the existing sectarian basis of the system, continuing the tradition of segregated education.¹⁹³ Therefore, when a pupil of a religious belief other than Catholic is admitted into a Catholic secondary school, it can be regarded as a privilege rather than a right.

4.4.3 The ‘Ethos let-out clause’

Apart from the equality legislation exemptions, the Education Act 1998 clearly outlines the rights and obligations of the state and of schools; however, this is qualified by what is described as the ‘ethos let-out clause.’¹⁹⁴ Almost all rights and obligations are subject to ‘having regard to the characteristic spirit of the school’, obliging Boards of Management to ‘uphold, and be accountable to the patron.’¹⁹⁵ This ‘characteristic spirit’ of the school could involve possible conflict with the rights of parents and students whose culture and/or religious beliefs do not fit in with the school’s ethos.

¹⁸⁶ Office of the Minister for Integration. *Overview of Key Statistics* www.ria.gov.ie accessed 12 June 2009

¹⁸⁷ Lodge, Anne, and Lynch, Kathleen. 2004. *Diversity at School*. Dublin: Equality Authority. p.47

¹⁸⁸ Ibid. p.47

¹⁸⁹ Ibid. p.47

¹⁹⁰ Ibid. p.47

¹⁹¹ Under section 7 (3) of the Equal Status Act 2000 schools can discriminate by giving preference to in admissions to children of a particular denomination, or by refusing to admit a child where such refusal is essential to maintain the ethos of the school.

¹⁹² Under section of the Employment Equality Act 1998 ‘certain religious, educational and medical institutions may give more favourable treatment on the religion ground to an employee or prospective employee where it is reasonable to do so in order to maintain the religious ethos of the institution’.

¹⁹³ Bacik, Ivana. 2004. *Kicking and Screaming: Dragging Ireland into the 21st Century*. Dublin: The O’Brien Press. p.43

¹⁹⁴ Lodge, Anne, and Lynch, Kathleen. 2004. *Diversity at School*. Dublin: Equality Authority. p.49

¹⁹⁵ Education Act. 1998. Section 15.2 (b)

4.4.4 Lack of choice

The right to education is guaranteed in the Irish Constitution¹⁹⁶ which protects the right of parents to send their children to a school of a particular religion, ensuring the child is educated within the faith of their parents; while this gives the impression that parents have a choice of schools, it is very limited since schools at both primary and secondary level are mainly denominational.¹⁹⁷ This lack of choice was clearly illustrated by a case in Galway where parents were refused permission by a Board of Management to allow their daughter attend a non-denominational school outside of their catchment area.¹⁹⁸ Since most nearest schools are Catholic, those who control it have a veto on whether pupils in their catchment area can attend another school. A significant issue is the fact that Boards of Management have such a right, giving them power to deny children equal access to an education in line with their own values.¹⁹⁹

With such an unfair and discriminatory system, there is little space for the non-believers and minority religions.²⁰⁰ It can be summarised that neither the constitutional rights of children of minority religions nor the constitutional right to choice of their parents and families have been respected by the State.²⁰¹ It is clear the denominational nature of schools and the primacy attributed to the maintenance of ethos of religious institutions are key factors which renders the rights of religious minorities precarious in Ireland.²⁰²

4.5 Accommodation of religious minorities in schools

The State has recognised the Protestant religious minority through a block grant enabling disadvantaged children to attend their schools, such support to facilitate choice is not extended to other disadvantaged minority groups.²⁰³ Many foreign nationals who are not Roman Catholic and in many cases non-Christian have no means to send their children to schools in accordance with their religious beliefs.²⁰⁴ Given the sheer size of the Catholic majority,²⁰⁵ religious minorities have little or no influence in comparison.²⁰⁶ There is a dearth of research on the experiences of minority

¹⁹⁶ Irish Constitution, Education, Article 42

¹⁹⁷ Hogan, Claire. 2005. *A Veiled Problem: Religion In Irish Schools*. *Trinity College Law Review* 5. p.15

¹⁹⁸ O'Toole, Fintan. 2004. *Catholic is not the only choice*. *The Irish Times*, 8.8.2004. The Department of Education regulations for the bus service stipulates that pupils wishing to go to a school in another catchment area must ensure 'agreement of the management authorities of the school in their home centre is secured.'

¹⁹⁹ Ibid.

²⁰⁰ Bacik, Ivana. 2004. *Kicking and Screaming: Dragging Ireland into the 21st Century*. Dublin: The O'Brien Press. p.43

²⁰¹ Hogan, Claire. 2005. *A Veiled Problem: Religion In Irish Schools*. *Trinity College Law Review* 5. p.16

²⁰² Ibid. p.29

²⁰³ Lodge, Anne, and Lynch, Kathleen. 2004. *Diversity at School*. Dublin: Equality Authority. p.48

²⁰⁴ Ibid. p.49

²⁰⁵ The most recent Census found that 92 per cent of Irish nationals were Roman Catholics compared with 50.8 per cent of non-nationals

²⁰⁶ Bacik, Ivana. 2004. *Kicking and Screaming: Dragging Ireland into the 21st Century*. Dublin: The O'Brien Press. p.33

groups or those of secular beliefs in Ireland.²⁰⁷ However, this study draws on two pieces of academic research, aspects of which focus on the issue of the Muslim headscarf.

4.5.1 A study on cultural diversity in post-primary schools

Substantial research into cultural diversity in post-primary schools revealed some interesting findings pertinent to this study.²⁰⁸ One aspect focused on the interviews with parents of Muslim girls who wear the Muslim headscarf. One principal viewed the Muslim headscarf as ‘threatening the Catholic ethos of the school.’²⁰⁹ Another parent spoke of the upset at remarks made by a teacher to her daughter who ‘suggested that she was being forced to wear the Muslim headscarf and asked her to stop wearing it because she believed that Muslim women have ‘no life’.²¹⁰

In terms of an approach to cultural diversity, the study revealed the majority of teachers do not operate from any framework; while open and welcoming of pupils from minority groups, their welcome was coloured by an ethnocentric perspective.²¹¹ Also, their understanding of culture was very narrow, seeing it in terms of music, dance and language.²¹² Instead, the dominant approach was based on a charitable or welfare model of caring for minority students which the author concludes stems from the origins of the Irish educational system in religious run schools, many of which were established to provide education for the poor.²¹³ The approach is also influenced by attitudes towards people from the global south and an ignorance of their specific economic, social and cultural conditions.²¹⁴ While the educators were very concerned with doing their best for students, their vision was about them ‘fitting in’ rather than an approach being based on human rights, equality or cultural pluralism.²¹⁵

This research highlights the challenges faced by schools that are attempting to stay true to their ethos while accommodating students with other beliefs and starkly emphasises the conflict between rights and maintenance of ethos.²¹⁶ A shift in thinking in thinking is required for the majority of Irish post-primary schools, however, as long as the Education Act supports schools in using the ‘characteristic spirit of the school’ as a justification for maintaining a specifically denominational ethos, this shift is likely to be slow in coming about.²¹⁷

²⁰⁷ Lodge, Anne, and Lynch, Kathleen. 2004. Diversity at School. Dublin: Equality Authority. p.49

²⁰⁸ Gannon, Mary. 2005. Framing Diversity: Responding to Cultural Diversity in Irish Post-Primary Schools, The University of Dublin, Trinity College, Dublin.

²⁰⁹ Ibid. p.236

²¹⁰ Ibid. p.236

²¹¹ Ibid. p.215

²¹² Ibid. p.215

²¹³ Ibid. p.252

²¹⁴ Ibid. p.252

²¹⁵ Ibid. p.252

²¹⁶ Ibid. p.235

²¹⁷ Ibid. p.241

4.5.2 A study on Muslim women in Galway city

A further comprehensive study of young Muslim women in Galway city reinforced the above findings. The majority of Muslim women interviewed stated that when they wore the Muslim headscarf people assumed they were asylum seekers.²¹⁸ For Muslim university students their experiences of wearing the Muslim headscarf were of being 'largely misunderstood' and it being perceived as a symbol of women's inferiority to men.²¹⁹ Among non-Muslim students the common perceptions of Muslim women were 'exotic, fundamental and oppressed.'²²⁰ In the context of this study, it is interesting to note that the majority believed (Muslims and non-Muslims) that if children in Irish society were given a biased-free education explaining all religious beliefs that they would be less influenced by tertiary elements in society.²²¹

Meanwhile, students at a Dublin university, in an effort to communicate a different message about the Muslim headscarf, organise annual 'hijab fashion shows' to show Muslim women 'don't go around in black sacks and that we enjoy covering our heads.'²²² Similar to the Muslim women in Galway, they stated that while they were allowed to wear the Muslim headscarf at school, the 'most annoying misperception about the hijab ... is that they are forced by their families or by male relations to cover up.'²²³

The opinions and attitudes reflected in the above studies echo the concerns of post-colonialism feminism in viewing women as a homogenised group, thereby reproducing an ethnocentric model of Western cultural superiority.²²⁴ The stereotypes of Muslim women as oppressed and 'exotic' is analytically reductive and fails to take into account the complex reasons why Muslim women wear the Muslim headscarf.²²⁵

4.5.3 Could the Muslim headscarf be banned in Ireland?

The Irish Constitution states 'the right to freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.'²²⁶ One could deduce from this article that an attempt to prohibit the headscarf would be protected and it is difficult to see how public order and morality arguments could be used as grounds since the headscarf does not pose a threat to society.²²⁷ However, it is improbable an Irish court would defend a ban on grounds that it was necessary for the free profession and practice of religion.²²⁸

²¹⁸ Moloney, Jacinta. 2005. *Unveiling Identities: Muslim Women and the Negotiation of Space in Galway*. Masters of Literature in Geography, Department of Geography, National University of Ireland, Galway, Galway. p.136

²¹⁹ Ibid. p.165

²²⁰ Ibid. p.167

²²¹ Ibid. p.167

²²² Ingle, Roisin. 2009. *Hijab on the catwalk*. *The Irish Times*, February 7, 2009.

²²³ Ibid.

²²⁴ Mohanty, Chandra Talpade. 2003. *Feminism Without Borders*. Durham, NC: Duke University Press.

²²⁵ Ssenyonjo, Manisuli. 2007. *The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases*. *Chinese Journal of International Law* 6 (3). p.667

²²⁶ *Bunreacht Na hEireann, Constitution of Ireland 1937*. Article 44 (2) 1

²²⁷ Hogan, Claire. 2005. *A Veiled Problem: Religion In Irish Schools*. *Trinity College Law Review* 5. p.20

²²⁸ Ibid. p.20

A key argument to support a ban on the Muslim headscarf would be to maintain the religious ethos of a school since schools are allowed to discriminate and recent case law has allowed such discriminatory practices.²²⁹ Then, it was assumed that there would be few applications to denominational schools from those of a minority or no religion; however, the situation is very different now regarding religious diversity within the schools system.²³⁰ Article 42.2.4 of the Constitution²³¹ is easy to comply with it if there are only a small number of students from a different religion; however, should a rural catholic school be faced with a significant Muslim population, for example, we can be less sure of their successful admission.²³²

Ireland's obligations under international law have been criticised as a result of these major inequalities within the education system. In 2005 the CERD Committee urged the government to end the discriminatory admission policy of schools and to promote the establishment of non-denominational or multid denominational schools.²³³ Ireland is also in breach of the Convention on the Rights of the Child which states the '*right to children of minority groups to enjoy their own culture, language and practice their religion.*'²³⁴

4.6 Challenges to the dominance of the Catholic Church

There has been ongoing resistance to the dominant role of the Catholic Church, challenging its power and encouraging a more secular approach to reflect the increasing diversity of Irish society.²³⁵ Views are changing among the population, a survey undertaken in 2004 showed a strong majority in favour of the removal of the Catholic Church over education with almost two-thirds of people (61 per cent) agreeing that schools should be non-denominational.²³⁶

A major controversy has not yet arisen with regard to religious expression but the potential for this to happen remains given the number of cases that have arisen in the past year.²³⁷ In 2007, a Sikh member of the Garda reserve was prohibited from wearing

²²⁹ Ibid. p.22. The Supreme Court upheld sections 12 and 37 of Employment Equality Bill allowing certain vocational training bodies and religious bodies operating religious educational or medical institutions to discriminate to maintain their ethos. (1979) 2 IR 321

²³⁰ Ibid. p.25

²³¹ Article 42.2.4 guarantees the right of a child not to have to attend religious instruction at a publicly funded school.

²³² Hogan, Claire. 2005. *A Veiled Problem: Religion In Irish Schools*. *Trinity College Law Review* 5. p.30

²³³ OHCHR. 2005. *Concluding Comments of the Committee on the Elimination of Racial Discrimination: Ireland*. UN Doc CERD/C/IRL/CO/2. Para 18

²³⁴ *Convention on the Rights of the Child*. (entered into force Sept. 2, 1990) U.N. Doc. A/44/49 (1989). (CRC). Article 30

²³⁵ Bacik, Ivana. 2004. *Kicking and Screaming: Dragging Ireland into the 21st Century*. Dublin: The O'Brien Press. p.43

²³⁶ Kellaghan, T., McGee, P., Millar, D., and Perkins, R. 2004. *Views of the Irish Public on Education: 2004 Survey*. Dublin Educational Research Centre.

²³⁷ McGarry, Patsy. 2008. *Religious expression in the workplace*. Radisson Hotel, Athlone: Athlone Chamber of Commerce.

his turban on duty; as a result the issue forced the Gardai to say it would review other religious symbols such as crucifixes and pioneer pins with the official uniform.²³⁸ The then Minister for Foreign Affairs, Dermot Ahern, supported the decision of the Gardai, insisting that foreign nationals who arrived in Ireland needed to "assimilate" into Irish culture and society.²³⁹

The question of church-state relations has been a matter of politics rather than law which results in few cases coming before the courts; however, 'the range of situations where religious beliefs may conflict with legal provisions are limitless' but the Supreme Court has yet to address these problems.²⁴⁰ The recent publication of the Ryan Report²⁴¹ has raised the church-state debate to a new level.²⁴² In the context of negotiations on the Report, a politician commented that 'this might be the time for the State to take on its responsibilities for delivering an educational system'.²⁴³ In any other society, such a statement would be unfathomable but it

hints at a realisation that the Ryan report marks the necessity for a whole new deal in church-state relations, one in which basic services in education (and in health), overwhelmingly funded by the taxpayer, finally come under public control.²⁴⁴

However, 'power built up over 150 years will not easily be ceded, but until it is, neither the church nor the State will be free to face up to its responsibilities.'²⁴⁵

4.7 Multiculturalism or Interculturalism?

Within Europe two models of integration could roughly be defined as assimilationist and multiculturalist.²⁴⁶ Ireland has been grappling with managing a population that has become increasingly diverse and the debate on approaches, however, is still in the early stages.²⁴⁷ With an increasing focus on integration, challenges are compounded by the fact that Ireland shares the beliefs of the European nation-state, often 'characterising itself in an exclusionary fashion and grounded in cultural, linguistic and historical experiences reflecting what has been called a WHISC (white, heterosexual, Irish, settled, Catholic) discourse'.²⁴⁸

²³⁸ Ibid. p.4

²³⁹ Ibid. p.4

²⁴⁰ Casey, James. 2000. *Constitutional Law in Ireland*. Dublin: Round Hall Sweet & Maxwell. p.693

²⁴¹ The Ryan Report investigated abuses that occurred in the industrial and reformatory schools, run by the religious orders and supposedly under the supervision of the state.

²⁴² O'Toole, Fintan. 2009. *Catholic Church must develop role to survive*. *The Irish Times*, 23.6.2009.

²⁴³ 2009. *Lessons in the Power of the Church*. *The Irish Times*, 6.6.2009.

²⁴⁴ Ibid.

²⁴⁵ 2009. *Catholic Church must develop role to survive*. *The Irish Times*, 23.6.2009.

²⁴⁶ Fanning, Bryan. 2007. *Integration and Social Policy*. In *Immigration and Social Change in the Republic of Ireland*, edited by B. Fanning. Manchester: Manchester University Press. p.216

²⁴⁷ Ibid. p.217

²⁴⁸ Ibid. p.215

Ireland's reputation for recognising diversity is not notable since it fails to recognise Travellers as an ethnic group²⁴⁹ and 'intercultural' policies have failed to address discrimination and social exclusion.²⁵⁰ The rights and interests of various minority groups are not sufficiently incorporated in the representative structures of the political system.²⁵¹ Interculturalism, as an approach was increasingly being incorporated into key policy documents such as the National Action Plan against Racism²⁵² which aims to 'develop a more inclusive, intercultural society.'²⁵³ Intercultural guidelines for schools were developed 'to ensure reasonable accommodation is made for cultural and ethnic diversity.'²⁵⁴ However, in the government's most recent policy document, the key theme throughout is 'integration'.²⁵⁵ The concept of 'integration' is widely used at an EU level, however, its limited focus on 'third country nationals' while omitting existing ethnic and cultural diversity, is a major weakness.²⁵⁶ In the context of this study, the recognition of the faith-based groups is interesting and their role in supporting new immigrants who 'because of their attachment to their religious beliefs ... look to religious authorities for information and assistance'.²⁵⁷

The shift in policy from interculturalism to integration reflects some confusion on the government's part; while integration is promoted as a positive value, immigration is increasingly restricted and devalued.²⁵⁸ The comment of the former Minister for Justice regarding the need for foreign nationals to 'assimilate' conflicts with his own government's policy on 'integration', reflecting the disconnect between policy and practice. The closure of the National Consultative Committee on Racism and Interculturalism and more recently a proposal to abolish the Office for the Minister for Integration calls into question the government's commitment.²⁵⁹ With the demise of these

²⁴⁹ Ibid. p.253

²⁵⁰ Ibid. p.183

²⁵¹ Beetham, David, Clancy, Paula, Harris, Clodagh, and Hughes, Ian. 2007. *Power to the People? Assessing Democracy in Ireland*. Dublin: TASC at New Island. p.467

²⁵² Department of Justice, Equality and Law Reform. 2004. *The National Action Plan Against Racism 2005-2008*.

²⁵³ Watt, Phillip. 2005. *Approaches to Cultural and Ethnic Diversity and the Role of Citizenship in promoting a more inclusive Intercultural Society in Ireland*. In *The Report of the Democracy Commission, Engaging Citizens: The Case for Democratic Renewal in Ireland*, edited by C. Harris. Dublin: Tasc at New Island. p.3

²⁵⁴ National Council for Curriculum and Assessment. 2006. *Intercultural Education in the Post Primary School: Enabling Students to Respect and Celebrate Diversity, to Promote Equality and to Challenge Unfair Discrimination*. Dublin

²⁵⁵ Office of the Minister for Integration. 2008. *Migration Nation: Statement on Integration Strategy and Diversity Management*. p.8

²⁵⁶ Watt, Phillip. 2005. *Approaches to Cultural and Ethnic Diversity and the Role of Citizenship in promoting a more inclusive Intercultural Society in Ireland*. In *The Report of the Democracy Commission, Engaging Citizens: The Case for Democratic Renewal in Ireland*, edited by C. Harris. Dublin: Tasc at New Island. p.16

²⁵⁷ Office of the Minister for Integration. 2008. *Migration Nation: Statement on Integration Strategy and Diversity Management*. pp.44-45

²⁵⁸ Lentin, Ronit, and McVeigh, Robbie. 2006. *After Optimism? Ireland, Racism and Globalisation*. Dublin Metro Eireann Publications.

²⁵⁹ Department of Finance. 2009. *Report of the Special Group on Public Service Numbers and Expenditure Programmes. Volume II: Detailed Papers*. Dublin Government Stationery Office p.169. The Office of the Minister for Integration was set up to 'improve the perception of the importance of integration in the new multi-cultural Ireland'.

agencies, it does not augur well for government's capacity to manage multicultural disputes such as the Muslim headscarf if or rather when it emerges on to the national agenda again.

4.8 Conclusion

Recent demographic changes pose huge challenges for the education system in Ireland, a system that is mainly denominational and where the needs of minority students are marginalised. It is a system full of contradictions between constitutional law and educational policy - where the rights of individuals to religious freedom and the rights of denominational schools to uphold their ethos are at odds. While the Irish government is in breach of its international obligations and the dominance of the Catholic Church is being resisted, it seems a long way off before their power will be dismantled and the State takes up its responsibilities to govern.

Further contradictions are evident in policies on integration and interculturalism where, despite a recent government document promoting 'integration', a government minister speaks of 'assimilation' while institutional supports for interculturalism and integration are being dismantled. This scenario does not paint an optimistic picture in terms of the State's capacity to play a role in the resolution of any potential multicultural disputes such as the Muslim headscarf may throw up.

CHAPTER 5

THE MUSLIM HEADSCARF IN IRELAND – A CASE STUDY

5.1 Introduction

The challenges facing Irish schools in accommodating religious and cultural diversity has been highlighted, particularly for religious schools who are attempting to stay true to their ethos. The Muslim headscarf clearly illustrates such a challenge. This chapter presents the background to the Muslim headscarf debate in Ireland and the response of the OMI (Office of the Minister for Integration) to the issue when it arose in Wexford. This is followed by an analysis of the submissions from teaching bodies as part of the OMI's consultation process and findings from the interviews carried with the three school principals.

5.2 The Background

As outlined in the introduction of this study, the issue of the Muslim headscarf debate arose in May 2008 when the parents of a fourteen year old girl in Wexford requested that she be allowed to wear the Muslim headscarf to school. The school principal accommodated the pupil but was concerned that, if the pupil transferred to another school, in the absence of national guidelines or policy, the pupil could encounter difficulties in a new school.²⁶⁰ Up to this time, no difficulties had been reported on the Muslim headscarf and 'approaches taken locally appeared, and still appear, to be working.'²⁶¹ When the Department of Education and Science (DES) was occasionally asked by some schools about the matter, it consistently responded that other schools had allowed it on condition that the colour reflects school uniform.²⁶² However, in response to the specific request from the principal in Wexford, the OMI undertook to consult with key stakeholders in order to devise a formal set of Departmental guidelines which could be utilised for future reference. Before outlining the OMI's response, a brief glance over some of the media debates is presented in order to give a picture of the diversity of opinions on the matter.

²⁶⁰ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms. Para 1.1

²⁶¹ Ibid. para 1.3

²⁶² Ibid. para 1.3

5.3 Media debates

When the issue arose in Wexford, it sparked off extensive media coverage and controversy with columnists either voicing their support or their absolute opposition to it, the latter appearing to represent the majority of views:

Muslim women are under huge social pressure to cover up, it can't truly be called freedom of choice ... there must be no place for the hijab in civic life here .. and most definitely not in schools. And, if we accept it in schools, we open the door to other practices in the Muslim world even more repressive to women, among them arranged marriages & female circumcision.²⁶³

No matter how you spin it, this is such a visible sign of inequality, it can only harm women's efforts in furthering equality. Just ask women in Afghanistan or in Iran.²⁶⁴

Others, although they were in the minority, were supportive:

A girl who makes the request to wear it in school is likely to have thought about it, and be clear about what it means to her. She is doing something brave and counter-cultural. I for one would not like to suppress that. If we draw the lines of what we tolerate too tightly, we risk creating ghettos.²⁶⁵

Opposition spokespersons on education also voiced their strong opinions on the debate with a Labour Party politician commenting:

A manifestation of religious beliefs in such a way is unacceptable and draws attention to those involved. I believe in a public school situation they should not wear a headscarf ... nobody is formally asking them to come here. In the interests of integration and assimilation, they should embrace our culture.²⁶⁶

Similar objections were raised by the Fine Gael education spokesperson who commented 'the wearing of the hijab is not about religiosity, it is more an example of modesty. It is not a fundamental requirement to be a Muslim.'²⁶⁷

There is no doubt, from the above, that the Muslim headscarf generates some absolutist views. Again, Muslim women, whether from Iran or Afghanistan are all the same! This lack of understanding results in easy condemnation of the Muslim religion and Islamic societies as patriarchal.²⁶⁸ Such views also illustrate the increasing gap between dominant

²⁶³ Devlin, Martina. 2008. If Muslim men like the veil so much, let them wear it. *Irish Independent* 22.5.2008.

²⁶⁴ O'Connor, Alison. 2008. The veil beyond the pale. *Sunday Business Post*, 1.6.2008.

²⁶⁵ O'Brien, Breda. 2008. It is better to avoid making the hijab a major issue. *The Irish Times*, 16 June 2008.

²⁶⁶ McDonagh, Patricia. 2008. Muslim anger at Opposition calls for school ban on hijab. *Irish Independent*. June 2, 2008

²⁶⁷ Ibid

²⁶⁸ Freedman, Jane. 2007. Women, Islam and rights in Europe: beyond a universalist/culturalist dichotomy. *Review of International Studies* 33. p.40

understandings of the Muslim headscarf as a symbol of gender inequality and the positive experience for Muslim women in wearing it.²⁶⁹ The blatant racist and ethnocentric undertones of the politicians, particularly those of the Labour Party politician are shocking and surprising given what the party stands for. Such comments from a former Labour Party Minister are in contrast to what his party stands for.²⁷⁰

5.4 The response of the OMI

While the opposition voiced strong opinions calling for a prohibition of the Muslim headscarf, the government took a different approach. Up to the time of the Wexford controversy, no difficulties had been reported regarding the headscarf, and approaches were taken locally which appeared to be working. When the DES was asked by some schools about the matter, it consistently responded that other schools had allowed the wearing of a Muslim headscarf, with the proviso that the colour reflects that of the school uniform.²⁷¹

After being contacted directly by the Wexford school for guidelines, the government consulted with key stakeholders (all primary and post-primary schools and representative bodies in the sector) in order to devise guidelines. The process resulted in a diversity of views with those opposed to guidelines doing so for reasons to do with the independence of schools. The view of many schools who allow the Muslim headscarf was that such practice had not caused any difficulty. On foot of the consultation process, the Government issued its report with the following recommendations which are outlined below.²⁷²

²⁶⁹ Ruby, Tabassum F. 2006. Listening to the voices of hijab. *Women's Studies International Forum* 29. p.54

²⁷⁰ What the Labour Party stands for: the four socialist principles are based on 'freedom, equality, community and democracy. www.labour.ie)

²⁷¹ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms. para 1.3

²⁷² Ibid.

Recommendations

The current system, whereby schools decide their uniform policy at a local level, is reasonable, works and should be maintained.

In this context, no school uniform policy should act in such a way that it, in effect, excludes students of a particular religious background from seeking enrolment or continuing their enrolment in a school. However, this statement does not recommend the wearing of clothing in the classroom which obscures a facial view and creates an artificial barrier between pupil and teacher. Such clothing hinders proper communication.

Schools, when drawing up uniform policy, should consult widely in the school community.

Schools should take note of the obligations placed on them by the Equal Status Acts before setting down a school uniform policy. They should also be mindful of the Education Act, 1998. As previously mentioned, this obliges boards of management to take account of ‘the principles and requirements of a democratic society and have respect and promote respect for the diversity of values, beliefs, traditions, languages and ways of life in society.’²⁷³

5.4.1 Analysis of the Government’s recommendations

The government’s contention that the current system works rings hollow since, as outlined in the last chapter, there is evidence to the contrary.²⁷⁴ Findings from this study, which are reported later in this section, further confirm such difficulties. While it appears that, in most cases, schools do allow Muslim girls to wear the Muslim headscarf, there is a lack of evidence to ascertain the extent to which they could be excluded.

Furthermore, it is ironic for the Department to remind the schools of their obligations under the relevant legislation when this very legislation is a major part of the problem since it is discriminatory and acts to perpetuate the inherent inequalities within the system. While most teachers’ unions welcome the recommendations, one civil liberties group, the Irish Council for Civil Liberties, was a lone voice in its criticism of the Government putting the decision back on to school principals, thereby abrogating their responsibilities:

‘This would appear to be a policy not to have a policy In the absence of a nationally-agreed and enforceable policy, there remains a danger that individual principals could interpret this to permit them to exclude a child for wearing

²⁷³ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms

²⁷⁴ Gannon, Mary. 2005. Framing Diversity: Responding to Cultural Diversity in Irish Post-Primary Schools, The University of Dublin, Trinity College, Dublin. p.236

religious dress, such as the hijab. The Ministers should live up to their responsibility to close this loophole.’²⁷⁵

5.5 Analysis of Interviews and Submissions

This section presents analyses of both the interviews with the three school principals and the submissions to the OMI from teaching bodies as part of the consultation process.

5.5.1 Summary

The research findings showed that all three principals had no issue with Muslim girls wearing the Muslim headscarf in their schools, allowing it ‘in the spirit of religious tolerance.’ The schools appeared to have no policy on cultural diversity, instead placing emphasis on ‘sameness.’ One major teaching body’s submission was noteworthy in its linking difference with ‘fundamentalism.’ Of the three principals, two agreed with the Department’s approach that the Muslim headscarf be left to the discretion of Boards of Management, while a third principal was concerned that this could be exclusionary, particularly due to lack of choice of schools. All of the teaching bodies were very clear that guidelines on the issue would not be helpful and consultation or dialogue with parents was the best approach.

The findings are discussed under the following themes: ethos of the schools; religious tolerance; approach to cultural diversity; all the same, no difference, views on the Department’s approach and gender equality.

5.5.2 Upholding the ethos

The primacy attributed to the maintenance of ethos of religious institutions is a key factor in rendering the rights of minorities uncertain, a pertinent point since equality legislation permits schools to discriminate based on ethos.²⁷⁶

In this study, the issue of ‘ethos’ was referred to specifically by the Principal of the Catholic secondary school who stated that ‘*we accept all newcomers on the understanding that they realise it’s a Catholic school and has an ethos of Christian values*’. She explained that there is an expectation that everyone respects each other’s beliefs and religion, which is made clear to incoming parents and students.

While the Muslim pupils are in the classes for religion, the principal emphasised

²⁷⁵ MacCormaic, R. No directive on hijabs in the classroom to be issued. Irish Independent. 24.8.08

²⁷⁶ Hogan, Claire. 2005. A Veiled Problem: Religion In Irish Schools. *Trinity College Law Review* 5. p.29

we do not indoctrinate them but we encourage involvement, where possible and that has worked well - we encourage them to talk about their own experiences and some of them like to share what their belief is and it's good for the other girls.²⁷⁷

One teaching body, the Joint Managerial Body (JMB)²⁷⁸ stated that while they are:

in favour of freedom of religious expression and the use of religious symbols in schools, this freedom is subject to the following: the need to uphold the ethos of the school.²⁷⁹

The limitation put on freedom of religion, by the teaching body, clearly illustrates the 'ethos let-out clause' of the Education Act and highlights the conflict between the rights of parents and students whose culture and/or religious beliefs do not 'fit in' with the school's ethos. It is important to note that 'maintaining the religious ethos' would likely be a key argument to support a ban on the Muslim headscarf were a case to come before an Irish court.²⁸⁰

5.5.3 In the spirit of religious tolerance

An interpretation of Articles 44 and 42 in the Irish Constitution²⁸¹ leans towards the view that pluralism and tolerance are vital; therefore, the 'freedom of conscience and freedom of profession and practice of religion' guarantee would translate into the wearing of Muslim headscarves and other conspicuous symbols. While the right is conditioned by public order, it is difficult to see how the Muslim headscarf could pose as a threat to society.

All three school principals were of the view that the headscarf is 'allowed in the spirit of religious tolerance and observance' and had no issue with pupils wearing it. While having no issue with the headscarf, one principal said she would have an issue with the burqa, stating:

I wouldn't like to see this burqa – where you can only see their eyes because education is not just the learning, it's also about socialising and if they are cut off like that, it would be difficult.²⁸²

Her comments are in keeping with the OMI's view in that it 'does not recommend the wearing of clothing in the classroom which obscures a facial view and creates an

²⁷⁷ Interviewee two. (School Principal)

²⁷⁸ The JMB is the representative body for boards of management in Catholic and Protestant voluntary secondary schools. The voluntary secondary school sector is made up of schools under the trusteeship of either Catholic trustees or those of the Protestant tradition. See www.jmb.ie

²⁷⁹ JMB

²⁸⁰ Hogan, C. 2005. *A Veiled Problem: Religion In Irish Schools*. *Trinity College Law Review* 5. p.22

²⁸¹ See article 42 on education and article 44 on religion, Irish Constitution

²⁸² Interviewee two. (School Principal)

artificial barrier between pupil and teacher. Such clothing hinders proper communication.’²⁸³

5.5.4 Approach to cultural diversity

Several policy documents²⁸⁴ provide a potential framework for a human rights / equality approach to cultural diversity. However, none of the principals referred to having a policy on cultural diversity and when asked about accommodating ethnic minorities, one principal stated ‘it happens through osmosis...’.²⁸⁵ Nevertheless, it is important to emphasise that all of the principals were very open and positive about minority students in their school and clearly committed to supporting and accommodating them.

This lack of a formal policy or framework in the schools concurs with the previous study cited, where teachers, while concerned with doing their best for the pupils, operated from an ethnocentric framework which resulted in their vision of students ‘fitting in’ rather than on a policy based on human rights or equality.²⁸⁶ The notion of people from different cultures ‘fitting in’ ignores the aspect of cultures that is ‘riven with internal contestation.’²⁸⁷ For liberals there is no difference, they get ‘mapped on to nation states,’ in this case schools.²⁸⁸

5.5.5 We’re all the same – no difference

The reluctance on the part of schools to have a formal policy on cultural diversity could be linked to their inclination to see all pupils ‘the same.’ All three principals, while acknowledging the difference of having Muslim girls in the school, there was a distinct emphasis on ‘sameness’ and treating all pupils ‘equally’. As one principal stated:

there’s been no issue regarding the headscarf in the school/community, the girls are the same as everyone else’ and another reiterated a similar view ‘it doesn’t matter what their culture or creed is, we treat every child the same.

One principal while stressing the sameness also asserted ‘Vive la difference! Why not?’ This emphasis on ‘sameness’ leaves no space for recognition of difference and negotiation of imaginary boundaries, between ‘we’ and the ‘other,’ it being very difficult ‘to accept the ‘other’ as deeply different while recognising their fundamental human equality and dignity.’²⁸⁹ This view also fits with the dominant model of equality which

²⁸³ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms, para 3

²⁸⁴ See Charting our Educational Future, Migration Nation, Intercultural Guidelines for Post-Primary Schools, National Action Plan against Racism.

²⁸⁵ Interviewee one. (School Principal)

²⁸⁶ Gannon, Mary. 2005. Framing Diversity: Responding to Cultural Diversity in Irish Post-Primary Schools, The University of Dublin, Trinity College, Dublin. p.252

²⁸⁷ Benhabib, Seyla. 2002. The Claims of Culture: Princeton University Press. p.103

²⁸⁸ Ibid. p.103

²⁸⁹ Ibid. p.8

identifies equality with equal treatment, ignoring the deep material and structural differences apply.²⁹⁰

Views downplaying difference were blatantly expressed in a teachers' union submission but with an added twist:

If we focus on what we all have in common and respect difference, we reduce the significance of the difference...If we focus on difference we never get to the point of understanding what we have in common. *To focus on difference can encourage the development of fundamentalist viewpoints.* Emphasis should be on our common humanity & shared human experiences in the context of our tradition of respect for equality and liberty."²⁹¹(emphasis added)

Apart from diminishing the value of difference and problematising, it is alarming that in the one sentence it is equated with fundamentalism. While not directly linking the Muslim headscarf with fundamentalism, this connection echoes the underlying fear in the Sahin judgement that the headscarf will breed Islamic fundamentalism.²⁹²

5.5.6 The Government's approach

There were differences of opinion regarding the Department's approach in issuing 'recommendations' on the Muslim headscarf rather than mandatory guidelines. Of the three schools, two agreed that the Government's approach was the best way, agreeing that a 'one size fits all' is not good as different circumstances can emerge in different places. One principal was critical of the Dept's approach and felt there should be guidance for State funded multid denominational schools stating for matters of religious observance, the headscarf should be allowed since it is the only thing some members of the Muslim population insist upon for their teenage daughters:

personally, I didn't think it was a good decision – it's a policy not to have a policy – if there's a situation where it's easy to express religious tolerance by allowing headscarf, then foolish not to do it – if there's no health and safety issues involved – there should be a sensible approach.²⁹³

However, the principal acknowledged the State's view is valid since, while they fund the schools, they are run by Boards of Management but stated 'you need a guiding light'.

All of the teaching bodies agreed with the Department's approach that guidelines would not be the best way to address the issue.

²⁹⁰ Young, Iris Marion. 2007. *Structural injustice and the politics of difference*. In *Multiculturalism and Political Theory*, edited by A. S. Laden and D. Owen: Cambridge University Press. p.88

²⁹¹ Submission from ASTI (Association of Secondary Teachers of Ireland), 'Consultation on Clothing in Schools'. 3.7.2008

²⁹² Ssenyonjo, Manisuli. 2007. *The Islamic Veil and Freedom of Religion, the Rights to Education and Work: a Survey of Recent International and National Cases*. *Chinese Journal of International Law* 6 (3). p.576

²⁹³ Interview 3. (School Principal)

A response on guidelines from a major teacher's union is interesting in its clarity on the implications of having a policy on one religion.

having civic rules on anything to do with a religion is poor – in fact very bad practice and would put us inexorably on a difficult road. *If government makes a statement about an aspect of one particular religion, then it follows that it must also do so in time for all religions.* Successive governments have strenuously avoided doing this.²⁹⁴ (emphasis added)

One could say such a 'burden' is hanging over the Garda Síochána in light of their decision to prohibit a Sikh Garda reserve from wearing a turban; subsequently, the Gardai was forced to say it would review other religious symbols.²⁹⁵

One teaching body, viewing dialogue between school management and families of minority religions as being critical, suggested that guidelines would be unhelpful as they 'are likely to provide schools with an opportunity to bypass vital dialogue with parents.'²⁹⁶ Another body reiterated this point, stating, 'schools should be encouraged to engage in dialogue with parents on how best to respect different cultural & religious values within the context of the school's mission'.²⁹⁷ A 'politics of positional difference' approach views dialogue among cultures as key in resolving intercultural conflicts²⁹⁸ and recommends groups reflect on ways they contribute to unjust structures and act to change the situation.²⁹⁹

One teaching body, responsible for denominational schools, was categorical in its view that it was

not the role of Government to intervene 'in matters relating to the upholding the ethos of a school under denominational trusteeship ... we believe that it is *inappropriate for the State* to prepare specific national guidelines.'³⁰⁰ (emphasis added)

This comment clearly illustrates the conflict between the Constitutional religious rights of children and parents to freedom of religion and those of denominational schools to uphold their ethos.³⁰¹ Its tone is also indicative of where the power lies and reinforces the notion that the religious-dominated education system remains deeply entrenched.³⁰²

²⁹⁴ Submission from ASTI

²⁹⁵ McGarry, Patsy. 2008. Religious expression in the workplace. Radisson Hotel, Athlone: Athlone Chamber of Commerce. p.4

²⁹⁶ Submission from Educate Together

²⁹⁷ Submission from ASTI

²⁹⁸ Young, Iris Marion. 2007. Structural injustice and the politics of difference. In *Multiculturalism and Political Theory*, edited by A. S. Laden and D. Owen: Cambridge University Press. p.78

²⁹⁹ Ibid. P.84

³⁰⁰ Submission from JMB

³⁰¹ Lodge, Anne, and Lynch, Kathleen. 2004. Diversity at School. Dublin: Equality Authority. p.51

³⁰² Bacik, Ivana. 2004. Kicking and Screaming: Dragging Ireland into the 21st Century. Dublin: The O'Brien Press. p.46

5.5.7 Inclusion and exclusion?

In its report, the Department's states that while schools cater for several different religions, 'this fact has not operated to exclude pupils of different religions from those schools or schools operating under other patronage arrangements.'³⁰³ However, two principals highlighted actual and potential difficulties. One principal described receiving a phone call from another principal in Dublin to which a former Muslim pupil had transferred. She (the Dublin principal) contacted her regarding this new pupil wearing the Muslim headscarf, stating:

you know this girl and the way she is dressed - wearing this garb and she said "we won't be allowing that here" ... I said we had no problem whatsoever with it. So it's interesting, this was another secondary school in Dublin.³⁰⁴

Another principal voiced his concern that while he allowed Muslim girls to wear the Muslim headscarf in his school, if she was to transfer to another school:

.. in the absence of national guidelines or policy, the pupil could encounter difficulties in a new school, Muslim girls would have to go to a neighbouring town and that's not a good precept. Some Muslims travel to single sex school but many come to the community school and that should be their choice.³⁰⁵

While he acknowledged this has not become a major issue, he stated that there are a few schools who do not 'openly' welcome the Muslim headscarf. Surprisingly, the actual and/or potential reality of girls being excluded from schools for wearing the Muslim headscarf was not raised in any of the submissions.

In the debate on this issue, what is surprising and greatly lacking any acknowledgement of the possibility and/or probability that some schools are or will in the future discriminate against Muslim girls who wear the Muslim headscarf. A reluctance to recognise this issue stems, perhaps, from some schools/bodies not wanting to draw attention to the existing 'legal' discrimination that is well in place.

5.5.8 Gender equality

Another issue which was surprisingly absent in discussions with principals and in submissions was the Muslim headscarf being seen as an issue of gender equality. It was raised, however, in the Department's report which stated:

There was also some concern expressed that the hijab is worn by some women as recognition of a second class status in society and is enforced by some parents to emphasise the lower status of women.³⁰⁶

³⁰³ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms, para 1.1

³⁰⁴ Interviewee two (School Principal)

³⁰⁵ Interviewee three (School Principal)

³⁰⁶ Office of the Minister for Integration. 2008. Report by the Minister for Integration, Conor Lenihan TD, on the need for a Guidance Note to Schools when reviewing their policies on School Uniforms, para 2.2

This statement reflects the widespread misunderstandings of the Muslim headscarf, seeing it as something that is oppressive rather than one of empowerment where women are marking their identity, taking control of their bodies and giving them a sense of belonging.³⁰⁷ This view also resonates with the ECtHR rulings which views the Muslim headscarf as incompatible with gender equality and assumes it is 'imposed on women.'³⁰⁸ However, it also begs the question – where is the voice of Muslim women? Multicultural feminists argue for Muslim women's voices to be heard in navigating the complex intersection of gender and culture in their lives.'³⁰⁹

5.5.9 'It's not an issue'

Finally, all three of the principals strongly asserted and were consistent in their views that the wearing of the Muslim headscarf is not an issue. As one stated, 'if you make it an issue, it'll become one ... these issues don't need to be a problem.' They all referred to the girls complying with the school uniform colour and were very aware of potential health and safety issues. Another principal commented, 'it's best not to make it an issue and then the girls accept it as well, the others, so it doesn't make life uncomfortable for anyone'³¹⁰ The emphasis on it 'not being an issue' could be explained by the common sense approach 'if it's not broken, why fix it?' This is an understandable approach and particularly, given the already heavy workloads of principals and teachers. The reluctance to make the Muslim headscarf an 'issue' warrants further investigation in order to gain a deeper insight into this consistent view.

5.6 Conclusion

There are a number of surprises in the findings of this study. Gender equality was not directly highlighted as an issue, in sharp contrast to the media coverage on the Muslim headscarf. The equation of difference with fundamentalism by a major representative teaching body is extraordinary and is a cause for concern. What is striking is the little attention paid to the actual and potential exclusion of girls wearing the Muslim headscarf from some schools. Given the availability of Intercultural Guidelines for schools, it is surprising that they were not mentioned by the teachers.

The overall agreement with the Department's approach is not surprising and the resistance by some bodies to state interference highlights the major conflict between the upholding of schools' ethos and the rights of parents and children. All of the teaching bodies were unanimous in their opposition to government guidelines, some more definite than others. Since the majority is private institutions, they have a valid stance. One could relate this debate to the public/private dichotomy – the school being the private domain

³⁰⁷ Ruby, Tabassum F. 2006. *Listening to the voices of hijab*. *Women's Studies International Forum* 29 p.54

³⁰⁸ Evans, Carolyn. 2006. *The 'Islamic Scarf' In The European Court of Human Rights*. *Melbourne Journal of International Law* 52. p.62

³⁰⁹ Shachar, Ayelet. 2007. *Feminism and multiculturalism: mapping the terrain*. In *Multiculturalism and Political Theory*, edited by A. Simon Laden and D. Owen. Cambridge: Cambridge University Press p.127

³¹⁰ Interviewee two (School Principal)

of the school, resisting the public role 'interfering' role of government – in the playing out of these contestations. However, it is a deeply unequal system where the 'maintenance of ethos' trumps the rights of children and parents. The question is how long more can this situation be sustained? Resisting state interference, many schools, particularly those in the Catholic secondary school system, don't want national guidelines as they would draw attention to the discriminatory practices within the system, practices they have a vested interest in holding on to.

CHAPTER 6

CONCLUSION

6.0 CONCLUSION

This study set out to identify the factors which accommodate the wearing of the Muslim headscarf in Irish post-primary schools and to identify the contribution a human rights framework can make to address the complexities of the issues involved.

The Irish education system is fraught with contradictions and anomalies between constitutional law and educational policy, between the rights of individuals to religious freedom and the rights of denominational schools to uphold their ethos. The level of acceptance, therefore, of the Muslim headscarf in schools could be regarded as unpredictable. This study shows that many school principals accommodate the Muslim headscarf ‘in the spirit of religious tolerance.’ However, despite the increasing significant diversity of religious and ethnic minorities, schools did not have a policy on cultural diversity and rather than highlighting ‘difference,’ there is an emphasis on treating every pupil the ‘same.’

Similarly, a tendency to assert that ‘it’s not an issue’ implies there are no difficulties. However, anecdotal evidence from principals points to the contrary where Muslim girls have experienced problems in schools. This should not be surprising since neither their constitutional rights as children of minority religions nor their parent’s right to choice is being respected. The denominational nature of schools and the primacy attributed to the maintenance of ethos are key factors which leaves the rights of religious minorities precarious in Ireland. One could surmise that some schools’ willingness to accommodate Muslim girls could be, in part, connected with the fact that should attention be drawn to one religion it has to be drawn to all religions, as stated by one of the major unions. So if the Muslim headscarf were to be banned in Ireland, all religious symbols would have to follow suit.

However, there is a need to reframe the debate - rather than view it in a polarised ‘either your culture or your rights’ fashion. While schools resisted national guidelines, several emphasised that discussion on religious dress opens up opportunities for dialogue and consultation with families from minority groups. The increasing number of ‘inter-faith’ groups presents links into such families; however, it is imperative that the voices of Muslim women are prominent in such discussions. Women must be given an opportunity to navigate the complex intersection of gender and culture in their own lives. Schools could play a vital role in initiating this dialogue; intercultural education guidelines are available, however, training programmes and a whole school approach is necessary to translate this into action. With the recent draconian cutbacks, unfortunately this is unlikely.

Much can be learned from the experiences in the United Kingdom, where a similar non-restrictive approach is adopted and commended by the UN Special Rapporteur on the Freedom of Religion. The general criteria, developed by her office, suggests two key issues need to be kept in mind - the significance of wearing a religious symbol and its relationship with competing public interests; secondly, who is to decide ultimately on these issues, whether it should be up to the individuals themselves, religious authorities, the national administration and courts, or international human rights mechanisms? Such questions are very relevant for Ireland which is just starting to grapple with these issues.

Ireland could be said to have followed some of the Special Rapporteur's guidelines, having carried out an extensive consultation process which culminated in its recommendations for a non-restrictive model with issues being considered on a case by case basis. What is crucial in this regard is that the human rights aspects of women wearing or who wish to wear the Muslim headscarf are taken into account, while also taking into account the rights of others. However, if the life choices of Muslim women are of concern, their social, economic, cultural and political circumstances should also be addressed, thereby creating favourable conditions in which they can make autonomous and meaningful choices.

Further research is necessary to get a clearer picture of the extent of schools excluding Muslim girls from wearing the Muslim headscarf and generally on the experiences of minority religious groups since there is currently a dearth of information on the impact of discriminatory policies on such groups. It may only be a matter of time in Ireland before a Muslim teacher is not allowed to teach or a Muslim student is not allowed into class because they are wearing the Muslim headscarf. Such cases are, as yet, untested. Therefore, it is concluded, the Muslim headscarf is, very definitely, an issue, in Irish post-primary schools.

Appendix I

Letter to School Principals

Dear

Thank you very much for agreeing to participate in this research project on the Muslim headscarf which I am undertaking as part of my Masters in Human Rights at NUI Galway.

Despite some debate being raised about the headscarf in a secondary school last year, which culminated in the Department of Education leaving it to the discretion of each school to decide their own policy, there appears to have been little public attention paid to the issue since then. In my research, I wish to follow up on this issue, specifically exploring the response of some schools and their experiences regarding the Muslim headscarf.

A broad outline of the issues I would like to discuss with you includes:

- The status and ethos of the school; the number of religious minorities, particularly the number of Muslims and girls for whom the question of wearing a headscarf in school or not arises.
- The policy of the school with respect to religious and cultural diversity.
- Any issues raised about the headscarf in the school and/or community?
- The role of the Department of Education in your School's response to the issue.
- Your own views on the Muslim headscarf in the context of school life.

In terms of conducting the interview, I would like, with your permission, to tape it as this would help me to more accurately record the content. If this meets with your agreement, after transcribing the content I will forward it to you to check that it an accurate account of your comments and to note any amendments that you wish. I would also appreciate if I could have the liberty to quote from the material gathered. The data collected will be anonymous and treated confidentially, the names of all interviewees, schools and locations, will not be disclosed. In keeping with good research practice, the data collected will be kept securely for a period of two years at NUIG. The findings of the research will be published in a bound MA thesis that will be available through the NUIG library. I would be very grateful for your contribution to this project and would like to assure you that at any point during the research process you are free to decide to withdraw from the research if that is your preference.

Thank you again for your time and I look forward to talking to you Tuesday, 30th June at 11.00 a.m.

Kind regards
Nóirín Clancy

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