

INTERNATIONAL THE NEWS

Headscarves and decorum in US courts

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A few weeks ago, a Muslim woman wearing a headscarf was barred from entering a Georgia state courthouse in the US. She responded with abusive language and was subsequently held in jail briefly for contempt of court. This was not a singular incident and several other Muslim women have been disallowed from entering US courts while wearing hijabs in recent months. Their refusal to comply with the standard security procedures, insistence on entering the court on their own terms, and often violent and abusive outbursts directed at the officials, led to their arrests for brief periods (e.g. Haleema Abdullah in Nov. 2007). At other times, the women involved left quietly (Aniisa Kareem in July 2007, Sabreen Abdul Rahman in Dec. 2008).

As expected, these cases have precipitated a wave of protests from Muslims in the US and around the world, with the implicit claim that the women concerned were imprisoned purely for their choice of dress, conveniently ignoring their obnoxious behavior toward the public officials. The protest slogans sometimes decry perceived illegal discrimination on the part of the judge against a Muslim woman because of the former's alleged religious or racial bias. Another point of view invokes liberalism, arguing that the freedom to choose one's dress should be a fundamental right in a liberal, pluralistic society. Proponents of this view speak of the necessity to allow religiously mandated attire and the law's protection against discrimination toward any religious sensitivities.

These charges exist on entirely different planes and therefore require different courses of action if indeed they are found to be true. The former questions the legality of the judge's conduct while the latter is based on the constitutional provision of individual freedom within defined limits. Their advocates, however, are often guilty of muddling them together and invoking passion based on communal ties to further confound the issue. The consequence is the usual cry of helplessness and indignation from Muslims that they are oppressed and discriminated against for no fault of their own but only because of the unreasonable biases of the rest of the world colluding against them.

Let us disentangle this debate not only to understand the issue more incisively but also to approach a possible solution. The liberalism argument translates into the perceived inadequacy of the existing law to guarantee the freedom of expression and religious practices under all circumstances, thereby suggesting that the current laws need to be amended to better espouse the American values of freedom and accommodation. What constitutes religious freedom or freedom of expression in a pluralistic society, or what individual and communal rights the law should aspire to protect, is however a separate debate that we will not venture into here. Let us consider the charge of religious or racial bias, continuing with the case in point.

The bias of the judge can be proved unequivocally only if it is established that he acted against the established legal practice to discriminate against an individual. It is decreed in the US case law that a judge has the discretion to decide the decorum of his court, as he is the impartial and competent official with the authority to set the rules of decorum for the courtroom. In fact the court has ruled (*Berner v. Delahanty*, 1997) that it is beyond serious question that a trial judge who is charged with the responsibility of maintaining proper order and decorum in the courtroom has the right (and, indeed, the duty) to limit, to the extent practicable, the appearance of favoritism and partiality in judicial proceedings. The prohibition of particular forms of dress code in order to maintain court decorum has numerous precedents. The US Supreme Court unambiguously ruled (*Empl. Div. and Oregon Dept. of Human Res. v. Smith*, 1990) that if the law is applied across the board equally and not created with the intent to discriminate, then religious belief does not constitute a valid excuse to violate the law (also see *Cloutier v. Costco Wholesale Corp*, 2004). In domestic law, judges have ruled against yarmulkes, habits, crosses, etc. (see *People v. Drucker*, 1979, *O'Reilly v. New York Times*, 1982, and many more). In particular, it was ruled that allowing a plaintiff to wear a priest's collar in court was prejudicial and the court directed a retrial to make amends for this violation of the law (*Ryslik v. Krass*, 1995).

These cases establish that a judge has the responsibility to maintain court decorum and that he can regulate dress code to maintain that decorum as long as it is applied uniformly. In other words, a judge has the discretion to bar an individual from his court who does not follow his rules of conduct, which includes the dress code. Keeping this background in mind, the fact that a judge did not allow a woman wearing a headscarf or another piece of clothing to enter his court does not necessarily show an illegal bias; it is only the exercise of the discretion that the law has entrusted him with.

One can argue that the court system should aspire to be more than just minimally correct to accommodate

religious sensitivities while maintaining equitability. That argument however, does not negate the fact that the judge, in this particular case, acted within his legal allowance, and is a far cry from invoking religious discrimination and racism. The law also recognizes the possibility that judgments can be imperfect and injustices can occur, and it therefore offers counter-investigation and appellate procedures accessible to all. In the case of the Georgia woman, a detailed post-hoc police investigation was commissioned to analyze the actions of the court officials and the accused woman, which concluded that the actions of the judge and bailiff adhered to the legal specter. It also found that the judge had a clear history of accommodating religious requirements on dressing, including headscarves, without any indication of discrimination against anyone.

Then there is the aspect of use of abusive language by the woman and the arrest that followed. This is entirely independent from the issue of barring entry into the court due to attire, but the two have been hopelessly intertwined which has only made the episode more confusing. In fact, the Georgia police investigation report explicitly stated that the woman was imprisoned not for her dressing but for her repeated use of expletives, violent behavior and accusing the judge of racism. The use of abusive language in court has been considered a misdemeanor previously on a number of occasions and substantial jail terms awarded in accordance with the law (see *Gooding v. Wilson*, 1972, *Chaplinsky v. New Hampshire*, 1942). Penalizing obscene, threatening or disruptive behavior in court is well within legal norms and the right of free speech does not apply.

The above discussion establishes that the protests by Muslims around the world on this incident, accusing the concerned judge of a specific bias against their religion, are entirely unjustified and presumptuous. These deliberately confused facts foster unwarranted sympathy for the perceived victims. This unjustified support, while understandable as stemming from distrust and indignation, encourages illegal activity and attracts the scorn of the wider legal and social ecosystem, in turn further ostracizing the social group in question and reinforcing the feeling of distrust. Therefore, it would be in everybody's interest if the right battle is recognized, which is the reformation of the law within the established US legal framework – a social contract that all residents of the country have agreed to -- rather than making unfounded claims of discrimination and injustice.

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