

## Hijab in Law

Many people do not know the definition of Hijab, so before even starting the article I think it is prudent to define Hijab.

A hijab is a head covering worn in public by some Muslim women.

We are fortunate in South Africa to have a constitution and a Bill of Rights that can be regarded as far more superior to most of the western world. Chapter Two of the Constitution of South Africa contains the Bill of Rights, a human rights charter that protects the civil, political and socio-economic rights of all people in South Africa.

Section 15 of the constitution states “Everyone has the right to freedom of conscience, religion, thought, belief and opinion.”

The Section expands on the Right to freedom of religion by stating “ Religious observances may be conducted at state or state-aided institutions, provided that those observances follow rules made by the appropriate public authorities; they are conducted on an equitable basis; and attendance at them is free and voluntary.

If you look at other countries even though their constitution allows the wearing of the Hijab most women have to go to court in order to enjoy this right.

Let us look at legal decisions in other countries

A Muslim woman who was fired from her job for wearing a headscarf has won a landmark legal battle against her former employer in Switzerland.

Judges at the Bern-Mittelland Region Court ruled that the woman, known as Abida, was dismissed unfairly from the dry cleaning business where she had worked for six years. The 29-year-old, from Serbia, started wearing covering her hair in January 2015, prompting an order from managers either to stop wearing the hijab or leave. The employer cited hygiene regulations but refused Abida’s offer to wear disposable scarves or wash them every day. She challenged her dismissal, winning three months’ salary and 8,000 (£6,600) Swiss francs in compensation.

France has some of the hardest-hitting legislation. The headscarf, a piece of fabric which one Socialist MP complained was a French "obsession", is still a major political issue in France. MPs are now considering passing a new, tighter law limiting the professions in which headscarves can be worn, including banning carers in private nurseries from wearing it in front of young children.

In 2008, Fatima Afif was dismissed from her job at a private crèche, Baby Loup, in Chanteloup-Les-Vignes, north-west of Paris. The crèche dismissed Afif for insubordination and misconduct for adorning the head scarf. The crèche's argument is that they had an internal rule book that banned religious symbols worn by any staff. Several years were spent in the lower courts, which all found against Afif, eventually the French high court ruled that Afif was wrongfully dismissed as a result of "discrimination on the basis of religious conviction" and that private firms could not apply blanket bans against all staff wearing the hijab. (2012)

In France, the debate is still quite on going. In 1989, 3 Muslims students were suspended from school for wearing a headscarf. A commission was set up called the Stasi Commission, this commission did not recommend the ban because it viewed the headscarf as a symbol of the subjugation of women and explained that such an interpretation could not justify banning the headscarf.

In the United States of America especially under Trump's regime, Muslim women are terrified to adorn the head scarf. A little bit of insight on a head scarf, this is an obligation prescribed to every woman who reaches puberty to wear it. The Quran makes it obligatory for it to be worn.

The western world's defence against the adorning of the head scarf and the most common defence is as follows:-

- Secularism which basically means separation of state and church,
- Coercion –preventing girls to be forced into wearing the headscarf's,
- equality – protecting the rights of women,
- lastly the religious extremism after the 9/11 justification was to curb terrorism.

Let us get back to South Africa and although there was never a headscarf ban or any matters that were in front of the judiciary. It begs the Question, is this in our new future? South Africa being such a diverse country, it does not aspire to a strict interpretation of secularism, rather it promotes diversity. To ban the headscarf would be to suppress an individual's constitutional right and to use any of the arguments above as a basis will just belittle our supreme constitution.