RIGHTS WATCH

Headscarves: Liberalism, secularism and human rights regime put to question

Human rights regime seems somewhat confused in balancing between liberal democratic values of freedom of religion and keeping educational institutions free from religious symbolism. Eurocentric interpretation of human rights favours banning headscarf for the sake of its secular identity at the cost of outright abandonment of religious freedom.

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Headscarves are garments mostly worn by Muslim women across the world as per religious obligations. But many educational institutions do not allow headscarves in the campus. A number of countries have prohibited wearing headscarves in schools. Even where headscarf is not legally banned, intolerance towards this particular mode of dressing seems to have gradually increased. Justification for banning headscarves ranges from protecting the 'liberal' and 'secular' feature of the state to guaranteeing gender equality. Consequently, the question arises whether the principles of liberalism, secularism and human rights justify banning headscarves.

Freedom, rights and equality are the foundation of liberalism, and the idea of liberalism prohibits sanctioning any act unless it causes harm to others. It advocates for the highest possible personal autonomy. Wearing headscarf is simply a matter of personal choice regarding the way someone wants to dress up. In order to ban a particular mode of dressing, as per liberal view, a set of indisputable facts and rationale must be established that veiling causes harm to others. Mere worries and imaginary fear do not meet the requirement. Headscarf may offend those who do not like it but it is not 'offensive'. Difference between 'being offended' and 'offensive' can be better understood in terms of 'free speech', where one particular statement may offend many even though the statement does not amount to offence. Judge Tulkens, the lone dissenter, held a similar view in *Shahin v Turkey*.

The argument that Muslim women wearing the headscarf may compel others to do so is not satisfactory since there is no supporting evidence for such claim. One argument against headscarf is that wearing headscarf indicates that women are subjugated. If so, how can a subjugated person force values to another independent person? Contrarily, women who wear headscarves may face humiliation, abuse and discrimination for their choice of dressing. It begins as 'micro-aggression' and later on results in violent abuse and greater discrimination.

A liberal state is supposed to be neutral. The headscarf debate is as simple as that – a group is fighting for the right to wear it and another group is fighting for not to wear it. Both camps are exercising a harmless practice based on free choice. No liberal state can take a side in this debate. The state should maintain equidistance from both sides but ensure that no one can force their choice onto the unwilling. When a public authority bans headscarf, it suggests that the state wants a particular form of apparel to be worn. This attitude is destructive to the core values of liberalism.

PHOTO: REUTERS

Secularism means public affairs must be separated from religious dictation. Secularism has two dimensions: first, 'liberal secularism' which allows people to manifest her religious conviction in public sphere; and secondly, 'fundamentalist secularism' which prohibits religious expression in public and relegates religious freedom to the private domain. Fundamentalist secular view fails to appreciate the distinction between those who merely wear headscarf and those who forces it to others. When headscarf is banned for protecting secular environment, secular framework seems unable to accommodate the women who want to veil themselves out of free choice. Such stringent form of secularism undermines multiculturalism and promotes intolerance towards some particular cultural and religious values.

Human rights regime seems somewhat confused in balancing between liberal democratic values of freedom of religion and keeping educational institutions free from religious symbolism. Eurocentric interpretation of human rights favours banning headscarf for the sake of its secular identity at the cost of outright abandonment of religious freedom. A group of human right scholars argue that most women wear headscarf due to coercion and suggest banning it for ensuring liberation of women. But the truth is that educated, empowered women also wear headscarf out of free choice. Banning underestimates their autonomy and dignity. Thus, banning headscarf is equally paternalistic and coercive as much as compelling one to wear it.

Gender equality argument appears as a popular justification against the right to wear headscarf. Arguments for banning headscarf is mostly based on the stereotype that all Muslim women are oppressed, dominated and subjugated by their male family members and they are coerced into wearing the headscarf. Therefore, ban is necessary for emancipation of oppressed women. But do the women who veil themselves out of free will still need emancipation? Can the removal of certain garments play an emancipatory role? How does wearing headscarf infringe equality? If headscarf is held responsible for gender discrimination, a universal ban operating both in public and private sphere seems justified. Contrarily, ban on headscarf can be counterproductive. Where women are forced to cover themselves upon religious dictation, parents may allow them to go to school if schools allow her covering herself. But if the school forces her to unveil, parents may prevent them from getting education. Education and financial independence should be the top-priority for women liberation. Hence, can 'unveiling' be an essential prerequisite for getting education or ensuring equality?

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RIGHTS ADVOCACY

On territorial sovereignty and its impact on neighbouring state

The indecent restraining and withdrawal of water unilaterally in the Teesta river basin has overlooked the environmental aspects in the lower riparian Bangladesh. According to article 7 of the 1997 UN Watercourses Convention, the countries are required to utilise international water course by taking all appropriate measure to prevent harm to the concerning countries.

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Among the 54 rivers shared with our neighbouring country India, the past research reveals that the Teesta river basin is seemingly the most sensitive one considering its geographic stand point. The central government in India partially promised on Teesta agreement several times, but now the time has come to decide whether the dispute surrounding Teesta shall fall under a matter of promissory obligation or an absolute right. While sharing the fifty plus rivers, India-Bangladesh have abstained from entering into any bilateral agreement for the last quarter of a century. The livelihoods, agriculture, fisheries, food system, source of fresh water of the Rangpur region are directly interconnected with the Teesta river basin. The Indian 'cordial' diplomatic approach towards water sharing demands vis-à-vis the central government's 'hide and seek' in the name of regional para-diplomacy regarding Teesta agreement deserves to be appraised in light of applicable laws.

The Statute of the Indo-Bangladesh Joint Rivers Commission (JRC) was set up in 1972, with the mandate of reaching fruitful solution in terms of rivers water sharing. In 1983 an ad-hoc agreement almost reached a solution but ended up with nothing but an empty promise. After constant emphasising on Teesta agreement by our Prime Minister Sheikh Hasina, in 2011 the Indian central government seemed to have reached a solution and headed towards a written settlement conditioned on 37.5% water sharing with Bangladesh while containing 42.5% of the river basin itself. This very last attempt also failed when Mamata Banerjee, the Chief Minister in West-Bengal, posited her stern opposition on the proposed agreement. The position of the West Bengal State government has been often clarified by questioning the exact availability of water in the Teesta river basin. The Teesta River water has drastically decreased in lower riparian region (Bangladesh) when the Gajaldoba barrage started working fully, along with a canal by channelling a large amount of water flow towards Mahananda. Building several river dams and restraining natural water flow in the summer season is one of the biggest reasons for the scarcity of water in the Teesta river basin in the Northern part of Bangladesh. This sort of diversions of water resources is not even supported by the 1958 Law on Transboundary Water Uses or Inter-state Water Uses of India as well.

Worldwide, the upper riparian countries have always been reluctant to share water and often tried to justify their exploitation of water resources claiming 'territorial sovereignty' which has always been criticised based on fair, just and equitable grounds of water distribution. Furthermore, the concept of 'absolute territorial sovereignty' could not be justified in the eyes of the law while more than one territory is attached with the disputed water resource. It is evident that, the same restrictive approach has been adopted by the State government of the West Bengal. The later theory depending on the existing international law developed on transboundary water sharing is known as 'absolute territorial integrity' which permits the upper riparian countries to use and exploit the shared water in accordance with their wish, as long as the lower riparian countries experience natural water flow from the concerned river basin.

PHOTO: THE DAILY STAR

Another dominant doctrine called 'limited territorial sovereignty' was also adopted based on the Latin maxim *'sic utere tuo ut alienum non laedus'* which means, 'states must respect the rights of other states sharing the same watercourses as they all have equality of rights'. At last, the most progressive characteristic has been observed in terms of the doctrine rooted in Roman law referring to'the community of interest.' It states that 'a water resource cannot be a subject to private appropriation or free disposition.' According to this principle, 'each of the country relating to the basin has right of action against another country and under any situation no country can affect the water resources without the permission, co-operations of its neighbours'. The Permanent Court of International Justice recognised this principle and directed to follow-up the 'effective reasonable utilisation' of the transboundary water resources, which was also accredited in the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses, 1997. According to article 5 of this Convention, the rights of the concerned countries have been protected under international law, which stresses 'the effective reasonable utilisation of the water course and parties shall participate in the use, development and utilisation of an international water course in equitable and reasonable manners'.

The indecent restraining and withdrawal of water unilaterally in the Teesta river basin has overlooked the environmental aspects in the lower riparian Bangladesh. According to article 7 of the 1997 UN Watercourses Convention, the countries are required to utilise international water course by taking all appropriate measure to prevent harm to the concerning countries. Article 6 further requires the countries to consider the facts of population, socio-economic needs, ecological and hydrological characteristics 'in course of development and utilisation of combined water course'.

It is evident that, in terms of water distribution, regulation and maintenance of the Teesta water basin under the provisions of the 1997 UN Convention has been violated repeatedly by the State government of West Bengal, and in turn, by India. The former judge C.G.Weeramantry stated in the case of *Gabcikovo v Nagymaros* that, "[t]he Court must hold the balance even between environmental considerations and the developmental considerations raised by the respective Parties." Similarly, in the case of *Suez and Vivendi Universal S.A. v The Argentine Republic* it was noted that, "Argentina was subject to both human rights and investment treaty obligation and must have to respect both of them equally". The international legal position regarding dispute resolution of transboundary water sharing has always underscored the significance of combined efforts of the basin states to accommodate a win-win situation. However, the exploitation of the Teesta river basin by the State government of West Bengal on a lower riparian neighbour Bangladesh and the subsequent impact have never been a subject of consideration. The unilateral water withholds and withdrawals without any cooperation with the lower riparian state are not supported by the international law not even under the Indian domestic law.

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