

## **LEGISLATIVE PROHIBITIONS ON WEARING A HEADSCARF: ARE THEY JUSTIFIED?**

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### **SUMMARY**

A headscarf, a simple piece of cloth that covers the head, is a controversial garment that carries various connotations and meanings. While it may be accepted as just another item of clothing when worn by non-Muslim women, it is often the subject of much controversy when worn by Muslim women. In recent years the headscarf has been described as a symbol of Islam's oppression of women and simultaneously of terrorism. As the debate regarding the acceptability of the headscarf in the modern world continues, an increasing number of states have legislated to ban the wearing of the headscarf.

This article critically examines the reasons underlying these bans and argues that these prohibitions are not justified. It does this by first analysing the place of the headscarf in Islam, its religious basis and its significance to Muslim women. It argues that the headscarf is more than just a mere religious symbol and that Muslim women wear the headscarf as a matter of religious obligation. The headscarf is considered to be an important religious practice protected by the right to freedom of religion.

Thereafter the article examines legislative bans on the headscarf in France, Turkey and Switzerland in order to identify the most popular justifications advanced by states and courts for banning the headscarf. It critically evaluates the justifications for protecting secularism, preventing coercion, promoting equality and curbing religious extremism, and disputes that the reasons put forward by states and accepted by courts justify banning the headscarf. It thereafter explores how South African courts would respond to a headscarf ban and argues that schools and

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employers should accommodate the headscarf. While Muslim women may not have an absolute right to wear the headscarf, there has thus far been no justifiable reason for banning the headscarf.

**KEYWORDS:** headscarf ban; Muslim; Islam; women; oppression; terrorism; religious symbol; freedom of religion; secularism; coercion; equality; religious extremism.