

Islamophobia and the European Convention on Human Rights

French Muslims protesting against discrimination



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Islamophobia & The European Convention on Human Rights

by Adeeba Ishaq, LLB LLM, Solicitor of the Supreme Court of England, October 1997

On the 11th October 1997, Prime Minister Rt. Hon. Tony Blair of Britain, announced that fundamental changes to the British constitution are underway and that Britain shall be adopting the European Convention on Human Rights into its domestic laws. For the Muslim Community this would mean essentially a recognition of the laws prohibiting discrimination based on religious grounds. On the 22nd October 1997, the Runnymede Trust published its report on Islamophobia and identified the fears faced by and against the Muslim community living in the West.

This paper examines the Human Convention on Human Rights and shall endeavour to outline its shortcomings generally and specifically its weaknesses in offering protection to the Muslim community. In light of the recommendations of the Runnymede Report there shall also be a brief examination of what is the future strategy that should be adopted by the Muslim community in dealing with the phobia against it.

Article 14 of the Human Convention on Human Rights states that, 'no person shall suffer discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.' This article is inherently weak, in that it constitutes subordinate status in its expression and content. In practice it amounts to empty words, as the rights under it apply only in the context of the convention rather than as a principle of general application. It sincerely fails to outlaw discrimination. This is why to date there has been no case so far either the European Court of Justice or the European Court of Human Rights in which discrimination contrary to Article 14 has been established.

Under Article 15 Member States may derogate from their obligations except Articles 1, 2, 3, 4 and 7 of the Convention. This effectively means that they may derogate from the enforcement of the rights contained in Article 14 and albeit they may be signatories to the Convention and or may have introduced it in their domestic law. This means that Member States not forced to creating the offence of discrimination under Article 14 and may also derogate from their responsibility to ensure the right to a fair trial, ensure liberty and security to its citizens; offer freedom to practice thought, consciences and religion of an individual, the right to free expression, assembly and association and the right to marry and found a family.

Effectively the optimum benefit of such legislation is that it is helpful in the interpretation of domestic statute and shall cause compensation for the victim of any discrimination, but in fact shall not cause or find an offence against the perpetrator. The effect of Article 14 and 15 is typical of the way in which pen pushing creates an escape-goat for politicians, in that they are seen to be doing their duty, but in effect achieve far less than what was promised.

The European Convention on Human Rights in its entirety does not address many critical issues which are important to the Muslim community. The asylum policy, control of immigration and police co-operation, or affecting and invading the rights of individuals to their privacy are all matters outside the jurisdiction of the Convention. The European Court of Justice and the European Court of Human Rights has no basis in making any adjudication on these matters.

The Convention offers no right to freedom of movement; visitors from foreign countries are not entitled to visit members states by right, they still need further visas to move from one member state to another. Workers with permanent residence in one member state still require visas for travel to other member states These are all requirements which are not imposed on nationals and citizens of the members states.

There are no secure family reunion rights under the Convention. Although there has been the abolition of the primary purpose rule in the Immigration laws of the UK, but other requirements remain in the domestic laws and remain validated by the European law This includes the derogatory requirement that spouses must show that they intend to live permanently together and that they have met, demeaning the Islamic legal flexibility of allowing marriage to take place without spouses having met.

There are no guarantees of equal treatment with regard to other social, economic and cultural rights under the European laws. There is no specific mention to rights of the education of parents' choice including right to Muslim schools at members states expense There are no rights offered to practice ones religion especially in the performance of *Jumuah* prayer and ablution facilities in places of work. European law allows and ensures disabled facilities, but no facilities for Muslims. There are no statutory provision of *Ha/al* food in any public maintained institutions for example schools, hospitals, prisons etc. Muslims are required to pay for circumcision, yet other religious rights of communities are offered on the National Health Service.

It is clear that the European Convention on Human Rights and the European Laws do not offer the Muslims the rights that are necessary and critical for them in order to practice Islam freely in the West. Balanced against this deficiency there is a need to examine what rights does the Convention cater for. The Convention allows for the right to homosexual and gay marriages. It offers encouragement to lesbian and gay parenting. It does not bench mark expressions which are deemed to be indecent in any civilised society, for example under European law it is not an offence to teach young children that incest is acceptable.

The European Convention allows the right to abort children at a late stage. There is no curtailment for blasphemy and allows for the freedom of expression without any barriers of morality and public health.

It is clear that differential treatment is meted out to the Muslim community as opposed to the gays rights movement. This differential treatment contributes to and feeds xenophobia and now particularly Islamophobia in the West. Muslims generally are classified as "third country nationals" and effectively "second class citizens", without equal rights with other citizens.

The institutions that implement these hollow Conventions are constituted in such a manner that it is ensured that no serious voice can be provided through the structures of implementation. Heading the implementation procedure is the Committee of Ministers under the European Convention of Human Rights, which consists of the politicians that are generally responsible for breaches under the Convention in the first instance. This Committee of Ministers appoints the personnel to the Commission of Human Rights and the European Court of Justice. Article 54 of the Convention on Human Rights allows the Committee of Ministers supervisory function in which the Committee executes decisions on merits and awards of damages.

The Commission of Human Rights investigates and decides on admissibility of cases that may be brought before the European Court of Human Rights. The Court of Human Rights then adjudicates on matters which are deemed admissible by the Commission. Some matters are referred to the European Court of Justice, which is deemed to be of more authority than the European Court of Human Rights. However, in relation to the true position of the courts, it is submitted that both Courts have no jurisdiction to adjudicate on main issues connecting and concerning the Muslim Ummah, thus no over riding judicial authority exists in European legislation to provide minimum Human Rights for the Muslim Community and to ensure compliance on Member States. It is also the case that when a state demonstrates reluctance in compliance with the Courts decision, no additional compulsion can be placed by either the Courts or the Council of Minister other than pressures of adverse international public opinion.

This means in brief that the “Politician” who are meant to be regulated by the European Convention of Human Rights in effect make the law, they break the law, then they investigate the law, then they are responsible for adjudicating on the law and they are also the Executors of the same law. This is truly a unique form of justice in which the same people are responsible for the judicial process from the beginning to the end.

The figures for 1993, demonstrate that there were over 2000 cases reported to the European Commission of Human Rights. From these 1450, were deemed to be inadmissible by the Commission. 250 were investigated and only 41 of them passed judgement in which not one case was successful under article 14, providing for protection against discrimination. In addition to this, Complainants face 5 years waiting list before their matter can be heard, and face huge legal costs, which are insurmountable for the ordinary citizen.

It seems fare to conclude that there is no security for Muslims in the West. There is no redress in the constitution or the legislation in Europe or domestic laws tackling any form of Islamophobia, that may exist. In effect the practices of the European Community is not only to allow for discrimination but in effect persecution of the Muslim people. However, the situation in Muslim Countries seems worse for those concerned with the Islamic movement.

What then is the answer to this predicament, you can change laws, issue directives to public institution allow for more local government participation and allow for some “yes men”, to be present in the House of Lords (recommendations of the Runnymede Trust).

These recommendations are not the answer for the Muslim community. The Muslims need to strategize in a manner in which they can change attitudes, but not from the position of weakness, rather from a position of strength. There is no future in begging for survival.

The first instance of Islamophobia was when the Satan announced that he would corrupt and cause humanity to fall astray against the word of Allah. This is when he was shown certain people and he said “except those who are sincere,” it was the illustration of these sincere people that caused the Satan to demonstrate Islamophobia in its original form.

The usage of the word Islamophobia is a good terminology in that there are only two ways in which phobia can be dealt with. The first is to see a Psychiatrist, and this cannot be advocated for the whole of the non-Muslim population. Second is to overcome the phobia by touching and embracing that which is feared and in this submission means that to become at one with Islam and to embrace Islam completely.

The Muslim community must be prepared to educate itself and other people about Islam. “Surely you are the better nation”, better in terms of moral values social health, and spiritual purity. These are the treasures which the whole of the West is crying out for.

The Muslims must prepare for debates at all levels. In order to assist in the overcoming of this phobia they must not think of the consequences of their actions upon themselves personally, but state for the record what Islam says and put into practice what is preached by acting upon it themselves.

This conduct would be like the *Sahabah*, who presented themselves in front of the Abyssinian Emperor. They did not bow their heads they did not compromise their arguments, but they stated the facts and by doing so obtained self respect at all costs. That is the way Muslims should live as a minority in the West. The message should be made clear in terms of answering the debate on Islamophobia, that there shall be no integration or assimilation, it is only a question of time when the rest of the world shall have to bow down to the weight, logic and the purity of the Islamic debate and movement.[END]