

MASKING IDENTITY: THE FRENCH HEADSCARF CONTROVERSY VIS-À-VIS CHILDREN'S REHABILITATION HOMES IN BANGALORE

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The growing frequency of terrorist attacks and sporadic acts of violence based on cultural and religious differences points towards the need to rethink policies adopted by multicultural societies towards integrating diverse communities into the national fabric. Indeed, creating a sense of belonging amongst individuals from different cultures has always been a challenge for multicultural societies. In order to achieve this end, many European countries have sought to erase markers of cultural identity from the public domain. For instance, in a recent move, France has banned the use of all religious symbols in its schools. Field research in two children's rehabilitation homes in Bangalore suggests that efforts to create homogeneity exist at the microcosmic level, parallel to forces seeking to mask identity at the level of the nation State. Does the policy of 'masking' differences in identity in order to create a single, homogenous identity, which is at work in different ways in both India and France, meet the challenge of forging a sense of belonging in multicultural societies? Is it an effective means of ensuring the peaceful coexistence of distinct cultural groups within a nation State? Theories of cultural pluralism and assimilationist liberalism answer these questions in divergent ways. This paper seeks to analyze the process of 'masking identity' and to evaluate its impact within this theoretical framework.

Introduction

The Juvenile Justice (Care and Protection of Children) Act (hereinafter "the Act") was passed in the year 2000, with the objective of providing a comprehensive legislative framework for dealing with children in conflict with the law and children in need of care and protection.¹ As is apparent from the

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¹ § 2 (d) and § 2(i) of the Act define the terms 'child in need of care and protection' and 'juvenile in conflict with the law' respectively.

§ 2(d) -- "child in need of care and protection' means a child- (i) who is found without any home or settled place or abode and without any ostensible means of subsistence; (ii) who resides with a person (whether a guardian of the child or not) and such person- (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person, (iii) who is mentally or physically challenged or ill children or

terminology used in the Act and the Statement of Objects and Reasons appended to the Act, the Act seeks to provide for the development needs of such children and ensure a child-friendly approach in dealing with them. Apart from the procedure to be adopted in such cases, the Act also provides an institutional framework for the rehabilitation of these children, through the establishment of children's homes² and observation homes.³ For the purposes of this paper, these homes established under the rubric of the Act, will be referred to as rehabilitation homes.⁴ Following the passage of the Act, there has been a renewed interest in academic circles on various facets of their functioning. However, most of the research/studies have chosen to examine aspects of living conditions that are immediately apparent to the sceptical

children suffering from terminal diseases or incurable diseases having no one to support or look after, (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, (v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry, (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking, (viii) who is being or is likely to be abused for unconscionable gains, (ix) who is victim of any armed conflict, civil commotion or natural calamity.”

§ 2(i) states that a juvenile in conflict with law is a juvenile who is alleged to have committed an offence.

² § 34(1) of the Act provides for the establishment of children's homes:

“The State Government may establish and maintain either by itself or in association with the voluntary organizations, children's homes, in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation”

³ § 8(1) of the Act provides for the establishment of observation homes:

“Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act.”

⁴ These homes are part of the institutional setup established under the Act to bring the juvenile justice system in the country in conformity with India's obligations under the United Nations Convention on the Rights of Child, (CRC), 1989. However, studies indicate that in practice, the rights of the child are systematically violated within the precincts of these very homes. State governments have the power to establish these homes (§§ 8(1) and 34(1)) and to make rules for the management of these homes, including the standards to be maintained and the services to be provided, under §§ 8(3) and 34(2). Under the Act, State governments are empowered to coordinate with voluntary organizations in the establishment of these homes.

outsider.⁵ While the value of these investigations cannot be denied, it is notable that an uncomfortable silence surrounds several aspects of the functioning of these Homes. This article seeks to tear away some of that silence by investigating the politics of identity in child rehabilitation homes in the city of Bangalore in Karnataka, India. The hypothesis of the author is that the identity of children is constantly reformulated while they are under the protection of the functionaries in these Homes. While some of this reconstruction is inadvertent and of a passive nature, the field experiences forming the basis of this paper suggest that very often, active attempts are also made in this direction.

Closely associated with this microcosmic process of identity reconstruction is the politically charged issue of State interference with the use of identity symbols, particularly the Muslim *hijab*, at the level of the nation in Europe.⁶ Most recently, in November 2006, the Dutch government has put forth a proposal to ban the wearing of the veil in public places.⁷ In 2006, the House of Lords in the U.K. ruled against a Muslim student, Shabina Begum, who had claimed a right to wear a *jiljab*, although disallowed by the school uniform policy.⁸ In the U.K., comments by the Leader of the House of Commons, Jack Straw criticizing the use of the veil kicked up a national controversy.⁹ However, France is unique in that it has a uniformly applicable law banning the use of symbols proclaiming one's religious identity in schools across the country.¹⁰ Hence, it is used as the parallel for the argument put forth here. The situations are comparable insofar as identity reconstruction in both sites involves children, whose identities are yet in the process of being formulated, and are therefore more vulnerable to such reconstruction.

⁵ See Yogesh Snehi, *State and Child Justice: Stories of Delinquent Juveniles*, 39(41) ECON. & POL. WKLY. 4512-4514; Meera Kosambi, *Society's Children: A Sociological Study of Destitute Children in Maharashtra*, 23(20) ECON. & POL. WKLY. 1014-1024 (1988).

⁶ Naima Bouteldja, *The Dutch have Reached A New Level of Authoritarianism*, available at <http://www.guardian.co.uk>

⁷ *Id.*

⁸ R v. Head Teacher and Board of Governors, Denbigh High School, [2006] U.K.H.L. 15.

⁹ Bouteldja, *supra* note 6.

¹⁰ The ban was initially recommended by the Stasi Commission, headed by Bernard Stasi, which had the mandate of examining the principle of secularism in modern France. Interestingly, the other proposals of the Commission, such as marking important dates in the Muslim and Jewish calendars with public holidays in France were ignored, while the ban was soon put in place. See *French Secularism-Laïcité*, <http://www.bbc.co.uk/dna/h2g2/A2903663> [hereinafter French Secularism].

However, a more detailed comparison with the French law would throw light on the differences and similarities in the operation of identity politics at the microcosmic level and at the level of the nation state. This paper is drawn from field experiences at two institutions in Bangalore, the Government Home for Girl Children in need of care and protection – a children's home in Nagarbhavi and ECHO Centre for Juvenile Justice, an institution which primarily deals with children in conflict with the law.¹¹ In particular, interactions with the administration, staff and the children were used to uncover the different ways in which identity reconstruction is silently at work in these institutions.¹²

Section I of this paper examines the French headscarf controversy from the perspective of identity politics in a culturally pluralistic society. Section II seeks to situate the complexities of 'the politics of difference' within a theoretical framework. In particular, it examines the debate between assimilationist liberalism and cultural pluralism. Section III, which is based entirely on field experiences of the author, examines the problematic aspects of identity construction in Bangalore's child rehabilitation homes, in light of the French controversy and the theoretical framework in Section II.

I. Identity Politics and *Laicite*

In late 2004, the French Parliament passed a law which prohibits children in public schools in France from wearing clothes and insignia that 'openly manifest a religious affiliation.' Significantly, the law was passed almost unanimously and the French public was largely in support of it.¹³ The rationale of the law - the creation of a neutral, colourless public sphere, uncluttered by different religious identities - is an ideal of the French system, as encapsulated by the French term *laicite*, which connotes the separation of the Church from

¹¹ § 2 of the Juvenile Justice Act, 2000 makes a clear distinction between children in need of care and protection and those in conflict with the law. *See supra* note 1.

¹² Additionally, there were exchanges with the Superintendent of the Nagarbhavi Home, with the Administrator, ECHO and with the Director of ECHO. Due to ECHO's internal policies, the author was unable to interact with the children at ECHO. However at the Home in Nagarbhavi, it was possible to interact with the children on two occasions successfully despite the language barrier, since some of the children were conversant in both Hindi and Kannada.

¹³ The French Parliament voted almost unanimously in favour of the ban (494 to 36 voted in favour of the ban). Early polls indicated that the French public was in overwhelming support of the ban. *See* Jessica Fourneter, *France: Banning Legal Pluralism By Passing A Law*, 29 HASTINGS INT'L & COMP. L. REV. 233 (2006) [hereinafter Fourneter].

the State.¹⁴ In France, secularism is not limited to allowing the free practice of religious beliefs, but extends to the erasure of religious identity from the public sphere to replace it with the homogenous identity of being 'French.' The understanding is that differences should be hushed up and not celebrated, if the aim is to create a unified society.¹⁵ The passage of the new law led to massive protests, not just in France, but across the rest of the world. Muslim women were hit the hardest because as per the traditional interpretation of Islam, it is mandatory for them to wear a hijab or a headscarf.¹⁶ In intellectual circles, the ban was viewed from different perspectives - as an example of paternalism,¹⁷ as a violent attack on the freedom of religion,¹⁸ as provocation for religious fundamentalism in the region¹⁹ and so on. This paper examines the controversy primarily from the perspective of identity politics.

The ban and the larger idea of *laicite* are predicated on the notion of masking identities that are considered undesirable in a certain social milieu, and of replacing them with a homogenous, forged identity. How is this process of 'masking' problematic? What are the complexities and contradictions inherent in this process?

From the perspective of an outsider, who is alien to the French system and to the concept of *laicite*, it is apparent that the idea behind the ban is a fantasy. In reality, France is a multi-religious society, so that one can realistically be a Muslim Frenchman or a Jewish Frenchwoman or a Catholic French girl. However, the French government and indeed, the French people,²⁰ cherish the

¹⁴ Nalini Rajan, *French Secularism, Headscarves, and Indian Schoolchildren: Anthropological Concerns of Political Philosophy*, 39(36) ECON. & POL. WKLY 3967-70 (2004) [hereinafter Rajan].

¹⁵ See French Secularism, *supra* note 10.

¹⁶ The practice of wearing *hijab* that is prevalent among Muslim women is based not on the text of the Qoran, but on religious doctrine. More specifically, it may be traced to the Hadith of Sahih Bukhari. The Hadith, loosely translated to the "tradition of Mohammed," reveals the teachings of the Prophet to followers of Islam. Bukhari's version of this text is generally regarded as authoritative, although many other versions exist. See *Women, Islam and Hijab*, <http://www.english.emory.edu/Bahri/Veil.html>.

¹⁷ Part of the justification for attacking the *hijab* is that it is a symbol for discrimination against women in Islam, which must be done away with, if Muslim women are to be truly liberated. See Alex Gask, *Hijab- A Woman's Right to Choose*, <http://www.ukesf.net/it/esf.shtml?x=2311&als%5BSSECTION%5D=Contacts>.

¹⁸ Maximilien Turner, *The Price of A Scarf: The Economics of Strict Secularism*, 26 U. PA. J. INT'L. ECON. L. 321 (2005).

¹⁹ French Secularism, *supra* note 10.

²⁰ French Secularism, *supra* note 10.

imagined idea of a homogenous society, in which everyone is nothing but 'French' and there are no differences of identity. The recent ban, which seeks to erase all symbols of religious differences from schools - a microcosm of the public sphere - to promote the idea that all French people are the same, is only symptomatic of this fantasy. Other aspects of France's laws and state policy are also based on the same fantasy. For instance, the French government insists on training Muslim *imams* in French laws and society and immigrants are encouraged to take classes on French culture, cuisine and language upon naturalization.²¹

However, this fantasy manifested in the process of masking differences to create a homogenous identity of a 'citizen' is not peculiar to France. In fact, it is characteristic of the nation-building process in most heterogeneous societies.²² For example, Aloysius has outlined the dynamics of the process in the context of the creation of the Indian nation State.²³ He points out that a significant element of the nation building process for any people is the active construction of a shared past – "[i]t is this construction of [c]ontinuity from the past, through the present, towards the future that constitutes the identity of a people, the soul or genius of a nation."²⁴

Interestingly, there is a continuous effort to discount the value of fantasy and to stress instead on the factual bases of these processes.²⁵ Thus, secondary school history textbooks rattle off dates and events, portraying these as the basis of nationalism and the birth of the Indian nation State. Thus, the creation of communities, of a sense of belonging and even the construction of nation states is not all fact. Fantasy and an imagined consciousness both play a crucial role in these 'real' political processes.²⁶

²¹ Fournieret, *supra* note 13.

²² See generally, G ALOYSIUS, NATIONALISM WITHOUT A NATION (1997); M.S.S. Pandian, 'Nation' From Its Margins: Notes on E.V. Ramaswamy's 'Impossible' Nation, in MULTICULTURALISM, LIBERALISM AND DEMOCRACY 287 (Rajeev Bhargava ed., 1999). In the Indian context, Pandian argues that the mainstream narrative of nation-building often privileges the subject position of the upper caste Hindu male, thus, marginalizing other discourses on the nation, from other subject positions.

²³ See generally ALOYSIUS, NATIONALISM WITHOUT A NATION (1997).

²⁴ *Id.*, at 154.

²⁵ Jason Keith Fernandes, *Panjim Realms* (2006) (unpublished thesis) [hereinafter Fernandes].

²⁶ This is an idea echoed by Lowenthal and Hobsbawm. See generally, David Lowenthal, *Fabricating Heritage* 10(1) HIST. & MEMORY (1998), available at <http://iupjournals.org/history/ham10-1.html>, cited from Fernandes, *id.*; HOBBSAWM et al., THE

Ironically, although the stated objective of the French policy of *laïcité* and the new law is the creation of a secular State, both seem to involve the suppression of minority cultures by the dominant culture of Christianity.²⁷ The concept of *laïcité* originated in the background of a strong Christian church and in the context of a predominantly Christian culture.²⁸ This historical understanding explains the fact that the policy of *laïcité* has always been coloured by Christianity.²⁹ For instance, Sunday is the weekly holiday in French public schools, which is attuned to the Christian Sabbath, but not to Muslim or Jewish practices.³⁰ Again, French public schools prescribe knee-length skirts as the official school uniform for girls, which do not take traditional Islamic sensibilities into account.³¹ Similarly, the recent ban on the use of religious symbols in school is ostensibly a uniform policy, applying across the board to all religious communities. However, since the law only prohibits symbols which ‘openly’ manifest religious leanings, the Christian crucifix falls outside the ban. Only the use of oversized crosses, which is an uncommon practice, is covered by the ban.³² However, the Sikh turban, the Muslim *hijab* would clearly fall within the prohibition. Significantly, while Christianity does not mandate the wearing of a crucifix, as per traditional/conservative interpretations of the Koran, Islam requires Muslim women to wear the *hijab*. Likewise, the wearing of a turban is customary among Sikhs. Thus, the recent ban is not just skewed in favour of Christians, but is in fact, seems to be unjustly harsh in its operation vis-a-vis other communities.

By attacking closely held identities, the ban provoked a process of questioning and articulation about the significance of identities and identity-

INVENTION OF TRADITION (1983), *cited from* Fernandes, *id.*

²⁷ See generally, Harry Judge, *The Muslim Headscarf and French Schools*, available at <http://www.journals.uchicago.edu/AJE/journal/issues/v111n1/111101/111101.htm>.

²⁸ For the history and the origin of the concept of *laïcité*, see generally, Rajan, *supra* note 14.

²⁹ Rajan, *supra* note 14.

³⁰ Interestingly, a Canadian Court recognized that this is discrimination on the basis of religion, although it operates in a subtle way. In *Ontario (Human Rights Commission) v. Simpsons-Sears Ltd.*, [1985] 2 S.C.R. 536, the Canadian Supreme Court held that an employer is duty-bound to make reasonable adjustments to employee work schedules so as not to discriminate against Seventh-day Adventist employees who observed the Saturday Sabbath.

³¹ Rajan, *supra* note 14.

³² Fournieret, *supra* note 13.

based symbols.³³ Muslim women have articulated their experiences with the *hijab*- of how the wearer of the *hijab* is presumed to be orthodox and unthinking.³⁴ Thus, identity based symbols can inadvertently have a profound impact on one's social interactions and interpersonal relationships.³⁵

A final aspect of the French affair that is relevant to our discussion on identity politics is the futility of the masking process. Not just in France, but across Europe,³⁶ there has been a consistent effort to mask differences in identities and to produce homogeneity where there is none.

However, the vocal protests following the French ban indicate that identities, especially those under siege, are closely held and that to try and erase them from the public sphere might prove to be a futile exercise.³⁷ Several schoolgirls have been dismissed from public schools in France,³⁸ thus only serving to defeat one of the ancillary objectives of the *hijab* ban - the uplifting of Muslim women. Many have chosen to pursue studies in neighbouring countries which do not observe the ban.³⁹ The ban has compelled Muslim families in France to make important decisions about their children's

³³ In particular, there has been a debate on whether the *hijab* is imposed on women by Islamic religious doctrine and is therefore, is a symbol of discrimination against women, which must be eliminated of whether such a ban violates their religious freedom. See Andreas Tzortzis, *Multicultural Symbol or Gateway to Fundamentalism*, <http://www.dw-world.de/dw/article/0,2144,1170572,00.html> [hereinafter Tzortzis].

³⁴ A personal account by a German Muslim woman reflects this sentiment - "[I] was unhappy with the widespread prejudices in Germany against *hijab*-clad Muslim women... [p]rejudices like 'they're dumb and servile. I had nothing to do with all that but I felt like I was being branded the same on account of my *hijab*.'" See Berlin Woman Designs 'Modern' Alternative to Hijab, <http://www.islamonline.net/English/News/2004-03/10/article03.shtml>.

³⁵ A recent tragic example is that of the killing of Jean Charles de Menezes, an innocent Brazilian immigrant who was killed by Metropolitan police officers in the U.K. who were investigating a 2005 bombing. De Menezes, an electrician, would probably not have aroused the suspicion of the police but for the fact that he was dark skinned and therefore, fit into the popular, post 9/11 image of a terrorist bomber as a non-white. The violence unleashed against Sikhs in the U.S. post 9/11 on account of their turban, which bears a remote similarity to Osama bin Laden's headgear is another example. French Secularism, *supra* note 10.

³⁶ Blandine Chelini-Pont, *Religion in the Public Sphere: Challenges and Opportunities* 3 B.Y.U. L. REV. 611 (2005).

³⁷ In Germany, where a similar ban was in contemplation, Emel Algan a Berlin Muslim has redesigned the traditional *hijab* and converted it to trendy headgear, while serving the purpose of the *hijab* to offer a peaceful alternative to Muslim women in Germany. Algan's example reflects that the Muslim identity is too strong for most people to erase out its symbols. Therefore, the effort has been to get around the law and protect the threatened identity rather than to comply with it. See *supra* note 13.

³⁸ Tzortzis, *supra* note 33.

³⁹ Ian Ward, *Headscarf Stories*, 29 HASTINGS INT'L & COMP. L. REV. 315 (2006).

education, merely because of their Muslim identity. The inescapable conclusion is that the ban has made France more conscious of its religious differences. The irony in the fact that a policy that seeks to erase consciousness of differences in identity has only deepened this consciousness is hard to miss.

II. The Theoretical Underpinnings of the Politics of Difference

Much ink has been spilt on the issue of conceptualizing a political structure best suited to the complexities of a multicultural society. Contemporary political theory is witnessing a debate between the proponents of assimilationist liberalism and the advocates of cultural pluralism centred on the politics of difference.⁴⁰

The assimilationist liberal would argue that in order to ensure equal treatment of all in a culturally diverse society, the State must be blind to differences of culture.⁴¹ This entails ignoring group identities and treating members of all communities as falling within the imagined, identity-neutral category of 'the citizen'. Bhikhu Parekh has offered a critique of assimilationist liberalism. He argues that it is problematic to assume that the 'citizen' can be constructed as a value-neutral and identity-less category in a manner that accommodates all communities equally.⁴² The prototype of the typical citizen in any society is depicted as it exists in the imagination of the dominant, because they control decision making, policy formulation etc. Thus, for example, the citizen is never female, is always heterosexual and uniformly applicable law and policy is ordinarily framed with this conception of the 'citizen' in mind.

Thus, it seems that the category of the citizen is inevitably value-loaded and has a defined cultural and social identity. This criticism of assimilationist liberalism is supported by the discussion of *laicite*, which privileges the dominant Christian community in many ways- determination of the weekly holiday, the idea of what constitutes 'appropriate' school uniform and also in drawing the line between suitable and unsuitable religious symbols. Ironically,

⁴⁰ Bhikhu Parekh, *Cultural Diversity and Liberal Democracy*, in DEMOCRACY, DIFFERENCE AND SOCIAL JUSTICE 202 (Gurpreet Mahajan ed., 1998) [hereinafter Parekh].

⁴¹ *Id.*, at 205.

⁴² *Id.*, at 207.

although the goal is to ensure equal treatment of all communities, inevitably one/more communities are always more privileged than the rest.⁴³

Parekh's argument finds support in Will Kymlicka's theory of multicultural citizenship. He argues that certain groups are invariably more disadvantaged than others in a given society. In such a context, the uniform treatment of all groups, which Kymlicka terms an approach of 'benign neglect' only serves to preserve these inequalities, by ignoring that citizens are never equally placed in society.⁴⁴ The solution that he proffers is the recognition of group rights, including territorial autonomy, land rights, language claims etc., in order to eliminate these differences.⁴⁵ He argues that the link between common citizenship and national integration is a tenuous one, with many groups-blacks, women, homosexuals etc. experiencing a sense of exclusion and marginalization despite enjoying common rights of citizenship.⁴⁶ Therefore, the trend today is for these groups to demand 'differentiated citizenship', which recognizes individuals not just as citizens, but also as members of groups enjoying group rights.⁴⁷ Parallel to Parekh's critique of the notion of a citizen, Kymlicka points out the impossibility of forming a 'neutral' State. In a democratic setup, the government is invariably, coloured by the culture of the majority.⁴⁸

Individuals cannot be correctly understood as abstract entities. In fact they exist within particular cultural and social contexts which contribute towards their identity and self-perception.⁴⁹ However, this richness in social life cannot be possible if an assimilationist agenda, which hides differences, is to be followed. Equal respect for all individuals, which is a basic tenet of liberalism, implies equal respect for their religious, cultural and linguistic identities as well.⁵⁰ Thus, it follows from the liberal theory itself that cultural diversity ought to be celebrated and not hidden under the veil of citizenship. Finally, liberal theory values cultural diversity for the reason that it lends richness to

⁴³ Will Kymlicka, *Multicultural Citizenship*, in *DEMOCRACY, DIFFERENCE AND SOCIAL JUSTICE* 105 (Gurpreet Mahajan ed., 1998) [hereinafter Kymlicka].

⁴⁴ See Rajeev Bhargava, *Introducing Multiculturalism* in *supra* note 40, at 15.

⁴⁵ *Id.*, at 105.

⁴⁶ Kymlicka, *supra* note 43, at 329.

⁴⁷ *Id.*

⁴⁸ Kymlicka, *supra* note 43, at 106.

⁴⁹ Parekh, *supra* note 40, at 206.

⁵⁰ *Id.*

social exchanges and relationships. On the other hand, differences need to be celebrated, if they are to enrich social life.⁵¹ In view of these chinks in the armour of the assimilationist liberal, there is increasing support for the theory of cultural pluralism in modern political theory.

As per the theory of cultural pluralism, individuals cannot be abstracted from the social and cultural contexts in which they exist and that these are crucial to their identity and existence. Therefore, respect for the individual necessarily implies respect for their cultural and religious identities. The cultural pluralist therefore, would advocate a celebration of religious diversity instead of banishing it from the public sphere. Further, the cultural pluralist also views multiplicity of cultures and religions as a means of enriching the quality of social life. As per one view, it allows individuals to choose a culture and religion of their own choice for themselves instead of being restricted to adopt the way of life followed by the community they were born into. While this is a contested idea⁵², the argument that diversity of culture and religion enriches exchanges in the public sphere is convincing. However, this idea is not free from criticism. It may be argued that by encouraging different cultures to flourish, it tends to harden divisions in society and halt the establishment of a more unified and stable society.⁵³ However, recent empirical evidence suggests that in fact, the impulse for secessionist movements and divisive forces in society is greater when State laws and policies threaten minority identities rather than in States which encourage cultural pluralism.⁵⁴ Further, the supposed failure of the British model of multiculturalism⁵⁵ has further provoked the criticism that cultural pluralism is not the best way to ensure happy coexistence in a multicultural society.⁵⁶ The argument that British multiculturalism has been a failure is based on the fact that Britain has

⁵¹ Parekh, *supra* note 40, at 207.

⁵² The idea of cultural *laissez faire*, permitting individuals to choose their own cultural affiliations was put forth by John Gray. *See generally*, John Gray, *The Politics of Cultural Diversity*, in *supra* note 40,. However, this argument has been subject to severe criticism. For an overview of this critique, *see generally*, Parekh, *supra* note 40.

⁵³ *See generally* Bhargava, *supra* note 44, at 35.

⁵⁴ This empirical evidence is largely based on the experience of Western liberal democracies. Kymlicka, *supra* note 43, at 351.

⁵⁵ The British model has been referred to as 'chicken tikka multiculturalism', a term that brings out how policies of the British State support the coexistence of different cultures, and importantly, those belonging to minority communities. *See* Amir Ali, *Chicken Tikka Multiculturalism*, 36(30) *ECON. & POL. WKLY.* 2821-2822 (2001) [hereinafter Ali].

⁵⁶ *Id.*

witnessed a series of acts of ethnic violence in recent times, thus indicating that cultural pluralism may not ensure a cohesive and unified society.

The more appealing conclusion is that Britain's implementation of cultural pluralism has been lacking in some material aspect. It has been argued that British policies have actively engaged with minority communities only over a narrow range of issues. Indeed, British policies have failed to address the fact that ethnic and other minorities in the country are economically far more vulnerable than other sections of British society.⁵⁷ This wide economic disparity, which parallels cultural differences, rather than British policies supporting cultural pluralism, better explains Britain's supposed failure in integrating its minority communities into the mainstream of society.

The French experience suggests that assimilationist liberalism has failed to ensure equality of treatment for all communities and in creating a sense of national belonging.⁵⁸ Also, this failure has come at the cost of increasing identity crises and a sense of alienation within minority communities which are constantly asked to hide their differences in the public sphere.⁵⁹ Political analysts point towards terrorist attacks in Europe planned and coordinated by European Muslims as an indication of the failure of the European States to integrate Muslims into national society.⁶⁰ Europe is now at a stage where national security concerns should compel it to question its integrationist approach towards national minorities. Instead, most European States have chosen to adopt a host of hard-line measures against Muslim populations, which have only served to intensify feelings of exclusion and alienation.⁶¹

⁵⁷ The economic position of minority communities has worsened in recent times, on account of Britain's economic policies, which includes economic restructuring, changes in labour market conditions etc. See Ali, *supra* note 55.

⁵⁸ Kristin Archick et al, *Islamist Extremism in Europe*, available at <http://www.fas.org/sgp/crs/terror/RS22211.pdf> [hereinafter Archick].

⁵⁹ *Id.*

⁶⁰ Many arrests with regard to terrorist activities have been made in Belgium, France, Italy, and the UK. The 11 March 2004 bombings of trains in Madrid, Spain, were carried out by a group consisting primarily of Moroccans resident in Spain. Again, the 7 July 2005 London bombings are traced to Islamic terrorists resident in the U.K. See *European Approaches to Homeland Security and Counterterrorism*, available at <http://www.fas.org/sgp/crs/homesecc/RL33573.pdf>.

⁶¹ *Dialogue with Islam and integration of Muslims in Italy and Germany - a Comparison of the political conditions and the legal frameworks for mechanisms of dialogue with the Islamic faith communities in both countries*, available at <http://www.germanlawjournal.com/article.php?id=811>.

III. Inside Bangalore's Child Rehabilitation Homes

The French ban was a noisy affair, spawning vocal protests within France and outside of it, as a response to the State's attempt to dismantle and reformulate identities. The author's field experience in Bangalore's rehabilitation homes for children indicates that a similar process of masking and reconstructing the identities of the children who inhabit these homes is underway. The policy of reformulating identities is as problematic here as it is in France. However, the process is a quiet one here, generating no demonstrations, fuelling no protests.

The Children's Home at Nagarbhavi in Bangalore is a State-run institution, so that it is legitimate for an outsider to expect a secular space. At the home, the Superintendent introduced Amritha (name changed) upon inquiry of the religious composition of the Home. Often names are markers of identity, providing an immediate clue to a person's background. Despite what her name would suggest, Amritha is a Muslim. She remains conscious of her religious identity, informing the author on her two consecutive occasions that she can say the *namaz*.

Of the twenty five odd children at the Home, only a handful belong to minority religious communities. It is evident that a subtle process of reformulation of identities is underway at the institution. The prayer song that Amritha sings in the morning is the *Gayatri Mantra* and the images that the children bow to at prayer time are those of Hindu gods and goddesses. This appears to be validation of the argument that institutions or public spaces can never really be neutral/secular, but are in fact, always coloured by the dominant culture. While the example of *laicite* illustrates this at the macrocosmic level of the nation, field experiences at the Home suggest that similar forces are constantly at work in microcosmic spaces as well.

To a great extent, the reformulation of children's identities is attributable to the apathy of the concerned officials to issues of identity. At the Nagarbhavi Home, the probation officer sees this process of the slow destruction of religious and other identities at rehabilitation homes, in a positive light. She points out that although the children are not forced to worship a certain god or goddess, Muslim inmates often forget their religious identity, as they interact with their peers from the majority community. In the same breath, she states that the children are sent to a nearby *ashram* every week for a prayer session.⁶²

⁶² In the author's interview with the officials, this is evident:

Interestingly, what the probation officer sees as elimination of divisions of language and religion among the children is in fact, the gradual erosion of minority identities. It was also pointed out to the author that there is a fundamental problem of failing to ascribe importance to identity related issues when dealing with children in rehabilitation homes.⁶³ However, there is a culture of openness about religious and other identities at the Home, which is reflected in Amritha's religious consciousness and in the girls' understanding about their distinct backgrounds.⁶⁴

On the other hand, at ECHO, which is a private institution run by Christian missionaries, there is a conscious attempt to stay away from religious symbols.⁶⁵ The policy is one of maintaining a silence about religious and other identities in order to prevent differential treatment. This policy appears strikingly similar to the French *laicite* and is based on the classic assimilationist

We do not force children to pray to a certain god or goddess. Muslim children who come to our Home, often forget their religion. Initially, some of them tend to pray separately and say the *namaaz*, but as they interact and mingle with other children at the Home, they gradually forget their religion and culture. For children, religion and language are meaningless. I send all the children to the nearby Chinmayananda Swami Bhajane Mandire for weekly prayer and *bhajan*. It is a bit of a change of scene for them, it can be tiresome to be within the four walls of the Home all week...

Interview with the Probation Officer, Home for Girls, Nagarbhavi (Apr., 2007).

⁶³ The author found that this sentiment could be situated within a larger critique of the Act:

Identity issues involving children in need of care and protection and children in conflict with the law, are not given any importance within the scheme of the Juvenile Justice Act, 2002. Even among those working with children in statutory homes and NGOs, there is an insensitivity to identity related issues. Indeed, in many cases, not enough effort is put into tracing the child's identity, so that it may be respected and maintained within the rehabilitation home." Ms. Manoharan narrates an anecdotal experience where it was discovered several months after a child first came into a rehabilitation home that his initials, "N.K.", which he had come to adopt, were not part of his name, but in fact, stood for 'Not Known', assigned by officials who were unaware of the child's antecedents.

Interview with Arlene Manoharan, Researcher on Juvenile Justice, Centre for Child and the Law, (Apr., 2007).

⁶⁴ Amritha is happy to inform the author on her first visit that she is a Muslim. On her second visit to the Home, she reminds her that she can indeed say the *namaaz*. The author asked Lakshmi (name changed) who can converse in Hindi, as to whether the children come from different religious backgrounds. Of course, she says, Amritha is 'a Telugu' and most of us 'are Hindi.' Even through her naïve explanation, it is evident that she is aware of the differences in background. (Interview with Amritha and Lakshmi, Apr.2007).

⁶⁵ On the author's visit to ECHO, I observed that there was a complete absence of all religious symbols/images on the campus.

liberal assumption that differences in identity should be silenced, to avoid division and hostility. In light of this policy, it is not surprising that although children at ECHO have the freedom to visit religious institutions of their choice, it is extremely rare for such a request to be made.⁶⁶ It is not therefore, unreasonable to imagine that the average child who has been “successfully rehabilitated” by ECHO would feel a complete loss of religious identity and consciousness at the end of the experience. It is indeed ironical that the fallout of trying to prevent interference with religious and other identities is the gradual erasure of religious consciousness.

The politics of silencing differences characterizes ECHO’s functioning in yet another way. Although ECHO maintains a record of the past backgrounds of all the children in order to track their progress, these are kept strictly confidential. Often, even the administrative officials at ECHO are unaware of the circumstances that brought a particular child to ECHO. In the words of the officials at ECHO – “[i]t is just like you heal a wound. You would cover it up and bandage it. Similarly, we choose not to talk of the pasts of these children.” The objective, therefore, is to erase out the tag of a ‘child in conflict with the law’ and to create a new, forged identity of the ‘good citizen’ as part of the rehabilitative process. Just like the French government which imagines that all citizens are tied to no identity other than that of being French, ECHO is struggling to weave the fantasy that its inmates are prototypes of the ‘good citizen’ with ‘clean records.’

However, this process of creating a new ‘clean’ identity in place of the old is often problematic. The rigid silence at ECHO about their backgrounds teaches children to deny that they had ever been in conflict with the law, and to reject it, almost like a bad nightmare. There is no real attempt at helping the children openly deal with their past.⁶⁷ As a result, the new identity of a ‘good

⁶⁶ Interview with Father Anthony Sebastian, Director, ECHO, (July 2006).

⁶⁷ Psychiatrists do conduct counseling sessions for the children at ECHO. However, since there is no open sharing of experiences with the staff or other children at ECHO, an uncomfortable silence surrounds these aspects of their past at all times. Under S. 15 of the Juvenile Justice Act, 2002, the Juvenile Justice Board, has the discretionary power to direct a juvenile to participate in group counseling. However, the Act does not envisage a structured system of group counseling for children in conflict with the law or for children in need of care and protection. As per Ms. Manoharan, “There is a need for group counseling to complement individual counseling. There are many issues that are common to children in rehabilitation homes, especially to those in conflict with the law, and a sharing of experiences can indeed facilitate a process of healing. The Act does focus on rehabilitating these children in society, but it doesn’t afford any importance to the equally significant issue of therapeutic healing.” Interview with Arlene Manoharan, Researcher on Juvenile Justice, Centre for Child and Law, NLSIU, (Apr., 2007).

citizen' sits uncomfortably on the child, who is always aware that behind this mask lies an unsavoury reality. This is best reflected in the story of Ravi (name changed), who had come to ECHO some years back, regularly attended school, like other children his age and performed fairly consistently. When his peers at school happened to discover his background and the silence was finally broken, Ravi was unable to deal with the situation. He refused to go back to school and it was after many sessions of intensive counselling that he agreed to return. Ravi's story captures some of the difficulties and complexities inherent in the process of reconstructing identities.⁶⁸

The silence around the children's past that is so painstakingly maintained at ECHO destroys the possibility of a healthy exchange of experiences by the children and a more effective healing process, geared at *dealing* with the past, rather than ignoring it entirely. In fact, at ECHO, the sharing of experiences between children has always been of a negative nature. Since it is the past of each child that is most devalued, it often comes up in fights between the children, when they point fingers at one another's past misdeeds as the ultimate weapon to injure the other. ECHO is thus perhaps, a microcosmic model of a liberal assimilationist society where the veiling of differences has prevented the meaningful dialogues and exchanges. The parallels with the European experience are evident. According to one body of scholars, the integrationist policy followed in France and across the rest of Europe, which tries to promote national unity by erasing closely held religious identities, has alienated Muslims. They are then more readily swayed by radical Islamic groups, which promise an end to the identity crisis by offering a strong religious identity.⁶⁹

Further, because the tag of a 'good citizen' is an imposition, it is oppressive to the subject, i.e., the child in conflict with the law. ECHO is unique among observation homes in Bangalore in that it is well maintained and the children are adequately provided for in every way, which is a novelty for many of the children brought to the institution. Despite this, ECHO's routine experience is that in their first few weeks at the institution, children consistently attempt to run away from the regimented, orderly life which is crucial to formulating the identity of the 'good citizen.' This element of imposition is usually inherent in any process of identity reconstruction and is also what makes such a reformulation unattractive to the subject. Going back to the French example, a

⁶⁸ Ravi's story was narrated to me by the Director, ECHO. Interview with Father Anthony Sebastian Director, ECHO, (July, 2006).

⁶⁹ Archick, *supra* note 58.

woman ‘liberated’ from the *hijab* is considered a symbol of modernity and progress. Despite this attractive ‘new tag’ of a modern woman, there is little support for the headscarf ban among Muslim women, which can be traced, at least partially, to its coercive nature.

One of the strategies that ECHO employs to create the tag of the ‘good citizen’ is its Traffic Police Assistant Program (TPAP), whereby children who were once in conflict with the law are trained to become traffic police assistants. The program is novel, distinct from the usual vocational training for tailoring, mechanics etc. that is usually provided at juvenile homes. In the popular imagination, the law enforcement official is on the right side of the law, and so, is immediately associated with the tag of a ‘good citizen’. The TPAP program recognizes this and seeks to utilize this popular consciousness to reformulate the identity of children in conflict with the law from that of a ‘bad citizen’ to that of a ‘good citizen.’ Thus, the TPAP program is a conscious attempt at identity creation wherein the new identity is that of a typical good citizen-the law enforcement official-to ensure a more effective masking of the ‘old’ identity of the child in conflict with the law. The empowerment of the children through the TPAP program is also a symbolic one. The author was informed by the Director – “[t]hey can raise a hand and bring even the most powerful Minister to stop”.

On one level, the significance of symbolism in identity creation is seen. Just as the *hijab* is a popular symbol of orthodoxy and traditionalism, the traffic policeman’s uniform is the emblem of power and respectability, regardless of what the wearer’s background might be. At another level, there is a contradiction in the TPAP program. The administration and the staff at ECHO perceive the police as a coercive, insensitive institution. Many of the children have had negative experiences with the police before coming to ECHO. And yet, the TPAP program aims at the induction of children in search of a positive identity into this very institution. Interestingly, although there is a culture of silence as regards the children’s past encounters with crime, the TPAP trainees’ uniform has “ECHO” emblazoned on it in bold letters, proclaiming the affiliation of the wearer to a home for child offenders. On the other hand, it seems that ECHO’s internal policies seek to avoid this identification at all costs within its premises, with the administration going to the extent of keeping children’s records even from the staff interacting with them on a regular basis. The contradiction in the policies is evident. The identification of the trainees as past offenders is not considered problematic in the context of the TPAP program, perhaps for the reason that it furthers the prestige of ECHO.

It emerges from the discussion that there are unique facets to identity issues concerning children. The vulnerability of children's identities to identity reconstruction is evident from the field experiences at both the Nagarbhavi Home and at ECHO. Additionally, issues of identity regarding children are especially problematic because at the very fundamental level, there is yet a need to acknowledge that identity-religious, linguistic and otherwise- is relevant to children and that there are knotty issues of identity reconstruction concerning them that need attention. As Ms. Manoharan points out, "[i]dentity issues with regard to children are especially complicated because most often, we fail to realize that children too have identities, which need to be protected. It is much like issues of sexuality and children- often, there is a failure to understand that children too are sexual beings". The process of reformulating identities within Bangalore's child rehabilitation homes is remains ridden with confusions and complexities.

Conclusion

The difficulty faced by Bangalore's Homes for children is primarily two-fold-that of dealing with identities that society considers undesirable (the identity of a child in conflict with the law) and the question of dealing with differences in religious identity within these homes.

The difficulties faced by the French State in dealing with identity politics are much the same. There is the issue of how to deal with the problematic identity of the traditional, orthodox Muslim- who is often seen as teetering on the fringes of fundamentalism. Should the identity be allowed to exist in the public sphere or should the symbols of that identity-such as the *hijab*-be destroyed in the interests of communal harmony? The recent ban indicates that the French government is in favour of the latter alternative. There is the related dilemma of whether cultural and religious differences should be celebrated in the public realm in the interests of religious freedom or whether they should be hidden under the mask of the 'citizen' in the interest of equal treatment of all communities.

That the French government specifically chose to target schools in seeking to achieve the goal of a neutral public space highlights the fact that the formulation of children's identities is seen as crucial to French society of the future. If this rationale were to be accepted and applied to Bangalore's child rehabilitation homes, it is evident that the process of identity construction at work within their confines would indeed have an impact that is rarely recognized. Although the debate between assimilationist liberalism and cultural

pluralism has emerged in the context of citizenship, multiculturalism and the State, it is also relevant to our study of identity politics in Bangalore's child rehabilitation homes, insofar as both concern issues concerning the politics of difference. At ECHO, the policy of consigning religious differences and the 'old' identity of a 'child in conflict with the law' to the private realm, seeks to abstract the individual from her life experiences and background, and is thus, founded on the principle of assimilationist liberalism. ECHO is based on the classic assimilationist liberal formulation that if the goal is equal treatment of all, differences must necessarily be masked.

The parallel study of the dilemmas surrounding the politics of difference in French civil society and in Bangalore's child rehabilitation homes are also powerful illustrations of how fantasy is often used to create imagined identities. ECHO's administration and staff use silence as a tool to churn out the tag of a 'good citizen' for the child offender while the French government seeks to perpetuate the fantasy that France is home not to Muslims or Jews but to the 'French.' At the Home in Nagarbhavi, we see at the microcosmic level, a reflection of the idea that institutions are never neutral, they are invariably coloured by the ideas and belief systems of the dominant. It is an idea that is reflected at the level of the nation State also, in how France's seemingly secular policy of *laicite* privileges the dominant Christian community.

As pointed out in the initial section of this paper, the difference is simply that we choose to problematize processes at the level of the nation State, while ignoring similar issues and concerns in our immediate environment. This is a plausible explanation for the fact that the French controversy generated a noisy debate globally, but there is not so much as a finger raised about very similar identity construction processes at work in our backyard.⁷⁰

⁷⁰ Foucault elaborated on this idea when he argued that power relations do not exist merely in the State-citizen relationship, but are manifested in microcosmic spaces as well. *See generally*, MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (1975).