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Center for Constitutional Law Studies Jindal Global Law School

cordially invites you to a

Seminar

on

Religious neutrality in Germany? – Encountering “the Other” in recent adjudication of the Federal Constitutional Court and legal-political discourse

by

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The seminar engages with religious neutrality in Germany and the historic foundations of German secularism, with particular reference to the adjudication of the Federal Constitutional Court (FCC) and legal scholarship. It will be argued that the FCC's second judgment on the right of Muslim teachers to wear religious attire in 2015 can be understood as major step towards religious pluralism. At the same time, the more recent decision in 2017 on an interim application for legal protection with respect to religious creed can be seen as flawed: The FCC had to deal with the case of a junior prosecutor who by administrative order was not allowed to represent the state at sessions at Court unless she removed her headscarf. The decision shows that important issues of religious neutrality are still in dispute when it comes to forms of representation of the state, especially in the role of judges as civil servants (to which the FCC found the regulation on legal trainees comparable). The decision fails to differentiate sufficiently between the neutrality of the judge (meaning judicial independence) and the visibility of modest dress which it inextricably links to an apparent inability to be neutral. This appears only as one of the examples of a privilege of members of the Christian denominations to other (minority) religious groups and these mechanisms of attribution can be observed in other contexts regarding Islam, too. The presentation furthermore analyses the current political-legal debate on Muslim dress from a perspective that takes into account concerns of intersectional justice and – concurrently – exclusionary structures towards “the Other”. Culminating in the infamous new year's night of 2015 in Cologne, the interrelation of gender and religion and its problematic appropriation by racist movements in Western discourse on Islam became particularly visible. As forms of “epistemological border control”, once more, an essentialisation of “foreign” religious traditions may show that the project of decolonisation (“on the inside”) has still not been successful and that critique of nationalism is still strongly demanded. To frame this in more legal terms – taking insights from comparative law and critical legal studies as well as post-colonial thought – the presentation will describe some of the earlier jurisprudence of the FCC (mainly the crucifix decision of 1995 and the first judgment on Muslim veiling of 2003) and discuss the questionable method of balancing rights and justificatory reasoning along the lines of “protection of public peace” and “security”. Concluding, the seminar would like to open a dialogue upon questions of secularism in India in comparison to religious neutrality in Germany.

Wednesday, 28 March 2018, 1:00 pm – 2:00 pm

Classroom No. 53

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