

ARTICLE 9 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Law, Gender and Religious Beliefs in Europe:

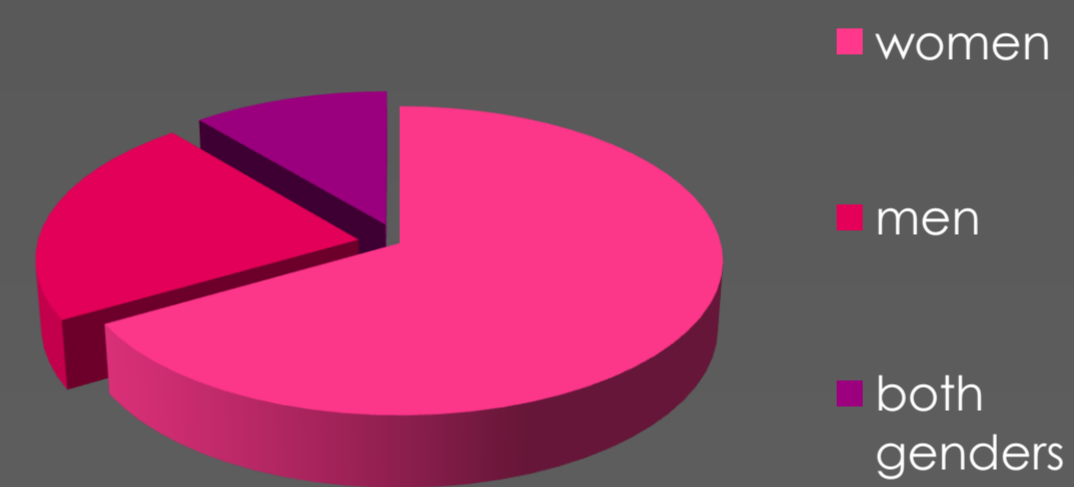
A judicial move of religion towards the private sphere?



Research Project

My research examines the representation of women, and their right to manifest their religious beliefs in the context of the ECtHR. The thesis will draw on the jurisprudence of the ECtHR and consider whether these decisions have encouraged states to increasingly move religious practises into the private sphere. It will draw on legal, sociological and political theories and critique the substantive area of law using feminist legal theory and the concept of intersectionality and gender mainstreaming. It will also use a thematic framework of feminist religious, cultural and racial scholarship to critically analyse the case law derived from the ECtHR and to establish whether their underlying assumptions are hindering legal development in the future.

Cases heard before the ECtHR on religious dress/symbols



Eweida and Others v the United Kingdom, Chaplin v the United Kingdom

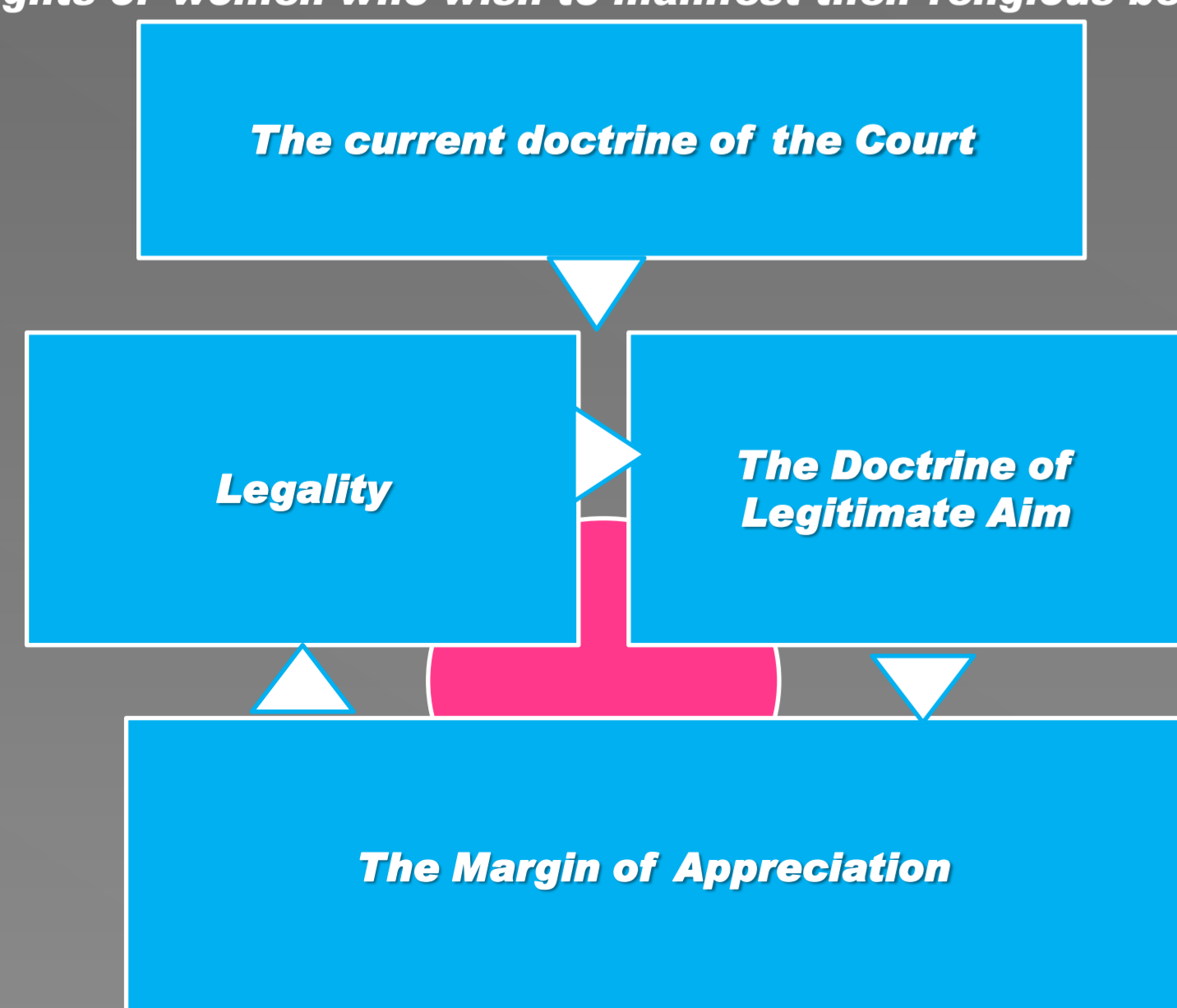
- In the recent case of *Eweida and Others v the United Kingdom* the ECtHR looked at whether the restriction of visibly wearing a crucifix by a geriatric nurse and a flight attendant by their employers was a breach of their right to manifest their religion. The Court held that the individual's right to manifest their religion at work needed to be **balanced with other considerations** and could legitimately be limited provided that this is justifiable. It stated that the previously held principle that the freedom to change jobs is not enough to guarantee the freedom of religion. However not much guidance has been given as to how states should balance competing interests.
- The judges were divided, a majority of 5 to 2 held that there was a violation of Article 9 when British Airways refused Nadia Eweida to wear a cross outside her uniform. All seven agreed that the hospital managers were correct in refusing Shirley Chaplin from wearing a cross outside her uniform for health and safety reasons.

Research Methodology

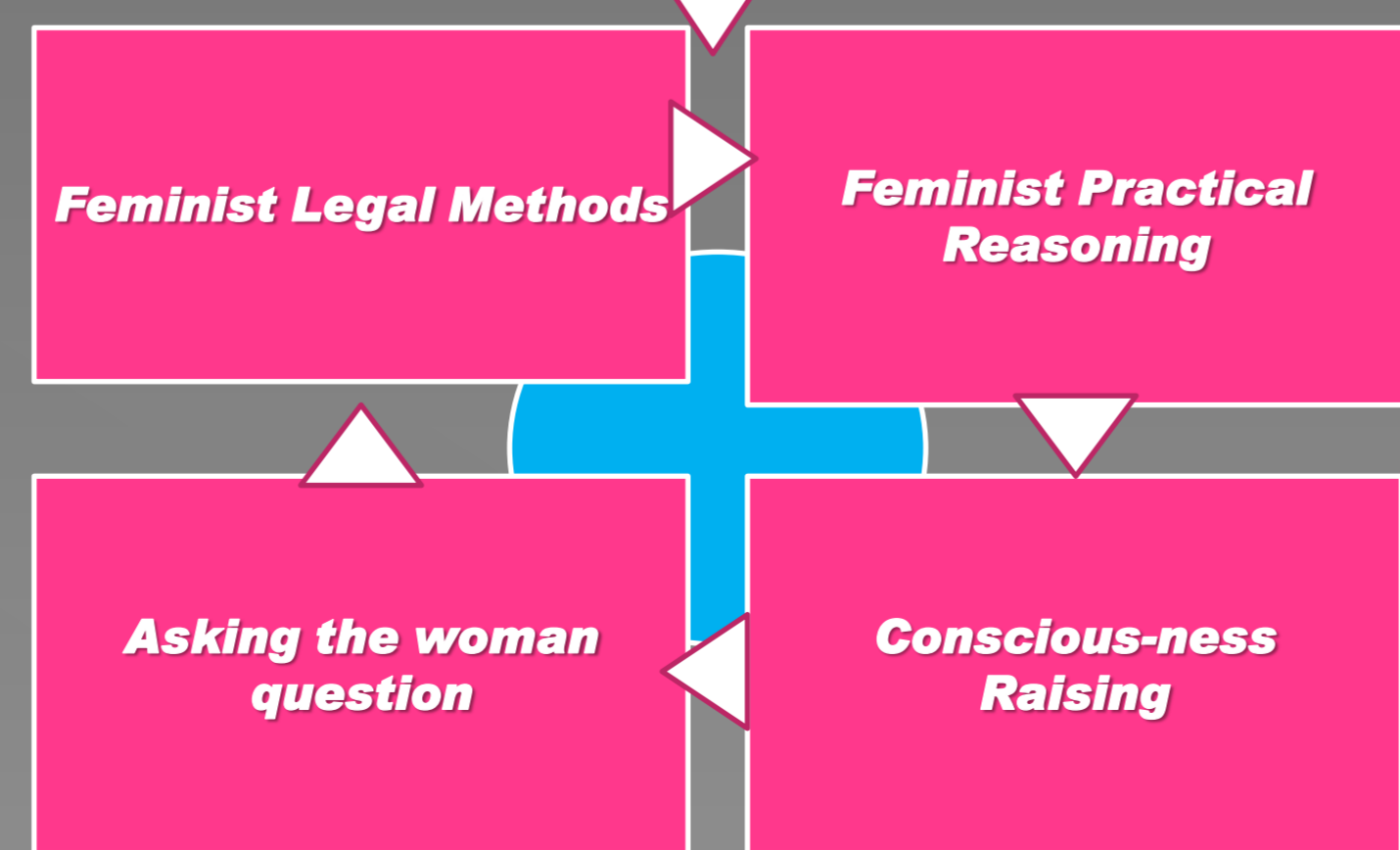
The research will discuss the normative standards of the manifestation of religion in Europe under Article 9(2) of the ECHR. When limiting the religious freedom to manifest religion the Court assesses a) whether the measure is 'prescribed by law', b) proportionate and c) 'necessary in a democratic society' whilst considering the doctrines of the Court. The research will include an analysis of the Court's Article 9 jurisprudence, policy documents and their interpretive doctrines. To ensure that the research is grounded in a real world context there will be some references to legal, political and sociological theories and perspectives including the liberal theory of autonomy, the decline of the secularization theory and the public private distinction. There will also be a feminist legal critique to challenge the assumptions made by judges, as the current case law suggests that these assumptions have allowed states to receive a greater discretion in managing religion in the public sphere which in turn disproportionately affects women. This will allow for the examination of whether there is a need for a pan European consensus on Article 9 in order to better protect the rights of women who wish to manifest their religious beliefs.

"It is the work of feminism to deconstruct the naturalistic, gender blind discourses of law" Carol Smart, *'Feminism and the Power of the Law'* (London, Routledge, 1989) 88

Is there a need for a pan European consensus on Article 9 in order to better protect the rights of women who wish to manifest their religious beliefs?



Should judicial reasoning incorporate 'the woman voice?' e.g. Through the consideration of women's experiences



"Where questions concerning the relationship between state and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision making body must be given special importance." *Leyla Sahin v Turkey*

'It is not possible to discern throughout Europe a uniform conception of the significance of religion in society: even within a single country such conceptions may vary' *Otto Preminger Institute v Austria*

'the comparative-law materials do not allow [of the conclusion that there is a lack of a European consensus in this sphere], as in none of the member States has the ban on wearing religious symbols extended to university education, which is intended for young adults, who are less amenable to pressure.... [for the purposes of justice] it is necessary to seek to harmonise the principles of secularism, equality and liberty, not to weigh one against each other...' Dissenting judgment of Judge Tulkens in *Leyla Sahin v Turkey*