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Hijab Ban: Revision of Religious rights & authority of State

Gopika G Nair^a Arya Suresh^b

^aCochin University of Science and Technology, Kochi, India ^bCochin University of Science and Technology,
Kochi, India

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The controversial Hijab ban by the Government Pre University Colleges in Karnataka is an example of the crossover of religious rights and authority of the state. Whether the Hijab ban amounts to a violation of a religious right is a matter of discussion. This serves as a big question mark in front of the most prized and glorified articles of the Indian Constitution. While a clear and trustworthy verdict on hijab from the court is still pending it's undeniable that all educational institutions must provide a sense of belonging and value to all students regardless of their faith or ideology at the same time it is essential that there must be a uniform form of code and conduct so that every single individual in the institution must be represented the same.

Keywords: *hijab ban, essential practise test, religious rights.*

INTRODUCTION

India is the synonym of diversity. It embraces the beauty of every shade of hues present. While transforming from a revolutionary colonial nation to a sovereign state our leaders were able to make the necessary mechanisms to preserve diversity, to bring unity and peace. Our ancestors who had different beliefs and faiths worked together despite their differences or realizing they were all alike; humans. India as a state is an inclusive one which is reflected in its constitution,

which defines the basis of the law of land. We have people who believe in different gods, people who believe in only one god, people who don't believe in the existence of God, we have a society in which a ton of rituals and ideologies are accepted and practiced, which may seem nonsensical to others. We believe in and have proved the truth that behind all those scarves and masks we are all alike, we all are just humans who like to do different things. And it certainly doesn't mean what one person has an interest in and practices can be abandoned for the sake of the other. Everyone has the right to follow the things they are interested in unless it's not harmful to others or is a threat to the peace and unity of the state. We as citizens of India have established certain rights as fundamental rights so that they can't be quashed unreasonably. The right to follow and practice the religion of one's own interest is a fundamental right¹. Also, the right to education is established as a basic human right². Every action of people has its own legal consequences. But what happens when different rights come into conflict? This question is reiterated when the recent hijab controversy in the state of Karnataka spurred. A secular state is one that doesn't approve of an official religion for the state. Indian secularism doesn't blindfold itself in front of the diverse mass which follows different religions. But sometimes religions spark conflicts which also give rise to questions regarding establishing rights and the reasoning behind certain rights. The recent hijab issue is an example of a conflict of various rights.

HIJAB CONTROVERSY

The issue came to the spotlight when the students of Government Pre-University College for Girls in the Udupi district of Karnataka, refused to remove their headscarves for attending classes. The university norms were such that the students should be in uniform inside the campus. The rules forbid female students from wearing headscarves inside classrooms. They were allowed to wear headscarves inside the premises of the college but not inside classrooms. This was questioned by six students of the college through a complaint to the principal. Students refused to remove the headscarves while the college authority decided to restrict them from attending the classes with headscarves pointing out it was against the rules of the

¹ Constitution of India, 1950, art. 25

² Constitution of India, 1950, art. 21A

college. At the same time, students who removed the headscarves were allowed into the college. Students started protesting outside the campus gate caught the eyes of the media and the controversy spread like wildfire. More colleges were involved and both parties stood firmly with their arguments. Muslim students advocated for protecting their religious rights and for preserving the right to practice hijab (headscarves) which is essential in Islam. The University and State governments argued it has the right to ban hijab to establish their rules citing previous orders by the Kerala, Bombay, and Madras High Courts.

THE INTERIM ORDER

The Karnataka High Court has begun hearing a group of petitions filed by Muslim females studying in government pre-university colleges in the Udupi region, challenging the restriction on wearing the hijab (headscarf) at college³...During the pendency of the petitions, Advocate Mohammed Tahir urged that four petitioner students of Government PU College for Girls, Udupi, be temporarily permitted to attend classes while wearing the dupatta, which is a component of the college's uniform, in the shape of a headscarf. According to Advocate-General Prabhuling K. Navadgi, the matter is no longer limited to only four pupils but has evolved into a broader legal issue about the right to wear hijab in educational institutions. The petitioners argue that wearing a hijab is not talking about wearing a burqa or veil, but only a headscarf while contending that wearing of hijab is an 'essential religious practice' prescribed in the Holy Quran. *"Let us layaway feelings and emotions, and proceed by the laws, the reasoning, and the Constitution,"* Justice Krishna S. Dixit, who heard the petitions, said to the lawyers at the opening. On February 11th, the High Court passed an interim order that restrained *"all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijabs, religious flags or the like within the classroom, until further orders."* The main reason cited was that these are not the essential practice of the religions. Following the interim order, high schools reopened on February 16.

³ *Smt. Resham & Another v State of Karnataka & Ors.* (2004)

THE ESSENTIAL PRACTICE TEST

The 'essential practice' doctrine can be traced to a 1954 decision of the Supreme Court in the 'Shirur Mutt' case⁴. The attempt to define what basically separates a religious subject from other matters, in this case, was taken up in later judgments to suggest that courts must distil the essence of religion to determine whether a given practice or deed falls within the category of religion or not. As a result, some acts were granted constitutional protection after being considered "important" to the practice of that religion, while others were refused protection because they were not. In 1983, the Supreme Court upheld the policy decision to disallow 'Tandava'⁵, a ritual dance performed with a skull and knife, in public places as part of a procession, as 'Tandava' was not an essential practice among the sect. In the Sabarimala case⁶ (2018)⁰, the majority ruled that the bar on entry of women in the age group of 10-50 was not an essential practice of the religion and also denied the status of separate religious denominations. However in a dissenting judgment, Justice Indu Malhotra, said they constituted a distinct denomination and the restriction on women of a particular age group is an essential part of their faith and is constitutionally protected. Jurist has criticized the continuing emphasis on applying the essential practice test to determine the constitutionality of state action against any religious practice that claims protection despite being either discriminatory or exclusionary.

WHAT ARE THE ISSUES?

The key concern is whether pupils may be barred from attending school just for wearing religious garb. Is this refusal to let them in a breach of their right to religious freedom and freedom of conscience under Article 25? While students argue for their right to freedom, the government believes that requiring a student to remove his or her headscarf for the sake of conformity does not violate Article 25. According to the government's position, the question can also be framed differently: whether wearing headscarves will have a negative impact on the law by pitting two communities against one another, and thereby, prohibit religious attire

⁴ *Commissioner, Hindu Religious and Charitable Endowments v Sri Lakshmindra Thirtha Swamiyar of Sri Shirur Mutt* AIR 1952 Mad 613

⁵ *Acharya Jagdishwaranand v Commissioner of Police* (1983), AIR 512

⁶ *Indian Young Lawyers Association & Ors. v State Of Kerala & Ors.* (2018), SCC OnLine SC 1690

in the interest of public order one of the grounds on which a right under article 25 can be curbed. The constitutional question of whether educational institutions can prohibit religious attire as part of their power to prescribe uniforms for students is linked to the constitutional question of whether such a ban falls within the power to restrict freedom of religion in the interests of public order, health, and morality. In the Quran, the sacred text of Islam, the hijab is used several times but not in the meaning of being a scarf that covers the hair of Muslim women. Hijab means curtain, separation, a wall, or anything that hides or protects something. It does not represent a particular mode of clothing; in the Quran, it concerns the wives of the prophet and the separation of private life from public life at the time of the prophet. The term Khimar used in the Quran expresses the idea of women covering the upper part of the body including hair.

The two terms have different meanings but are used interchangeably which is an error that occurred over time. Students raising the practice of hijab as an essential in Islam need to be reviewed in the light of these verses. But it's a common practice among Islam women to cover their head and hair and is essential as established by the holy text.⁷ So compelling students to remove the head coverings will be against religious rights.⁸ The protesting students were suspended by the college authorities, right to question and protest against infringement of rights is violated by the actions taken by the authorities at this time.⁹ The issue has various facets other than violation of religious rights. Yet another question is whether the denial of entry into schools amounts to a violation of students' right to education under Article 21A.¹⁰ Further, this can lead to a situation where parents, are not willing to send their children to school as it does allow them to follow their religious beliefs. And ultimately this can lead to a situation where the literacy rate or the educational qualification of the girl child is affected.

⁷ *Ibid*

⁸ Constitution of India, 1950, art. 25

⁹ Constitution of India, 1950, art. 19(1)(a), 19(1)(b)

¹⁰ Constitution of India, 2009, art. 21A

WHAT IS THE CONSTITUTIONAL POSITION?

In *Bijoe Emmanuel v the State Of Kerala*,¹¹ The Supreme Court found in favour of the students, finding that their expulsion infringed their rights to freedom of speech under article 19(1)(a) and to freely practice and proclaim their faith under Article 25(1). The goal of this technique is to determine if a student who claims religious freedom for a course of activity that the authorities deem disagreeable holds that belief truly and conscientiously. This kind of belief is protected by the law. The students are relying on a Kerala ruling¹² from 2016 that permitted two Muslim students to sit the All India Pre-medical test while wearing a headscarf, after ruling that it was an important component of Islam. In a separate case, the Kerala High Court refused to allow students to wear headscarves to school. They also referenced a Madras High Court ruling in which electoral registers were challenged on the basis that they infringed on the rights of Muslim women in purdah. The court found that Muslim scholars agree that the purchase is not required, but that covering one's head with a scarf is.

CONCLUSION

While a clear and trustworthy verdict on hijab from a constitutional court is still pending, it is undeniable that all educational institutions should provide a sense of belonging, value, and safety to all students, regardless of faith or ideology. Students' culture and language should be celebrated while religious freedom and, more importantly, their capacity to achieve their educational goals are protected. A dispute over the hijab underscores problems in increasingly pluralist nations grappling with issues such as integration, national identity, and security. As a result, constitutional courts must rise to the occasion and provide an authoritative judgment that will guide both the administration and the inhabitants of the country. In a deeply diverse society such as India -and such diversity is increasingly normal to most large political societies today the only way we can build our common future is by inviting those who feel different into a conversation and continually forge the common through it.

¹¹ *Bijoe Emmanuel v State of Kerala* (1986), SCR (3) 518

¹² *Amnah Bint Basheer v Central Board of Secondary Education* (2016) 2 KLT 601