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Hijab: A choice or An essential practice?

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Hijab is the headscarf worn by Muslim women as a sign of modesty. A brief history of the hijab and other headscarves worn by Muslim women has been discussed. The recent protests staged by the students raised the question of whether or not hijabs should be allowed in educational institutions. Various arguments have been raised amidst the recent uproar. The core issue that was taken to the Karnataka High Court was that the Hijab is an essential practice of Islam and the Muslim students have freedom of conscience under Article 25 of the Constitution of India.¹ This article deals with the analysis of the judgment of the Karnataka High Court. It ponders around the core issue of whether or not the hijab is an essential practice of Islam. This article also talks about the religious disparity and the deep-rooted hatred that has engulfed the minds of the younger generations. It conclusively states that the hijab is a choice for Muslim women.

Keywords: *muslim women, hijab, islam, freedom of conscience, article 25.*

INTRODUCTION

Men have been dominating the wishes of women for a long time. Sometimes women are asked to hide their beauty behind a purdah and sometimes behind a veil (burqa and niqab). A niqab covers the face, neck, and upper body part of a woman, leaving the eyes. A burqa covers the

¹ Constitution of India, 1947, art. 25

entire face and body of a Muslim woman, a hazy net covers the eyes, through which one can see. Hijab is neither niqab nor burqa. It is a headscarf that covers the neck and ears of an individual. This is worn by Muslim women and is considered a sign of modesty in Islam. Unlike the niqab or burqa, the hijab doesn't cover the faces of women. The major question that arises is whether the hijab is a choice of Muslim women or an essential practice of Islam. The other subsequent question that arises is whether or not the hijab should be banned or prohibited in educational institutions.

HISTORY

The history of hijab roots deep. The custom of wearing a hijab or more appropriately the need for wearing a hijab started even before Prophet Mohammad was born. Societies like the Byzantines, Sassanids, and other cultures practiced veiling in the Near and Middle East. There is even some evidence that indicates that two clans in southwestern Arabia practiced the custom of wearing a veil in pre-Islamic times, the Band Ismail and Bana Qahtan. The veil was a sign of a women's social status within those societies. In Mesopotamia, the veil was a sign of a woman's high status and respectability. Women wore the veil to distinguish themselves from slaves and unchaste women.

Women were sexually harassed by men in the holy place of Medina. Hijabs and other head coverings were worn as a measure of social security. Therefore, the Holy Quran asked the women to cover their necks and bosom from the bad view of the men. The Quran asks the women that they should draw their *khimār* (or head scarfs) over their breasts and not display their beauty except to their husbands, their fathers, their husband's fathers, their sons, their husbands' sons, their brothers, or their brothers' sons, or their sister's sons, or their women, or the slaves whom their right hands possess, or male servants free of physical needs, or small children who have no sense of the shame of sex; and that they should not strike their feet to draw attention to their hidden ornaments. However, it is nowhere specified in the Quran or the Hadith (statements attributed to the Prophet Mohammad) that the niqab, burqa, or hijab is an essential practice in Islam and that it must be mandatory. No punishment has been prescribed for not wearing a hijab in the public place in the Quran. It is nowhere stated that

women at all costs must wear hijab, burqa, niqab, or chador as an essential practice. In the case of *M.S. Ajmal vs The Election Commission of India and Ors.*² it has been stated by the hon'ble court High Court of Madras that the commandment in Chapter 33, verse 53 of the Holy Quran applies only to the "Mothers of the believers" i.e., to the wives of the Holy Prophet Mohammad. The wording of the Quran in Chapter 33, verse 55 applies to all Muslim women in general. It was stated that under the present system, Hijab was not only imposed upon all Muslim women, but also it is quite often forced upon women in an obligatory and mandatory fashion. It was highlighted that even the literal reading of the Quranic verse doesn't support the assertion that the Hijab is recommended for all Muslim women.

THE HIJAB ROW

The recent world has been experiencing hatred and animosity amongst people of varied religions and ethnicity. This pandemic of religious disparity has adversely affected the development of children. Students, who are meant to see their peers with the naked eye of compassion, look at their peers through the dark lens of religion and caste-based divisions of the hypothetical society. The students of Mahatma Gandhi Memorial College, Udupi, Karnataka were seen marching on the roads wearing burqa and saffron shawls. They had turned the place where they were sent to impart knowledge to the ground for protesting on nimble issues. This all started when six Muslim students were denied entry into the classroom as they wore masks and covered their faces with Hijab. These students held a press conference where they said that despite seeking permission from the college authorities, the teacher didn't allow them to enter the classroom. This incident soon snowballed into a massive protest. The Muslim students came to the ground with slogans of "Allah hu Akbar". The Hindu students also came to the fore with saffron shawls and slogans of "Jai Shree Ram". Social media, the so-called platform where people could express their views, was uproared with memes and slogans for and against the hijabs. While on the one hand people propagated that Hijab is a choice, on the other hand, people said that hijab is an essential practice of Islam. The so-called

² *M.S. Ajmal v The Election Commission of India and Ors.* (2006) Writ Petition No. 26841/2006

“most important question” that came out of this incident was whether or not the hijab should be banned in an educational institution.

JUDGMENT OF KARNATAKA HIGH COURT

This became a matter of heavy discussion and debate. The riots needed to be stopped immediately. The public of Karnataka waited for a judgment so that the issue could be nipped in the bud. The Karnataka High Court was dragged into this not-so-important issue. It had to postpone all its important pending cases aside to pass a verdict on this. The case of *Bijoe Emmanuel v State of Kerala, 1986* was cited.³ In this case, the Muslim students moved the court stating that the practice of wearing a hijab is a matter of free conscience and that it must be protected. The Hon’ble Supreme Court stated that there existed a difference between ‘free conscience and ‘expression of religion’. The court claimed that their conscience was an internal belief and religious expression is an outward display of religion. Therefore, the court concluded that wearing a hijab was a form of religious expression and it was subjected to the Essential Religious Practices test. The current judgment of the Karnataka High Court pondered two issues. Firstly, whether or not Hijab was an essential practice of Islam. Secondly, whether or not Hijab should be prohibited in educational institutions. The Muslim students had moved the court under Article 25 of the Constitution of India, 1950. The students claimed that Hijab was an essential practice of Islam. After a deep analysis, the court found out that Hijab was not an essential but a cultural practice of Islam. The court specified that even if wearing a hijab by Muslim women was an essential practice, the court would give constitutional protection only if it did not conflict with constitutional values of equality and dignity. On the second issue, the court upheld the power of the government to prescribe a dress code under Section 133(2)⁴ of the Karnataka Education Act, 1983. The court stated that the institution had the authority to prescribe a dress code and proscribe hijab on the premises of the institution. The Hon’ble bench of the court refused the petitioners to conduct a disciplinary inquiry against the principal and teachers of the Government PU College. The final verdict of the Karnataka High

³ *Bijoe Emmanuel v State of Kerala* (1986), AIR 748

⁴ Karnataka Education Act, 1983, s 133(2)

Court, regarding the hijab uproar, in *Resham and Ors. vs State of Karnataka and Ors.*⁵ declared that the hijab is not an essential practice of Islam and that the educational institution could prohibit the students from wearing the hijab on the premises of the institution.

JUDGMENT ANALYSIS

Some countries have put a blanket ban on the wearing of Hijabs by women. These countries include France, Switzerland, Denmark, Belgium, the Netherlands, Italy, Russia, and Austria. There is a massive difference between western secularism and Indian secularism. In western countries, the rights of an individual are the centre of concern. People may or may not respect each other's religion but they are ought to take care of each other's rights. In India, the rights of both individuals and religious communities are kept at the centre. Religion is an important part of one's identity and it cannot be taken for granted. One is strictly expected not to hurt the religious sentiments of the other. The judgment suits as an example of western secularism. The judgment was appropriate keeping in view the discipline and decorum of an institution. When one enters a classroom, one should leave their identity outside. Teachers should see students as people who have come to impart knowledge and not as Muslims or Hindus. Similarly, students should see their peers as people who share knowledge and not differentiate based on religion. An important issue has also been discussed on whether the burqa and niqab which hide the identity of an individual should be banned all over India. Even in the 129-page judgment of the Karnataka High Court, the issue of the burqa was raised. It was stated that the hijab, burqa, and keeping of beard were not an integral part of Islam and could be prohibited. Although the hijab could be a choice for women, a blanket ban should be put on the wearing of a burqa. The burqa is banned in 16 countries including Islamic countries like Tajikistan. Hijab doesn't cover one's identity. It is a choice for women. However, the burqa hides one's identity. Various crimes and mishaps have been committed behind the hazy veil. The courts and the government need to gradually put a blanket ban on the burqa.

⁵ *Smt. Reshma A v The State of Karnataka* (2021) Criminal Petition No. 96/2021

THE SIKH TURBAN

An argument was raised during the protests that the turbans that are tied by the Sikhs have never been questioned by the educational authorities. The 10th Sikh Guru, Guru Gobind Singh, officially made the turban the symbol of faith. The apex court has stated that the turban is an essential feature of Sikhism under Article 25 of the Constitution of India, 1950. To put fuel on the fire, activists said that the Muslim community has been specifically targeted by the Hindutva government. They said that this controversy was a political agenda to spread hatred behind the façade of the Uniform Civil Code.⁶ We don't know whether their assertions were true or not. However, we could put forward that the turban is an essential practice of Sikhism. Hijab is not an essential practice of Islam and it is solely one's choice. Since students are expected to compulsorily adhere to certain dress codes and norms on the institution's premises, the educational institution should have the authority to proscribe students from wearing hijab.

CONCLUSION

The entire hijab controversy was a display of hatred that corrupted the minds of the young generation. It displayed the destruction of the values of humanity and the construction of the foundation of disparity. It has always been taught to kids that God is one and is omnipresent. Religions were created to spread the teachings of goodness. However, the incident displayed the extent to which religion has divided humanity. In recent times, students expect democracy to turn to complete decentralized autonomy. Everything has its pros and cons. Every institution, be it the government and the courts or the colleges, has a certain authority. Their authority should be underestimated. Suggestions are always openly welcomed. However, protests spreading hatred should be despised at all costs. The judgment of the Karnataka High Court upheld the authority and dignity of the institution. This issue was made a mountain out of moles by the media and the unnecessary protests by the students. The valuable time of the hon'ble court was obstructed in vain. The lesson that this incident gave was that students need

⁶ Constitution of India, 1950, art. 44

to be taught more about integrity and equality from childhood. Be it the saffron shawls or hijabs, they ought to stay far away from the premises of knowledge.