
KARNATAKA HIJAB ROW: WHEN STATE UNVEILS SECULARISM

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ABSTRACT

This paper addresses the political debates surrounding the ban of Muslim girls from entering college wearing hijab in Karnataka. Hijab is worn by women who are Muslim as a symbol of modesty and privacy. They consider this practice integral to their religious identity. Paper discusses in detail how Right to wear hijab is a universally protected right, through various incidents of hijab ban reported globally and verdicts of international Justice Bodies. Focus is being made to analyse Right to Wear Hijab in the light of Right to Equality, Right to Freedom, Right to Education and Right to Life and Personal liberty guaranteed under Indian Constitution.

INTRODUCTION

Wearing Hijab is a customary practice followed by Muslim women all over India and outside. It is a religious outfit for Muslim women explicitly based on Quran and Hadith (precepts of the Prophet as inspired and suggested by God). Hijab has long been subjected to various open debates both on public and academic sphere with different scholars, politicians and activists having varied opinions. Some see veiling as suppressive practice while others consider it as a protection of modesty, morals and freedom of choice. The diverse reasons for wearing Hijab are religious obligation, personal choice, to assert religious identity, to fight stereotypes and discrimination, gain respect, avoid male attention etc. For past few months, India has witnessed several incidents questioning right to wear Hijab. This swing started when six students were banned from entering college wearing Hijab in Karnataka's Udupi District. This issue posed a legal question regarding freedom of Religion and whether right to wear Hijab is a constitutionally protected right.

HIJAB: AN ETHNIC ATTIRE

Hijab is a scarf like clothing which Muslim women wear to cover their hair as a sign of modesty and privacy from unrelated males mainly in public, However this concept is not unique to Islam it can also be seen in Judaism and Christianity too. Hijab or Veiling did not originate with the advent of Islam. Statuettes depicting veiled priestesses were found early as 2500 BC. Elite women in ancient Mesopotamia and in Byzantine, Persian empires used to wear veil as sign of respectability and high status. Female slaves and prostitutes were forbidden from wearing veil and if they do will be punished harshly. A 13th century Assyrian text require women of defined status to wear veils to avoid being publicly available and to protect from any gaze of men. Christian nuns wear veils as simple of marriage to Christ or as a sign of Chastity. Muslim women's practice of wearing Hijab can be inferred from interpretations of Quran and Hadith even though it is not strictly defined in Quran. In chapter 24 of Quran 'The Light' verses 31 says "and tell the believing women to restrain their looks, and to guard their privates, and not display their beauty except what is apparent thereof, and to draw their coverings over their breasts, and not expose their beauty except to their husbands, their fathers, their husbands' fathers, their sons, their brothers, their brothers' sons, their sisters' sons, their women, what their right hands possess, their male attendants who have no sexual desires, or children who are not yet aware of the nakedness of women. And they should not strike their feet to draw attention to their hidden beauty". In chapter 33 of Quran verses 59 says "O Prophet! Tell your

wives, and your daughters, and the women of the believers, to lengthen their garments. That is more proper, so they will be recognized and not harassed. Allah is Forgiving and Merciful.” With the spread of Islam to different parts of the world and through different societies custom of wearing hijab also propagated among generations of Muslim women. In today’s world with increase in Islamophobia Muslim women wear Hijab as a sign of showing pride in their ethnic identity.

HIJAB AS A UNIVERSAL RIGHT

Article 18 of Universal Declaration of Human Rights, 1948 declares that everyone has the right to freedom of thought, conscience and religion. It includes freedom to change his religion, to manifest his religion in teaching, practice, worship and observance. Article 18 of International Covenant on Civil and Political Rights (ICCPR) confers everyone right to freedom of thought, conscience and religion. This includes freedom to have or to adopt a religion or belief of his choice and to manifest his religion or belief in worship, observance, practice and teaching. In 1993, United Nations Human Right Committee (UNHRC) interpreted scope of this article and declared that this article not only include ceremonial acts but also such customs including wearing of distinctive clothing or head covering¹. Since India has signed and ratified this convention, India has obligation to respect, protect and implement this. On October 11,2010 France passed a law banning wearing of any article of clothing concealing face in public. Any violations were punishable by imprisonment and fine. Two French Muslim women Miriana Hebbadj and Sonia Yaker were fined under this law for wearing Burqa in the public. These women approached UNHRC arguing that this law violated their right to religion guaranteed under ICCPR. In 2018, the committee pronounced landmark decision in this matter ruling that French burqa ban was violation of right to freedom of religion (Article 18) and right to equality (Article 26) of ICCPR. In 2016, Parliament of Bulgaria imposed ban on face veils in public to boost security in the wake of Islamist militant attacks in Europe. In 2017, Austria put a ban on any kind of face covering including Niqab or Burqa. In April 2021, Sreelanka's cabinet put a ban on Burqa citing a threat to National security. Under Article 18(3) of ICCPR, it is given that any limitation on freedom of religion must be non discriminatory, necessary and proportionate to protect public safety, order, health, morals, fundamental rights and freedoms of others. Article 9 of European Convention of Human Rights (ECHR) states that everyone has right to

¹ CCPR General comment No 22: Article 18 (freedom of thought, conscience or religion)
CCPR/C/21/Rev1/Add4(1993) para 4

freedom of thought, conscience and religion. Ban on Burqa or Hijab is incompatible with international law and Human rights standards and hence discriminatory. In recent interpretation by European Court of Human rights in *Dahlab v. Switzerland* and *Sahin v. turkey* court assumed that wearing a hijab is a religious practice and the case was decided on the basis whether interference with religious freedom was justifiable. Analysing prominent Hijab bans by different countries, it can be found that the main justification given for such ban is protecting secularism, preventing coercion, promoting equality and guard against religious extremism. Diving into the concept of secularism we can find that to allow wearing hijab does not require any extra state resources. Allowing individuals to act or to follow the religious convention is actually more in keeping with the notion of secularism than commanding whether or not individuals may bear hijab which actually entice state's involvement with religion which is infact against the spirit of secularism which are more coercive policy. State can definitely interfere when a woman is being coerced to wear Hijab against her will but banning hijab altogether violates their religious rights. Wearing hijab or not is a personal choice of every women, no law could make it compulsory or prohibit it.

WHAT IS KARNATAKA'S HIJAB ROW IS ALL ABOUT

Muslim community is infuriated after a Karnataka college barred students from entering campus wearing Hijab. The college management insist that they had already set rules which parents gave declaration that their children will follow rules, at time of admission. Due to pandemic, institutions were closed, when it reopened, rules were back in place and has to be followed. This issue took a political turn when six girls in Udupi Government PU College protested against the college and also posted in social media their constitutional rights are being denied. Issue become viral and get spread to Kundapur Government PU College where college management prevented 28 girls with Hijab from entering college campus. They protested in Burqa and Hijab asking them to be allowed. The issue took a new political shade in Shivamogga's MV Government College in Bhadravati where students as a counter to Hijab started wearing saffron scarves. Students of MGM College, Udupi followed the same way. Protest also took place at Shivamogga, Mandya, Bagalkot and other places as well. As solidarity to Muslim students, students from IDGS college wore blue scarves and raised Jai Bhim slogans. In some places violence was reported as students pelted stones at colleges. Cases were filed and police arrested a few people. After widespread protest college management relaxed rules saying students can come to college with Hijab but as soon as teachers enters the

class they have to remove it. After issue flared up, Karnataka Government contemplated setting a committee to maintain the status quo until a decision is taken. Girls approached Karnataka High Court and filed a writ petition asking they be allowed to attend the class with Hijab. Later Karnataka High Court made an observation after Karnataka CM announced three days holiday that schools and colleges must be reopened at the earliest and no religious attire should be displayed. The Indian Youth Congress as approached the Supreme Court against the High Court's observation that students must not display religious symbols in institutions. As students got divided over Hijab and Saffron scarves, several political organisations began backing them. For Muslim girls, SDPI and Campus Front of India are backing them. Hindu Jagarana Vedike and ABVP had expressed solidarity with Hindu students demanding uniformity in Campus. Issue had turned to be more communal than political.

LEGAL ANALYSIS ON HIJAB BAN

The group of students who moved Karnataka High Court in the hijab issue argued that there was no such law that could prevent them from wearing hijab, since it is their essential religious practice. The issue put forth a legal question whether the right to wear a hijab is constitutionally protected as an essential religious practice or not. Article 25 of the constitution maintains that all people of the state are equally entitled to freedom of conscience and right to profess, practice and propagate religion subject to reasonable restrictions of public order, morality and health. But the provision adds that state can still regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practices. Article 26 provides to all religious denominations, right to manage its own affairs in matters of religion subject to public order, morality and health. The pivotal question is that when there is a clash between state imposed restrictions on religious attire on the ground of maintaining public order and uniformity and right of individuals to freely exercise their religious belief, which one will prevail. Another debatable point is how the constitution of India protects religious freedom and the state's right to impose restriction on the exercise of this right. In *Ratilal P Gandhi v. State Of Bombay*², court observed that State can regulate secular activities associated with religious practice but not religious practices as such. Supreme Court in *Commissioner, Hindu Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*³ devised essentiality test to determine core religious practices. Court prescribed two conditions, first:

² 1954 AIR 388, 1954 SCR 1035

³ 1954 AIR 282, 1954 SCR 1005

matters of religion will be distinguished from secular practices and second : religious community must consider the practice in question as an integral part of its religion. Custom of wearing hijab is based on Quran and hadith which muslim community regards as holy texts, they consider this practice of headcovering integral to their religion. In a directive validating acts of state educational institutions, Karnataka Government stated clothes which is disturbing to equality, integrity and public order should not be worn. According to State Govt, ban on hijab is not a violation of fundamental right to religious freedom . Muslim girls cannot be compelled to give up what they perceive to be essential to their religion when there is no threat to public order, state cannot say wearing hijab is essential or not, it is to be seen from the outlook of believer. It is stated in order that section 133(2) of Karnataka Education Act lay out that uniform style of clothes is compulsory and private schools can choose uniform of their choice. It is ironical that objective of the Act is to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education. This law doesn't say anywhere girls couldn't wear hijab and attend school. Infact, it says things that indicate opposite, like it says Govt has to work to promote education of weaker sections of society and also backward classes. Act talks about India's diverse culture and heritage and need to promote it. The very spirit of Indian constitution is prohibiting extremism of any kind. It provides Right to Education, Right to Equality and Right to Religion to coexist together, not any one could exclude another. Hijab ban is also explicit violation of Freedom of Speech and Expression guaranteed under Article 19(1)(a) of constitution. This Article lays down that all citizens shall have right to freedom of speech and expression subject to reasonable restrictions of interest of sovereignty and integrity of India, security of the state, friendly relations with foreign state, public order, decency or morality etc. But whether banning of hijab can be justified under any of these restrictions? Ban on hijab also violates right to equality since other religious markers like turban of sikh community is not prohibited. This is arbitrary and amounts to hostile discrimination. Wearing hijab is a facet of Right to Privacy recognised as part of Article 21 by the Puttaswamy judgement of the Supreme Court. Wearing of hijab is not a practice that disturbs public order in any manner, it is only a profession of their faiths and beliefs.

CONCLUSION

Hijab debate is not new to world, it has always remained extremely complex not just in India but all through the world. Women should be free and empowered to exercise their religious right to wear hijab. No public order would be disturbed merely because a Muslim girl wore the hijab. It is one of the core beliefs upon which their religion is founded. Indian constitution guarantees freedom of conscience and right to profess practice and propagate religion. Hijab ban is also violative of Right to Equality under Article 14, Right to freedom of speech and expression under 19(1)(a) and Right to Life and Personal Liberty under Article 21. Such acts are against India's international law obligations to uphold the Right to express religious beliefs and the Right to education without discrimination. State cannot make any such prohibitions on wearing hijab, issue is more sensitive when it is at the cost of their education. Education is a fundamental right of every citizen they are free to receive it at any place or time of their choice as long as they satisfy the eligibility criteria. wearing or not wearing a hijab cannot be imposed as a rule or criteria by any educational institutions.

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