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ABSTRACT

The purpose of this research is to discuss and comprehend the HIJAB CONTROVERSY. In December 2021, a group of Muslim girls from a government Pre-university College in Udupi protested about being kicked out of class for wearing hijab. Later, a mob flung stones at a restaurant in Malpe, Udupi district, owned by the father of one of the six Udupi girls who had petitioned the High Court of Karnataka for permission to wear hijab in school. During the supposed accident, the girl claims her brother was assaulted. Muslim female students filed the appeal in response to a government PU college's refusal to admit them because they wore a hijab (headscarf). The case was first heard by a single bench led by Justice Krishna S. Dixit, who sent the petitions to a larger bench, citing "issues of seminal importance. In this case, the Court had to decide whether hijab wearing is a fundamental religious practice of Islam and if state intervention in such matters is justified. The court was also asked to determine whether wearing the hijab qualifies as freedom to expression under Article 19(1)(a) of the Constitution and whether restrictions can only be imposed under that provision (2). Should a school observe such religious disparities, a basic component of a person's life, we ask ourselves. It is a long-debated topic on which everyone has different points of view and perspectives. This is being highlighted in the paper.

KEYWORDS

Fundamental rights, Hijab, Constitution, Religious freedom.

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FACT

It contends that on December 28, 2021, the petitioner and other female students at the Government-run Pre-University (PU) College for Girls in the Udupi district, who are members of the Islamic faith, were denied admittance into the college and were banned from attending lessons.

"The college has denied entry and access on the basis that they were wearing a headscarf" according to the report. The college claimed that petitioners and other similarly situated students had broken the college's dress rule by simply wearing a hijab.

A Muslim girl student has filed a writ petition in the Karnataka High Court, asking for a declaration that wearing a hijab (head scarf) is a Fundamental Right granted under Articles 14 and 25 of the Indian Constitution and an integral practice of Islam.

"Not only does the way in which the respondent college expelled the petitioner create a stigma among her batchmates, but it also creates a stigma among the children of the entire college" the appeal continues, *"which would, in turn, impair the petitioner's mental health as well as future chances."* The plea goes on to argue *"The college's decision to limit the petitioner's right to education solely on the basis of religion is tainted with deception, discriminatory, and politically motivated. By denying the petitioner's education, the state government has failed in its obligation to realise the right to human growth."*

According to the petition, *"Articles 25 and 26 of the Constitution provide protection in areas other than theology. They also cover acts carried out in the name of religion, therefore they include a guarantee for religious rituals and observances, as well as ceremonies and modes of worship."*

It is argued that a woman's right to choose her clothing based on religious injunctions is a fundamental right protected under Article 25 (1) where the religious injunction is an integral aspect of the faith.

The case of *Hindu Religious Endowments, Madras v. Sri. Lakshmindra Thirtha Swamiar of Sri. Shirur Mutt*² is cited, in which the Supreme Court decided that our Constitution's Freedom of Religion does not apply just to religious beliefs, but also to religious practices.

The petition cites verses from the Holy Quran, claiming that removing the headscarf from women who profess the Islamic faith leads to a fundamental shift in the Islamic religion's nature. As a result, it continues, the practice of wearing the headscarf is an essential and vital element of Islam. Furthermore, it is claimed that the shariah mandates women to wear the headscarf. So, the college's conduct in forbidding the headscarf within its premises is in violation of Article 25(1) guarantee of religious freedom.

JUDGEMENT BY SINGLE BENCH

The matter was first referred before a single bench- Justice Krishna S. Dixit Bench passed an interim order- that said students couldn't wear religious clothing including hijab.

A Single Judge (Krishna S Dixit J) vide order dated 09.02.2022 has referred these cases to Hon'ble the Chief Justice to consider if these matters can be heard by a Larger Bench '*regard being had to the enormous public importance of the questions involved*'.

Accordingly, this Special Bench comprising of three Judges has immediately been constituted and these cases are taken up for consideration.

² 1954 SCR 1005.

Which referred the matter before a full bench Chief Justice Ritu Raj, Justice Krishna S. Dixit, and Justice KM Khazi State of Karnataka was represented by Advocate General Prabhuling Navadgi.

The case was first brought before a single bench, when Justice Krishna S. Dixit issued an interim order prohibiting students from wearing religious clothing, including the hijab.

By order dated 09.02.2022, a Single Judge (Krishna S Dixit J) has submitted these cases to the Hon'ble Chief Justice for consideration of whether they can be heard by a Larger Bench "because to the tremendous public importance of the questions involved."

As a result, this Special Bench of three Judges has formed immediately, and these matters were immediately taken up for deliberation.

The petition was referred to a full bench, which included Chief Justice Ritu Raj, Justice Krishna S. Dixit, and Justice KM Khazi. Advocate General Prabhuling Navadgi represented the state of Karnataka.

TWO QUESTIONS BEFORE THE COURT?

- *Is the wearing of the hijab a fundamental Islamic religious practice?*
- *Whether prescription of school uniforms is violative of Article 19(1)(a)?*

Article 19(1)(a) of the Constitution of India states that "*all citizens shall have the right to freedom of speech and expression*".

FULL BENCH JUDGEMENT

The wearing of a hijab is not an essential religious practice in the Islamic religion, according to a full bench of the Karnataka High Court, and so is not protected under Article 25 of the Constitution.

Essential rituals, according to the Karnataka High Court, are those that are "*fundamental to the religion*" and have existed "*from time immemorial*." These are customs that either predate the religion or were established at its inception. These customs are binding and "*form the religion's cornerstone*." If these rituals are not performed, the effect will be "*the alteration of religion itself*."

The court stated that wearing a headscarf is not mandatory, citing many religious commentators it deemed to be credible. Wearing the headscarf is better associated with "*culture*," not religion. The court concluded, based on numerous texts, that the hijab was a veil intended to provide a "*safe means*" for women to leave their homes. As a result, the hijab was not deemed obligatory in Islam.

Furthermore, the court stated that requiring certain clothing items, such as the hijab and headgear, could be problematic "*hinder women's liberation in general, and Muslim women's emancipation in particular*".

The court stated that institutes should have the authority to impose a dress code, emphasising the necessity of uniforms. "*It was said that "no logical mind can imagine a school without a uniform."* To support its case, it cited a number of documents, including the ancient Indian scripture Dharmasastra and the English legal treatise Magna Carta.

CONCLUSION

Individuals must express their religious choices in a country with a constitution that incorporates the phrase "*secularism*" and protects essential rights such as freedom of speech and expression, the right to practise any religion, and the right to respect one's private life.

The Hijab ban is one of India's many restrictions on women. Women are becoming more self-assured, and they should have the option of wearing their religious identity or not.