

DE JURE NEXUS LAW JOURNAL

Author:
Ananya Mahajan
Symbiosis Law School, Noida
1st Year, BBA LL.B.

**HINSA OVER HIJAB****ABSTRACT**

Through the medium of this research paper, I shall be shedding light on the dispute regarding the ongoing Hijab controversy in India particularly in the state of Karnataka. My main aim for this research will involve delving in some depth into:

- *the origins of this practice of wearing Hijab by the Islamic women;*
- *the relevance it holds in modern times;*
- *whether it's considered a customary practice or a mere necessity as per the Islamic law and how it's affecting the current situation in hand.*

With the help of this research paper, I have attempted to exhibit the pivotal role a controversy like this holds in our nation and how one wrong decision can lead to complete and total turmoil, breaking down the pillars of a civilised society that is upheld by its laws, rules, and regulations. The analysis shall be dealing with the root causes of this whole feud, how it came to existence, the aggrieved parties' reaction to it and the repercussions that will follow.

KEYWORDS

Hijab controversy, Shah Bano, Muslim practices, Triple Talaq, religion, education.

INTRODUCTION

The feud started with the onset of 2022 as on January 1st, when 6 girls studying in a college in Udupi, Karnataka were denied entry into the educational institution merely due to the hijabs being worn by them. The said students claimed they had sought permission from the college authorities to wear Hijab. However, they were still denied entry due to their faces being covered. What probably began as a mere miscommunication between the students and the college authorities regarding the pertinent details relating to the acceptable institutional dress code, immediately snowballed into a nation-wide issue. Soon protests by the students started

emerging not only in reference to the current scenario in hand but rather from various other parts of Karnataka as well. After some interaction with the principal of the college it was discovered that although there wasn't a rule laid down in stone that girls attending the institution aren't allowed to wear hijab but rather the claim that although students used to wear it to the campus in the past, none of them entered the classrooms before removing it and that is what is seemed to be troubling the institution.

While petitions were filed by Muslim students and their parents on 31st January, 2022 pertaining to violation of Article 14 of the constitution which clearly states that the state shall not deny anyone equality before the law along with Article 19 which provides for freedom of speech and expression and Article 25 providing freedom to profess religion to all citizens, the first hearing for the same was held on 8th February 2022.

On one hand continual protests are being carried out and petitions are being filed in the High Court Of Karnataka, on the other hand the Karnataka government is justifying their actions by citing Section 33 of the Education Act, 1983 which allows the government to reserve the right to issue appropriate directions to schools and colleges for maintaining public order.

Thus, the questions that arise in one's mind right now would be:

(1). Are the college authorities justified in denying education to a student on the grounds of what is being worn by them?

(2), Are the Muslim students justified in their protests for recognising wearing of a hijab as customary religious practice or merely parental influences of carrying forward orthodox practices being dumped on them by their ancestors?

(3). Does the right to education, religion and expression as guaranteed in the Constitution protect the Muslim's female students' right to wear Hijab?

Let's try and address these questions.

CASE LAW RELEVANT TO GIVEN SITUATION

Taking a cue from the infamous Shah Bano case which took place 37 years ago it can be evidently noticed that history is on the verge of repeating itself. Analysing the facts of the case in question it could be observed that it revolved around a 62 year old Muslim woman who after being divorced by her husband was only provided with a minimal Meher amount as provided in the Nikahnama and as per conditions of the Islamic law. Shah Bano approached the Court, as the amount wasn't enough for sustenance and demanded alimony from her divorce like any other Indian woman is entitled to. The matter reached the Supreme Court and after due thought and deliberation the apex court ruled in her favour but this agitated the other side as according to them it was against the principles laid down by the Muslim law. In order to gain political mileage, the party in power at the time enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986 thereby nullifying Supreme Court's judgement.

This judgement went on to be the prime example of how when the Supreme Court made a progressive ruling, upholding ideals of the Indian constitution and ensuring equality for people of all faith but the amendment made by the party in power invalidating Supreme Court's order did nothing but give preferential treatment to one particular faith's personal

law thus absolutely destroying the very pillars of a civilised society upheld by the constitution.

We cannot also forget the landmark judgement of Supreme Court of India when by a majority judgement of a five judge bench, the practice of instant Triple Talaq given was declared unconstitutional. This practise was also defended as part of Islamic Personal law and therefore not amenable to interference by Courts. However, the Supreme Court prioritised the human rights of Muslim Women over what was defended as a Customary religious practice.

BREAKDOWN OF THE JUSTIFICATIONS AT HAND

Before moving on to the to analyse both the sides of the issue, one can't deny that restricting entry to hijab wearing students or any students for that matter is first and foremost blatant violation of the Right To Education Act which provides for free and compulsory education to all children in India. Foreboding the Muslim girls from attending college solely due to the hijabs being worn by them is both legally and morally unjust.

However, the second issue that arises revolves around the practice of compulsion of wearing of hijab by these women and if it's possible to fight for the rights of such women in attending college irrespective of their faith and their clothes, to not be denied education but at the same time entertaining the idea of hijab wearing as a compulsion. In order to get an in depth understanding of the reasoning behind wearing of hijab, we need to first understand if it's a personal choice or if it's the religion compelling them to do so.

The Karnataka government responded to the High Court with reference to the claim made by the petitioners under protection of their rights under Article 25 and how those rights don't actually fall under Article 25 but in defence of the petitioners, their rights fall under Article 19 and still stays relevant.

It also becomes essential to remember that the State should not enter into matters of what constitutes religion, whatever is essential and not essential. State will come in when it collides with public order, morality or health. The idea of having a specified and disciplined uniform dress code in schools and colleges is understandable to some extent however publicly asking a person, be it a student or teacher to remove their hijab is a whole new level of public moral cretinism and in my opinion a practice that should be discouraged and not supported. There's no denying in how the Shah Bano case is responsible for influencing people to look at the current situation as a means of ensuring progressive equal rights to all. However, it cannot be forgotten that the restraint on Hijab is aiming to erase Muslim culture presence in the society more than its doing for ensuring equality.

I acknowledge the fact that although it might seem to outsiders that many a times young Muslim women are coerced into wearing the hijab rather than personal choice, however, at the end of the day it is in fact still a choice. Moreover if one cannot underestimate the significance wearing of hijab holds to the person in question, be it religious sentiments, dignified faith, carrying forward of customary legacy or even oppression for that matter. It still doesn't give the power to government to interfere with the education of that student or participation in their public life.

It is no surprise that the society has always made accommodations for say bindis and tilaks amongst Hindus, turbans amongst ,Sikhs etc in public places despite it being potential of being criticised or made fun of or both. This is carried out regardless of the prescribed uniform code and gives the population a sense of diversity while upholding equality.

It is not always a question of ‘what it signifies’ when talking about a religious practice, it can very well be rooted into sartorial conservatism, patriarchy or even aesthetic purposes for that matter. But when those start coming in the way of should those girls be given the opportunity to attain education that is when the problem arises.

What started as a question of whether those women being denied entry into the college should be considered unlawful soon turned into a heated debate over defending or opposing the hijab which quite realistically wasn’t even the conflict in the first place. Calling oneself pro Muslim but then being opposed to the idea of their practice of wearing hijab screams not only double standards and performative activism but also labels the minorities as reactionary in the eyes of the law. How can we as individuals or even a society sit in judgement over a religious practice that may be part of tenets of the religion or have developed as a Custom over centuries of same being followed. To cite an example, in Punjab, if a Sikh boy cuts his hair and stops wearing turban, he may displease his family members and relatives but he is not punished or prevented from his fundamental rights by the Society. Although this whole fiasco might demand a bigger cultural debate it has absolutely no role in coming between how schools are treating their students.

It is not about making the practice of wearing a hijab into a religious sanction as that would demand it to be worn by every Muslim woman irrespective of their choice and be further eliminating any autonomy held by them. Rather its about prioritising the education of the youth, their future over what is worn by them and what isn’t.

Wearing of Hijab may be customary practise but the question today is not Muslim women’s right to wear or not wear it but right to an education while wearing it.

CONCLUSION

From the given facts and figures it can easily be analysed how the whole situation is first and foremost creating an even bigger problem out of a condition that arose merely due to some students being denied access to their college due to their outfit choices. What started out as feud between a single college and their students turned into a widespread controversy in no time. We could see how the college admitted to accepting that the hijabs worn by the women are permissible on the campus however not inside the classes as it seems to be going against their disciplinary rules since a situation like this never arose in the past 35 years. So the question remains if the institution literally does not have issues with hijab in the campus areas than them being non permissible inside the classroom as it might disturb the decorum of the class holds absolutely no grounds as a defence and rather using it as a pretext for disqualifying someone from teaching or going to college is a travesty.

If its merely a question of how a teacher in class can identify a student and address her if she is wearing a Hijab, the same van be tackled by asking the student to wear a nameplate while

she is in class. The solution given may seem comical to some but it merely seeks to address a practical problem that may from the Institution's point of view arise in class.

In addition to this ever since coming into the limelight the current controversy is being continually compared to the Shah Bano case where one wrong decision by the then ruling party, disrupted the entire values laid down by the Constitution and overthrew the idea of equality by patronising the fundamentalists in the minority community. Fortunately, Karnataka is not under the same pretences and neither are the rulers having the same mentality so it becomes a matter of utmost importance for the Karnataka government to stop intervening in matters of religion and now that the matter has snowballed into a needless controversy, and leave the decision up to the esteemed High Court to decide both the legally and morally the right thing to do.

Let the Law take its due course and stop this Hinsa over Hijab.



De Jure Nexus

LAW JOURNAL