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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

EXPLORING THE DIMENSIONS OF HIJAB: NAVIGATING BETWEEN ESSENTIAL RELIGIOUS PRACTICE, SPIRITUAL EXPRESSION, AND PERSONAL AUTONOMY.

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Abstract

The purpose of this paper is improvement of technical concepts, understanding, traditional as well as modern concept of Hijab. This paper explicitly explores the dimension of Hijab and navigate between Hijab as an essential religious practice, spiritual expression and personal autonomy, keeping in view the importance of Hijab as veiling system not only in India but across the whole world. The research has been conducted with the help of secondary data available on the internet, newspapers and journals. This paper aims to create awareness as well as improve the understanding of general public regarding different aspects of Hijab.

Keywords: Hijab, Veil, Islam, The Holy Quran, Culture, Essential religious practices, Spiritual Expressions, Personal Autonomy, Controversy, Right to Choose, Women's freedom, Modesty, Piety.

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CHAPTER 1

INTRODUCTION

1.1 Introduction

The global economy is fueled by the significant business of women's fashion. Women spend hundreds of dollars a year to stay current with fashion. In the Middle East and other Islamic countries, women's clothing frequently includes the veil, or hijab, which covers the head, torso, or face. But it's more than just a piece of clothing; rather, it's a representation of culture and faith. Hijab-wearing women assert that it is their choice to cover up. A lot of non-Muslims now think that Muslim women are being coerced into wearing veils by a predominantly patriarchal society. Through examining the history, diverse manifestations, and modern perspectives of veiling, we can gain a deeper understanding of what.

1.2 HISTORICAL BACKGROUND OF THE VEILING SYSTEMS

The origin of Hijab¹ existed much before the Quran came into existence, or for that matter, much before the Islamic Prophet Muhammad was born. Different societies ranging from around the Middle East, to the Greek, Mesopotamian and Persian empires, there was fusion of different cultures and societies, and when this happens, many practices followed by different cultures intermingle. This proves that, the veiling system was prevalent in the society as a part of culture and not as a religious practice.

Veiling in the aforementioned societies was considered to be a sign of social status. For instance, in Mesopotamia, it remarked a woman's high respectability within the society which distinguished her from slaves and other women of low repute, i.e. unchaste women.¹ This in itself is evident from the laws of Assyrian society wherein, if an unchaste woman was found veiling then, she would have to face severe penalties.

It is rather astonishing to understand that Islam was not the very first culture to practice the veiling systems. The reason why it is astonishing is because of the prevalent hijab system within Islam even today, any layman would be of the view that the origin of veiling was in hijab. Diverse as it may be, many societies before Islam had laws and customs with respect to the veiling systems and these different societies remark the various differences in the laws and customs of veiling systems.

1.3 STATEMENT OF PROBLEM

¹ Hijab-originated from Arabic word 'hijaba' means "to conceal"

“Hijab” a terminology used for the veiling systems amongst the Muslims. This in itself proves that the area of study will be limited to Muslims. Diverse as one may call India to be, secularism has been a part of the roots of this society, however, friction continues to prevail. It is often said that small flames turn into big fire and this fire has the potential of wide range destruction. In order to prevent this destruction, it becomes crucial to deal with these flames so that any kind of destruction is prevented at all cost especially when it is a topic as sensitive as this.

The topic under fire in itself is the problem. On one side there are women/girls who wish to wear the hijab as they consider it to be a part of their dignity while on the other side there is a group of women/girls who wish to send out a message that hijab does not define their life's existence. This is what it is all about in a layman's language. With the current hues and cries, it becomes important to not only deal with this problem to prevent future destruction but it is only after discussing about these sensitive issues that a viable solution can be reached. Often, the society shies away from talking about sensitive issues because everyone feels that it might land them into trouble and then crib about not reaching a solution. The only way to reach a solution is to 'deal with it'. This in itself is a bigger problem, even bigger than any technicalities of the law. Then, when the someone tries to talk about these issues with full sensitivity instead of fanning the flames, that someone is criticized the most. This is exactly what happened with the courts lately.

1.4 A BRIEF INSIGHT INTO THE LEGAL CONTROVERSY

Recently, the courts have put forth their views in their judgments. The courts have pointed the various dimensions to the problem at hand. All these problems have been with respect to the rights of women juxtaposed to the secularism deep rooted in our country. The entire controversy began when 6 girls in the Government Pre University College in Udupi who were not allowed to attend classes as they were wearing a hijab. The matter transformed into protests by students on the 31.12.2022. The students then filed a writ petition in the High Court of Karnataka, Bengaluru and a number of petitions were even filed in the National Human Rights Commission. The College is run by a Member of the Legislative Assembly from Bhartiya Janata Party and claimed that the girls have started wearing the hijab in the past few days. Also, there were some Hindus protesting against the same wearing saffron coloured clothes. Soon the spark turned into fire to other colleges. There was a Government order passed on 5.02.2022. which stated that in accordance to Karnataka Education Act, 1983 and Government Circular dated: 31.01.2014, the students should behave in a fraternal manner and follow the code of conduct. Further, the government order dated 5.02.2022, directed all schools including

private schools to follow the uniform code as prescribed by the management, meanwhile, the Colleges under the department of Pre-University Education were asked to follow a code that is in the interest of unity, equality and public order in the case of *Aishat Shifa v. State of Karnataka and ors.*² The petitions were all combined together and sent to the Karnataka High Court in the case of *Resham v. The State of Karnataka and ors*³. which struck at the very heart of the controversy and passed an interim order validating the Government's order dated 5.02.2022 and thereby validating the Karnataka Education Act, 1983, thus asking the students to follow the uniform code of conduct to prevent any anti-secular gestures. The matter then went to the Division Bench of the Supreme Court⁶ where a split verdict addressed the problems on both the ends of the controversy at hand. One part of the judgment upheld the decision of the Hon'ble Karnataka High Court, wherein, it was precisely put forth that to follow the uniform code as the right to freedom of religion comes under Article 25(1) of the Indian Constitution and that comes with reasonable restrictions in the form of preambular principles of secularism and Article 14 of the Indian Constitution which promotes the Right to Equality. The secularism and equality were getting hampered by the wearing of the hijab in an educational institution which promotes secularism and the Fundamental Duty of promoting the idea of composite culture and common brotherhood. In the other part of the judgment it was stated that in the language of law, a greater emphasis was laid on the Right to privacy and dignity under Article 21. It was stated that hijab should be a matter of choice. This wearing of hijab is sometimes a ticket to education in conservative families. The situation is so intense that many females face great challenges on a daily basis to seek education especially when they are from a conservative Islamic background and by denying the wearing of the hijab, they are merely adding to the struggles faced by these girls. Also, a violation of Article 21, i.e., her right to privacy, a violation of Article 19, i.e., her right to freedom of speech and expression. In the words of Hon'ble Mr. O. Chinappa Reddy, J. "Our tradition teaches tolerance, our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it", thus meaning to promote the idea of tolerance towards other religions and their practices, and hence, towards the wearing of the hijab as a part of the uniform.

1.5 'A' HIJAB OR 'THE' HIJAB

In this doctrinal research, there are literature reviews of the research papers written by researchers who have gone out in the field and conducted surveys on the various views of the hijab. These

² (2023) 2 SCC 1

³ 2022 LiveLaw (Kar) 42

literature reviews have been discussed in this part of the research. The empirical research in these research papers have not only given a direct view of muslim women in different societies but has also authenticated the research through its inferences.

1.6 Literature Review

The Holy Quran ⁴has been a major source to introduce the concept of hijab and its origin because when a religion or faith follows a particular book universally, it becomes an essential source. The Holy Quran, talks about the hijab in a modest way and not as a compulsion. Then official Islamic websites which provide the interpretations of the verses of the Holy Quran, state the hijab to be a covering in order to remain pure and pious, especially, because women require more privacy than men. While some websites interpret the verses of the Holy Quran that hijab was a requirement only for the wives of the Prophet and not other women and that other women followed it as a matter of faith.

In one of the field works of the University of Malta, hijab has been explicitly called an Affair of the Heart. The objective of this paper was to understand the concept of hijab from the women themselves, however, the geographical area chosen in this research is not hige and confines itself only to Arab women in Malta, but the views are of genuine importance so as to justify that whether hijab is to be treated as ‘A’ hijab or ‘The’ hijab. The author in the fieldwork reached a conclusion where women have called hijab to be an intimate affair. It brings to notice the radical feminist view where women wearing ‘The’ hijab have been considered to be subject to oppression, however, the survey proves that women wearing hijab had religious reasons for doing so, but their concerns regarding other aspects of life were not any different from the other women of Malta for instance the importance of education amongst their children, especially the daughters.

The research brings forth the discrimination that women had to face due to the wearing of the hijab, however, all women have called this to be a private affair. So, all in all hijab is ‘The’ hijab for women in their private space and they feel that for the society at large it should be ‘A’ hijab, that is, not a matter of great concern.

Another paper by Sara Slininger holds relevance here as this paper was quoted by the Hon’ble High Court of Karnataka in its decision on the controversy of hijab that turned huge post many protests. The court quoted from the paper that *“The hijab's history...is a complex one, influenced by the intersection of religion and culture over time. While there is little question that some women choose*

⁴ The sacred scripture of Islam.

to cover their heads due to social pressure, there are numerous additional reasons why they choose to do so. On the surface, the veil seems to be a straightforward object. This deceptive simplicity stems from the fact that the hijab symbolizes the attitudes and customs of people who wear it or do not, as well as the perceptions and misperceptions of others who wear it or decide not to, and the perceptions and misperceptions of those who see it worn. Its complexity lies behind the veil."

Considering the aforementioned paragraph, hijab in today's times has become a matter of issue rather than a choice. It has become 'The' hijab for everyone rather than the woman wearing it. On one side, the wearing of the hijab is harming the secular standards of uniform set in schools, and on the other hand, the wearing of the hijab is only following their religious faith, while for some young girls it is the only way to convince their orthodox Muslim families to go out of their homes and study. The complexity here is real but it vests only with the person wearing it and the people observing it have many notions. This entire conflict boils down to the difference of opinions between the person wearing the hijab and the one observing it being worn or not worn.

These notions of wearing the hijab have changed overtime but the fact the whether hijab is 'A' hijab or 'The' hijab will only be decided by the courts now that they are dealing with this matter, but the fact that it has become a matter of wild protests in the State of Karnataka, it is evident that hijab has definitely become 'The' hijab but the question that whether it should continue to remain 'The' hijab for time immemorial, continues to prevail.

CHAPTER 2

2.1 EXPLORING DIFFERENT DIMENSIONS OF HIJAB

Hijab, a term often heard in discussions surrounding Islam and Muslim women, is more than just a piece of fabric draped over one's head. It carries profound cultural, religious, and social significance, embodying various interpretations and practices across different societies. In recent years, the hijab has sparked global debates, raising questions about identity, feminism, religious freedom, and cultural expression. This article delves into the intricate layers of the hijab, exploring its diverse dimensions and shedding light on its significance in today's world.

Cultural Context:

To understand the hijab's significance, it's essential to delve into its historical and cultural roots. The concept of veiling predates Islam, with various cultures and civilizations adopting forms of modest

dress for both men and women. In pre-Islamic Arabia, veiling was associated with social status and protection from the harsh desert climate.

With the advent of Islam in the 7th century, the hijab took on a religious dimension, as outlined in the Quran and Hadith ⁵(sayings and actions of the Prophet Muhammad). The Quran instructs both men and women to dress modestly, with specific guidelines for covering certain parts of the body. Over time, interpretations of these guidelines have evolved, leading to diverse practices of hijab across different Muslim-majority societies.

Religious Significance:

For many Muslim women, wearing the hijab is a deeply spiritual and religious practice. It symbolizes obedience to God's commandments and a commitment to modesty and piety. By covering their hair and body, they strive to uphold the values of humility, dignity, and self-respect prescribed in Islamic teachings.

Muslim women can declare their identity and show their beliefs in a world where Islam is often misinterpreted and misrepresented by wearing the hijab. It acts as a reminder of their religious duties in day-to-day living and promotes a feeling of community within the greater body of believers

Feminist Perspectives:

The intersection of hijab and feminism is a topic of considerable debate and contention. While some argue that the hijab is inherently oppressive, denying women autonomy and agency over their bodies, others view it as a symbol of empowerment and liberation.

For many Muslim feminists, wearing the hijab is a choice made freely and autonomously, reclaiming control over their bodies from societal pressures and objectification. They assert that true feminism encompasses the right to choose one's clothing, whether it involves covering or revealing certain parts of the body.

⁵ Traditions of Prophet Mohammad.

However, critics argue that the hijab perpetuates patriarchal norms and reinforces gender inequalities within Muslim communities. They contend that women may face social pressure or even coercion to wear the hijab, limiting their freedom of expression and mobility.

Cultural Expression and Identity:

Beyond its religious and feminist dimensions, the hijab serves as a marker of cultural identity and heritage for many Muslim women. It reflects the rich diversity of Islamic traditions and practices, with variations in styles, colours, and fabrics influenced by regional customs and personal preferences.

In multicultural societies, the hijab becomes a symbol of multiculturalism and diversity, challenging monolithic perceptions⁶ of Muslim identity. Muslim women may choose to adorn the hijab as a way of affirming their cultural roots and asserting their presence in pluralistic societies.

Challenges and Controversies:

Despite its significance to millions of Muslim women worldwide, the hijab remains a subject of controversy and scrutiny. In some societies, women face discrimination or even violence for wearing the hijab, experiencing Islamophobia and prejudice based on their outward appearance.

In recent years, legislative attempts to ban the hijab in public spaces, particularly in Western countries, have ignited debates about religious freedom and individual rights. Such bans are often justified in the name of secularism or women's liberation, but they can have detrimental effects on Muslim women's access to education, employment, and public participation.

Conclusion:

The hijab is a complex and multifaceted garment, embodying religious, cultural, and social dimensions that defy simplistic interpretations. For many Muslim women, it represents faith, identity, and personal choice, while for others, it symbolizes oppression and constraint.

⁶ “one stone”- a massive undifferentiated and rigid whole.

As debates surrounding the hijab continue to unfold, it's crucial to approach the topic with nuance and empathy, recognizing the diverse experiences and perspectives of Muslim women worldwide. By engaging in constructive dialogue and challenging stereotypes, we can foster greater understanding and respect for the complex realities of hijab-wearing individuals in today's globalized world

CHAPTER 3

3.1 Unveiling the Layers: Exploring the Religious Aspect of Hijab

In the contemporary world, the hijab has become a symbol of identity, faith, and controversy. This modest garment worn by Muslim women has sparked debates globally, ranging from issues of women's rights to religious freedom. While much of the discourse surrounding the hijab focuses on its sociopolitical implications, it is crucial to delve into its religious significance within Islam. This article aims to unravel the layers of the religious aspect of hijab, exploring its roots, interpretations, and significance in Islamic theology and practice.

Historical and Cultural Context:

The practice of veiling predates Islam, with historical evidence suggesting its presence in various civilizations, including ancient Mesopotamia, Greece, and Rome. In pre-Islamic Arabia, veiling was associated with social status and modesty, and it was practiced by women from diverse religious and cultural backgrounds.

Islam emerged in the Arabian Peninsula during the 7th century, introducing new social norms and ethical principles. The Quran, Islam's holy book, addresses the concept of modesty and instructs both men and women to dress modestly. The verse in Surah An-Nur (24:31) is often cited concerning the hijab, stating: "And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers, that you might succeed."

Interpretations and Schools of Thought:

Islamic scholars and jurists have interpreted the Quranic injunctions regarding modesty and hijab in various ways, leading to diverse practices and opinions within the Muslim community. The term "hijab" itself is subject to interpretation, with some understanding it as a headscarf, while others interpret it as a broader concept encompassing modest attire and behavior.

Within Sunni⁷ Islam, there are different schools of thought, each with its interpretation of Islamic law (Sharia). The Hanafi, Maliki, Shafi'i, and Hanbali schools may differ in their understanding of hijab's specifics, such as the extent of covering and the conditions under which it is obligatory. Similarly, within Shia Islam, there are differences in the interpretation and practice of hijab among various sects.

Beyond the legalistic interpretations, the hijab carries spiritual and symbolic meanings for many Muslim women. It serves as a constant reminder of their faith, modesty, and submission to the will of Allah. For some, wearing the hijab is an expression of religious identity and a means of strengthening their connection to their faith community.

Contemporary Debates and Challenges:

In recent years, the hijab has been at the center of heated debates concerning women's rights, religious freedom, and cultural integration. In Western societies, where secularism and individual freedoms are valued, the issue of whether wearing the hijab should be a personal choice or imposed by societal or familial pressures has been widely discussed.

Critics argue that mandatory veiling infringes upon women's autonomy and perpetuates patriarchal norms. They view the hijab as a symbol of oppression and argue that women should have the freedom to dress as they please without facing discrimination or social stigma. Additionally, some feminists within Muslim communities advocate for reinterpretations of religious texts to promote gender equality and empower women.

On the other hand, many Muslim women assert their right to wear the hijab as a form of religious expression and personal choice. They reject the notion that the hijab is inherently oppressive and

⁷ 'Sunni' comes from the Arabic word 'sunna' meaning tradition. 'Sunni' thus means one who follows the tradition of the Prophet Muhammad who is seen as the model for mankind.

emphasize its role in fostering piety, modesty, and self-respect. For these women, the hijab is not merely a piece of cloth but a source of empowerment and spiritual fulfillment.

Therefore, the religious aspect of hijab is multifaceted, encompassing theological, cultural, and social dimensions. While rooted in Quranic teachings and prophetic tradition, its interpretation and practice vary across different contexts and schools of thought within Islam. Understanding the religious significance of hijab requires an appreciation of its diverse meanings and the lived experiences of Muslim women.

As debates surrounding the hijab continue to evolve, it is essential to approach the topic with sensitivity, respect, and a willingness to engage in dialogue across ideological divides. By acknowledging the complexity of hijab's religious aspect, we can foster greater understanding and empathy within our diverse global community. Ultimately, the hijab, like any religious symbol, should be understood within its broader context and not reduced to simplistic stereotypes or politicized narratives.

One of the fundamental human rights guaranteed by international law and safeguarded by many international treaties and regulations is the freedom of religion. However, there are often conflicts and obstacles in the legal system when religious ideas are expressed, especially when they are manifested through visible symbols like the hijab.

This research analyses the legal landscape surrounding the practice of hijab, examining key case laws that have shaped the jurisprudence on religious freedom and accommodation. By exploring these cases, we gain insights into how courts have grappled with complex issues of identity, equality, and secularism in diverse cultural and legal contexts.

3.2 Case Law Analysis:

1. France: *Affaire Baby Loup* (2014)⁸

In the landmark case of *Affaire Baby Loup*, the European Court of Human Rights (ECHR) addressed the dismissal of a Muslim woman from a private daycare center for refusing to remove her hijab at work. The court upheld the dismissal, ruling that the employer's decision was justified by the principle of secularism and the need to maintain neutrality in the provision

⁸ Religion, Children and Employment.

of public services. The judgment sparked debates about the limits of religious expression in secular societies and the extent to which private entities can regulate employees' attire based on religious considerations.

2. **United States: EEOC v. Abercrombie & Fitch⁹ (2015)**

The U.S. Supreme Court deliberated on whether Abercrombie & Fitch's denial of employment to a Muslim woman donning a headscarf breached Title VII of the Civil Rights Act, which forbids discrimination in the workplace on the basis of religion. The court decided that even in cases when a job applicant does not specifically ask for accommodations, an employer's knowledge of the applicant's need for religious accommodations is enough to prove discrimination. This decision emphasized how crucial it is for businesses to take proactive steps to respect employees' religious beliefs and refrain from discriminatory hiring practices.

3. **Canada: Multani v. Commission scolaire Marguerite-Bourgeoys¹⁰ (2006)**

In the case of Multani, the Supreme Court of Canada considered whether a Sikh student's right to wear a kirpan (a religious ceremonial dagger) to school was protected under the Canadian Charter of Rights and Freedoms. The court affirmed the student's right to religious accommodation, emphasizing the importance of accommodating religious diversity in educational settings. While the case did not directly involve the hijab, it set a precedent for recognizing and accommodating religious practices in public institutions.

4. **Iran: Islamic dress code enforcement**

In Iran, the mandatory enforcement of hijab for women in public spaces has been a subject of controversy and resistance. While the Iranian legal system requires women to adhere to strict Islamic dress codes, including covering their hair with a headscarf, many women have protested against these regulations, leading to arrests and prosecutions. The case of hijab enforcement in Iran highlights the tension between state-imposed religious mandates and individual autonomy, raising questions about the legitimacy of coercive measures to enforce religious observations.

In a nutshell, the legal landscape surrounding the practice of hijab is complex and multifaceted, reflecting the diverse cultural, religious, and political contexts in which it arises. Through an analysis of key case laws from various jurisdictions, we gain insights into the challenges and complexities of

⁹ 575 U.S. 768 (more) 135 S. Ct. 2028; 192 L. Ed. 2d

¹⁰ 1 S.C.R. 256, 2006 SCC 6

balancing religious freedom with competing societal interests such as secularism, gender equality, and public order.

While courts have grappled with these issues in different ways, there is no one-size-fits-all approach to addressing the legal challenges posed by the hijab. Instead, each case requires careful consideration of the specific facts and circumstances, as well as the underlying principles of human rights, equality, and dignity. As societies continue to evolve and confront new challenges, the legal framework surrounding the hijab will likely continue to evolve as well. By engaging in open dialogue, respecting diverse perspectives, and upholding fundamental rights and freedoms, we can strive to create inclusive and pluralistic societies where individuals are free to express their religious beliefs without fear of discrimination or persecution.

CHAPTER 4

4.1 SPIRITUAL EXPRESSION

Wearing the hijab is a powerful and life-altering choice. Muslim women cover their heads and chests with the hijab, a veil. Islamic dress codes for men and women stipulate that women's attire should cover from the navel to the knee while they are in public or around men who are not related to them. In front of other women, one must cover from the shoulder to the wrist. The hijab's spiritual significance encompasses several noteworthy elements, including modesty, piety, and surrender to Allah. It also acts as a reminder that every individual is accountable for the decisions and deeds that they commit to. In addition, the hijab serves as a barrier between the woman and everyone else, preventing her from being recognized only for her beauty.

Modesty: Women who wear the hijab are demonstrating their modesty, piety, and morals. Those who wear the hijab are exhibiting these ideals to all Muslims through their wardrobe choices. When women dress more modestly, they are better able to stay morally focused rather than dressing up to impress men. When a woman dons a hijab for the first time, she usually feels naked and nervous because no one can see her hair. This changes as you start wearing it more often because Allah will be the center of attention rather than how other people see you or perceive your appearance. Women who wear a burqa that covers their entire body, with the exception of a mesh opening for visibility,

are considered to be the most modest. It is unthinkable not to zero in on Allah when you are wearing this clothing!

Piety¹¹: The hijab enhances our piety by serving as a constant reminder that we should be conscious of God and his presence in everything around us, including the way we speak, walk, and dress. It promotes a style of life that places an emphasis on humility and surrender to Allah by making us concentrate more on our inner intentions than on how other people see us or judge us based on what we wear. By donning the hijab, women who might feel that they need to be attractive in order for someone to love them should also be inspired to appreciate who they are. Wearing the Hijab assists us with understanding that Allah loves us for what our identity is and not what we resemble or how famous we might accompany others.

Allah keeps an eye on you: The transcendent significance of donning a hijab serves as a reminder to Muslims that they must live their lives in obedience to Allah. We are all under God's constant watch, thus every decision we do will have consequences in the hereafter. When you wear a headscarf, Allah is more consistently present in your life because He is always watching over you, even when no one else is there. Wearing a headscarf means that a woman must deal with criticism from people over her appearance, but she also knows that Allah is constantly observing. God watches everything we do, thus wearing a hijab makes us always aware of what we are doing! Whether it's something as simple as what you wear, or something more significant like how effectively you submit to Allah and follow Islamic law, wearing the hijab can help you feel more in control of your life.

The hijab is a sign of courage to wear:

When you wear the hijab, you may be sure that Allah is always with you and will help direct your activities, whether you're alone yourself or in front of people who don't mind that you dress differently. The ability to be oneself without worrying about what others may think is another way that the hijab may empower women. Young girls who wear the hijab see a reduction in self-consciousness and an increase in self-esteem as a result of feeling more at ease in their own skin. Wearing a hijab makes a woman feel pleased to be a Muslim because it gives her the impression that she is the best representative of Allah.

Hijab Wearing:

¹¹¹¹ a way of behaving that shows a deep respect for God and religion

Some women feel that by covering their heads with a hijab, they are shielded from harassment by males who might not respect or perhaps try to take advantage of them. Because they can dress whichever best suits them, Muslim girls who wear the hijab also feel better about themselves. Since there are still people who don't care or put up with how women dress and look, the hijab helps Muslim women feel empowered and in control of their lives when it comes to making decisions about how they want to be perceived by others and setting boundaries for what other people can say or do to them.

In Islam, the hijab—which covers both men's and women's clothes—is a representation of modesty. It is usually associated with head and hair coverings, such as a headscarf or shroud. Nevertheless, hijab is more than just a piece of apparel; it can also serve as a reminder of one's behavior, self-image, and interpersonal relationships. The hijab is meant to promote modesty and deter improper conduct.

Instances of the Hijab importance in Islam:

For example, a lady who wears a headscarf or covers her entire body with loose clothing can opt to cover her head and hair. She might also make an effort to refrain from too flirting, displaying too much affection, or dressing too revealingly. Men who follow the hijab can dress modestly and refrain from inappropriate behavior by donning loose-fitting clothes and avoiding exposing apparel. Wearing the hijab is generally a personal decision that can be made in a number of ways. While some Muslims may choose to wear the hijab, others may not. It's crucial to respect people's personal preferences and religious convictions.

Right of Women to Choose:

What a woman chooses to wear is irrelevant because the hijab is about her freedom of choice—as long as she feels good about it. Allah will also be pleased if she is happy with her appearance! The idea that women are forced to wear the hijab against their will is the most widespread misperception about it. This is completely untrue. The hijab is not a symbol of subjugation or brainwashing of men! Rather, Muslim women are allowed to wear whatever they want without interference since everyone has the right to decide how they wish to be perceived by the outside world.

The Muslim female Wearing a headscarf is a choice since it demonstrates how these young women feel about their engagement and requires them to dress with humility and be judged on their strength, wisdom, and character rather than how they appear on the outside! You are liberated from society's standards of beauty since no one can see your true appearance when you are covered up by a

headscarf.

Literature Analysis: In her book "Qur'an and Women," Amina Wadud interprets the Qur'an from an inclusive female perspective. She uses the Quran to support her claim that God treats women fairly. She makes sense of that God has clarified that he would lean toward one human over the other dependent just upon the degree of Taqwa¹, every one has. She takes note of that a considerable lot of the changes executed by Islam were made to help ladies and not men because of the current androcentric standard, which had proactively accommodated the male's requirements and needs. Wadud makes the point that, at its core, Islam seeks to provide its adherents with equity rather than equality as a foundation for a more just way of life and human interaction. Seventh century Arabia was a long way from an optimal society. It existed as a man centric society that externalized ladies and considered them to truly deserve some regard in light of their heredity and fortune.

As per Leila Ahmed in her book Ladies and Orientation¹² in Islam, just high society ladies wore hijab in pre-Islamic Center East. It was a way to separate between "decent" ladies, and ladies who were thought of as openly accessible, in this way were not permitted to wear the hijab (Ahmed). God only required Prophet Mohamed (PBUH)²'s wives to wear the hijab during his lifetime. Many Muslims consider the hijab and the Jilbab, a long dress for men, to be part of the Sunnah because Muslims consider the actions of Prophet Mohamed to be Sunnah. The hijab, consequently, worn by every Muslim lady - by then was above and beyond taken by Islam to delete the social ordered progression carried out on ladies by the social arrangement of the Pre-Islamic period. The association between the historical backdrop of hijab given by Leila Ahmed and the analysis of the Quran by Amina Wadud permits us to perceive how value was accomplished through Hijab during that time span. Despite the fact that it has been nearly 1440 years since Islam introduced the hijab, many Muslim women around the world still adhere to the custom.

In this research, I'll discuss a few of the factors that, in my opinion, encourage Muslim women to wear the hijab. Spirituality. Muslims depend on both the Quran and the Sunnah to direct their life. They adhere to the teachings of the Quran and imitate the actions and hadiths of Prophet Mohamed (PBUH)¹³. As a result, many Muslim women practice the veils worn by the prophet's wives as a sign of submission to God and as a means of expressing their own surrender to God by leading similar lives to the prophet's. They gain spiritual contentment and feel closer to God as a result. A few contend

¹² Explains Islamic Feminism

¹³ 'alayhi s-salām (عليه السلام), which translates as-"Peace be upon Him".

that the hijab nowadays makes numerous troubles for ladies, particularly in the Western world. They are puzzled as to why a woman would wear the hijab to show that she is submissive to God and give up her own convenience and comfort.

One word sums up my response: "love." In order to attain a higher and superior spiritual connection with the loved one—whether it be a human or God—one is bound to give up almost everything when they love.

CHAPTER 5

5.1 Unveiling Autonomy: Exploring the Personal Choice of the Hijab

Introduction:

The hijab, a symbol of modesty and faith, has been a subject of extensive discourse globally. Its significance extends beyond religious contexts, intertwining with cultural, social, and political narratives. At the heart of this discussion lies the concept of personal autonomy – the ability of individuals to make choices regarding their own lives, free from external coercion or influence. This essay delves into the complex relationship between personal autonomy and the hijab, examining how wearing or not wearing it reflects personal agency amidst societal expectations, religious beliefs, and cultural norms.

Understanding the Hijab:

The hijab, commonly associated with Islam, encompasses various styles and interpretations, including the headscarf, veil, or modest clothing worn by Muslim women. Its origins are rooted in religious scripture, where modesty is emphasized as a virtue. However, interpretations of hijab vary widely among individuals and communities, ranging from a religious obligation to a cultural tradition or personal choice.

Personal Autonomy Defined:

Before delving into the autonomy aspect of the hijab, it is crucial to define personal autonomy. Autonomy entails the capacity for self-governance and self-determination. It embodies the freedom to make choices that align with one's values, beliefs, and desires, without undue influence or coercion from external sources. Personal autonomy encompasses the right to bodily integrity, freedom of expression, and the pursuit of individual goals and aspirations.

The Hijab and Personal Autonomy:

The decision to wear or not wear the hijab represents a complex interplay of personal agency, societal expectations, religious convictions, and cultural influences. For some Muslim women, wearing the hijab is a deeply personal choice, rooted in faith and identity. It serves as a symbol of piety, modesty, and adherence to religious principles. In this context, wearing the hijab is an assertion of personal autonomy, a conscious decision to align one's outward appearance with inner convictions.

Conversely, for others, the hijab may symbolize oppression or patriarchal control, reflecting societal pressures rather than genuine choice. In contexts where wearing the hijab is mandatory or heavily enforced, individuals may experience a lack of autonomy, compelled to conform to societal norms or familial expectations. The absence of choice undermines personal autonomy, as individuals are denied the freedom to express themselves authentically and make decisions in line with their own beliefs and values.

Navigating Societal Expectations:

The intersection of personal autonomy and societal expectations regarding the hijab presents a complex terrain for Muslim women. In societies where the hijab is stigmatized or viewed as a marker of otherness, individuals may face discrimination or marginalization based on their choice to wear it. On the other hand, in communities where the hijab is mandatory or highly esteemed, deviating from this norm can also result in social ostracism or familial disapproval.

The challenge lies in reconciling personal autonomy with external pressures and expectations. For some, wearing the hijab may be an act of resistance against societal norms, reclaiming autonomy in the face of oppression or discrimination. For others, it may be a means of asserting cultural or religious

identity within a diverse and pluralistic society. However, genuine autonomy can only be achieved when individuals are free to choose without fear of reprisal or censure, whether they opt to wear the hijab or not.

Empowering Choice through Education and Dialogue:

Promoting personal autonomy in the context of the hijab requires a multifaceted approach that addresses both individual agency and systemic barriers. Education plays a pivotal role in empowering individuals to make informed choices based on their own beliefs and values. By fostering critical thinking skills and promoting dialogue around issues of identity, religion, and gender, educational institutions can create a supportive environment where individuals feel empowered to express themselves authentically.

Moreover, dismantling stereotypes and challenging societal prejudices is essential in creating a more inclusive and tolerant society. By amplifying diverse voices and narratives, we can challenge monolithic perceptions of Muslim women and recognize the multiplicity of experiences and perspectives within the community. This includes amplifying the voices of Muslim women who choose to wear the hijab as well as those who do not, validating their autonomy and agency irrespective of their sartorial choices.

Therefore, the personal autonomy of the hijab encapsulates the intricate interplay between individual agency, religious conviction, cultural identity, and societal expectations. While wearing the hijab can be a manifestation of personal autonomy and religious devotion for some, for others, it may represent a constraint on individual freedom or a symbol of patriarchal control. Recognizing and respecting the autonomy of individuals to make choices regarding the hijab is fundamental to fostering a more inclusive and equitable society. By promoting education, dialogue, and empowerment, we can create a world where individuals are free to express themselves authentically, irrespective of societal norms or expectations.

CHAPTER 6

6.1 HIJAB IN LEGAL BATTLEGROUNDS

Aishat Shifa v. State of Karnataka and Ors. (2022 SC),

2 Judges Bench Judgment dated: 13.10.2022

Facts & Case History:

Six students from the Government PU College in Udupi were barred from class because they were donning the hijab, which sparked the whole incident. Students' protests against the issue began on December 31, 2022. The students then filed several applications with the National Human Rights Commission and a writ suit in the High Court of Karnataka, Bengaluru. The college is headed by a Bhartiya Janata Party member of the Legislative Assembly, who stated that the females have just recently begun donning the hijab. Additionally, other Hindus who were dressed in saffron were demonstrating against the same. The spark quickly spread to neighboring institutions like wildfire.

Soon after, on 5.02.2022, a government order was passed, stating that students were expected to behave in a fraternal manner and adhere to the code of conduct in accordance with the Karnataka Education Act, 1983 and the government circular dated 31.01.2014. Additionally, as per the government order dated 5.02.2022, all schools, including private ones, must adhere to the uniform code set forth by the management. In the meantime, colleges under the department of pre-university education are required to follow a code that promotes equality, unity, and public order (*Resham v. The State of Karnataka and Ors*). Details after the dispute (the Karnataka High Court's interim ruling in *Resham v. The State of Karnataka and others*). The Karnataka High Court heard all of the applications together and issued an interim decision, striking at the core of the dispute. The Holy Quran mentions the initial beginnings of the concept of hijab, which the Honorable High Court examined.

1. ***Aishat Shifa v. State of Karnataka and ors.***¹⁴ (2022 SC) and other reliable sources as considered authentic amongst Muslims. The various interpretations suggested that wearing of the hijab is more a matter of faith than being an obligatory custom of the religion. Besides, proving that the educational institutions are not in violation of the Fundamental Right to religion, under Article 25, the interim order emphasized on the presence of some 'unseen hands'¹⁰ sparking this controversy. The court stated the complexity of the situation where an observer may form perspectives about a person wearing or not wearing the hijab but the reality only lies with the person wearing it or not wearing it. Further, the Hon'ble High Court dismissed the petitions as insignificant stating that this is a sudden problem when the uniform

¹⁴ 13 October, 2022

code of the Pre University College was being followed since 2004. All the petitions were rejected unanimously by the 3 judges bench.

Issues: There were many issues that were discussed in this case, however, in this case analysis, only those that have been discussed in the judgment at length, have been mentioned as follows:-

- (i) How broad and inclusive is Article 25 of the Indian Constitution—which guarantees the freedom of religion and conscience—and how does it relate to Articles 21 and 19 of the same document?
- (ii) In accordance with Articles 21 and 14 of the Indian Constitution, what does the word "essential religious practices" mean and encompass?
- (iii) Does the Karnataka government's order undermine the principles of brotherhood and dignity outlined in the Preamble and in Article 51(e) and (f) of the Indian Constitution as Fundamental Duties?
- (iv) Can a student claim the right to wear the hijab at a secular school and is the hijab an essential religious practice?

2. Resham v. State of Karnataka and Ors.¹⁵(2022 SC)

Court's Answer to the aforementioned questions: Before discussing the answers to each question aforementioned, this judgment was a Division Bench decision with a split verdict. This automatically means that each question aforementioned was answered differently by both the judges and therefore, there are two aspects to each question, and each opinion will be discussed with the names of the judges:-

With respect to the first issue Hon'ble Mr. Hemant Gupta, J. upheld the order passed by the Karnataka High Court and went in favour of maintaining status quo wherein, the students must not wear a hijab to their respective classrooms. This was supported by an explanation of the terms 'freedom of conscience' and 'freedom of religion' under Article 25(1). The reasoning was that the terms freedom of conscience and the freedom of religion are independent of each other. The difference between the two terms was pointed out wherein, the former was a freedom which ties one to one's conscience and it is this conscience which regulates their lives, whereas the latter, gives one the freedom to follow their own faith, thus regulating their modes of worship and beliefs.

Therefore, it is not appropriate to read Article 25(1) in isolation as it is susceptible to other Part III rules, including Article 14, as well as public order, morals, and health. The Government's directive to

¹⁵ 10 February 2022

the girls to adhere to the uniform code without the hijab was deemed appropriate by the Karnataka High Court. Honorable Mr. Hemant Gupta, J. affirmed this by saying that all rights under Article 25 are subject to limitations, particularly under Article 14, which upholds equality. The Government Order was only to promote equality and parity so as to maintain a secular environment and hence, Article 25 of wearing the hijab could be restricted as a reasonable restriction.

On the other hand Hon'ble Mr. Sudhanshu Dhulia, J. was of the view that the Karnataka High Court and the Karnataka Government cannot take away the right to freedom of expression under Article 19 of the Indian Constitution and the right to privacy and dignity of a person under Article 21 of the Indian Constitution, in the name of secularism. He stated that a court is not the right forum to decide what a religion is. He was of the view that as it is, a girl child has to struggle with education in many conservative societies even today and by imposing such rules on girls, is equivalent to devoid them of an educational opportunity. Thus, Article 25 can and must be practiced by these girls freely.

(ii) With respect to the second issue, the court was of the view that, post the judgment of *K.S. Puttaswamy and Anr. v. Union of India*¹⁶, privacy is one such aspect which is discussed at length in matters like these. Hon'ble Mr. Hemant Gupta, J. completely rejected the contention made in favour of Article 21. He rejected that the Government was trying to direct a private activity by prohibiting the wearing of the hijabs thus creating a restriction on the freedom to think and act freely in a private space as well, since wearing the hijab is a matter of choice. Instead, in his judgment, he laid emphasis on the preambular principles of secularism and the right to equality under Article 14, which should be maintained at any cost. He was of the view that by such orders by the government, they are merely promoting the idea of parity and secularism without any discrimination. Therefore, in this part of the judgment, hijab is not considered to be an essential religious practice.

On the other hand Hon'ble Mr. Sudhanshu Dhulia, J. is of the view that in the aforementioned judgment of *K.S. Puttaswamy v. Union of India*, it was stated by Hon'ble Mr. D.Y. Chandrachud, J. that dignity and freedom are intertwined. Further, the full value of liberty is realized only when one is able to protect their private space and think and act freely in it. No doubt the uniform code is to maintain a decorum in the school and college premises, but to this the court counter questioned in this part of the judgment. The counter question was, what is more important, the dress code or

¹⁶ (2017) 10 SCC 1

education of a girl child ? It is a fact that due to the hijab ban, many girls were unable to appear for board examinations and some had to take transfer to madrasas from good schools simply because of the hijab ban. Here Article 14 is getting violated too when a woman's garment is given more importance than her education and there is no doubt a violation of Article 21 of those girls who wish to wear the hijab. In this part of the judgment, it has been made evident that hijab ban is an attack on a girl's privacy, her dignity and right to a secular education, thus proving that hijab is an essential religious practice for some women and its ban leading to denial of Article 21, Article 25(1) and Article 19(1)(a) of the Indian Constitution.

(iii) In the third issue, Hon'ble Mr. Hemant Gupta, J. laid emphasis on the premise that the Fundamental Rights would hold meaning only when the Fundamental duties were carried out efficiently. Article 51A (e) and (f) promote common brotherhood and preservation of composite culture in our society and the hijab ban in that Government Order of the Karnataka Government was held to be valid as it was merely directing all the students to maintain that common brotherhood. In this part of the judgment, he threw light on the fact that it is not a ban but a promotion of prevention of any activity which harms the secular nature of our society.

However, Hon'ble Mr Sudhanshu Dhulia, J. was of the view that the context in which the Fundamental Duties Under Article 51A (e) and (f) is been taken is completely misinterpreted. This was supported by the view that since it is our Fundamental Duty to promote composite culture and the spirit of common brotherhood, the aforementioned Government Order of hijab ban is going completely against it, because it is only by the freedom of practicing their culture that one can say that it is a secular society, banning it would simply create an image of society which is not only curtailing liberty but the secular spirit of the society. Thus, here the Government Order was declared invalid.

The last issue at hand is infact the heart and soul of the entire controversy at hand. It simply directs to the question that whether the wearing of the hijab is correct or wrong in a secular educational institution.

In the judgment of Hon'ble Mr. Hemant Gupta, J. in Para 195 of the judgment evidently states and proves that why wearing of a uniform and following the code is essential. Para 195 is quoted as follows:-

"....In fact, uniform fosters a sense of 'equality' amongst students-instills a sense of oneness,

diminishes individual differences, help focus on learning a students would not be bothered about their social status, improves discipline, fewer conflicts in schools, promotes school spirit-....., ensures equality before educational institution, serves the end of diverse community and promotes a positive sense of communal identity and does not lead to the growth of disparities of wealth and style....”

“Fraternity, which is our Constitutional value, would therefore require us to be tolerant,.....We should remember the appeal made by Justice O. Chinappa Reddy in *Bijoe Emmanuel and Ors v State of Kerala*¹³ *“Our tradition teaches tolerance, our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it”*”. demonstrating the wisdom of the prohibition on the headscarf in educational institutions.

In paragraph 79 of the subsequent section of the ruling, Hon. Mr. Sudhanshu Dhulia, J. makes the following statements:

He states in Para 80 that:-

“ Under our Constitutional scheme, wearing hijab should be a matter of Choice. It may or may not be a matter of essential religious practice, but still is, a matter of conscience, belief, and expression. If she wants to wear a hijab even inside her classroom, she cannot be stopped, if it is worn as a matter of choice , as it may be the only way her conservative family will permit her to go to school, and in those cases, her hijab is her ticket to education... ”

The aforementioned paragraphs, i.e., 79 and 80 evidently point towards the fact that why the wearing of a hijab to an educational institution is valid. The two words tolerance and education have been linked in the most appropriate ways for allowing the wearing of the hijab.

Decision:

The court's split decision in this case indicates that there was not a unanimous decision. To summarize the issues, Hon'ble Mr. Hemant Gupta, J. upheld the orders of the Karnataka High Court and the Karnataka Government, which forbade the wearing of the hijab in educational institutions and required adherence to the uniform code. This was because the Indian Constitution's Article 25(1) guarantees the right to freedom of religion, but it also imposes reasonable restrictions, such as the preambular principles of secularism and Article 14's promotion of the right to equality. This secularism and equality were getting hampered by the wearing of the hijab in an educational

institution which promotes secularism and the Fundamental Duty of promoting the idea of composite culture and common brotherhood.

On the other hand, Hon'ble Mr. Sudhanshu Dhulia, J. was of the view that a court is not the right forum to decide for a particular religion or religious practice. However, in the language of law, a greater emphasis was laid on the Right to privacy and dignity under Article 21. It was stated that hijab should be a matter of choice. This wearing of hijab is sometimes a ticket to education in conservative families. The situation is so intense that many females face great challenges on a daily basis to seek education especially when they are from a conservative background and by denying the wearing of the hijab, they are merely adding to the struggles faced by these girls. Also, a violation of Article 21, i.e., her right to privacy, a violation of Article 19, i.e., her right to freedom of speech and expression. Besides the Fundamental Duty of promoting common brotherhood and composite culture is getting hampered because the ban of a hijab promotes the idea of intolerance towards the practice of another religion. Also, because this was a split verdict, the matter has now been referred to the court of the Chief Justice of India.

CONCLUSION

Never has it ever happened that when there is a controversy or question like hijab being universally compulsory on Muslim women, and one has not reached a valid conclusion. Hijab is not universally compulsory on all Muslim women from the very beginning and that is the reason why some women wear it and some do not. If that would not be the case, many women in the recent controversy in Karnataka would not have worn saffron hijabs in order to protect their rights of wearing the hijab and protesting against the government. On the other hand, there would not be women in Iran removing their hijabs to protest against the Iranian government. Both societies and both perspectives hold their value in their origins. As discussed before, the various societies have various origins of their veiling systems and today it all boils down to the perspective of every eye. Harmoniously, instead of creating such hue and cry about the wearing of hijab, many articles in this research suggested that it should be left upto a woman and quit forming perspectives on the same.

When it comes to the Constitution of India, hijab can be called an essential religious practice under Article 25 or the Right to a woman's dignity under Article 21 or maintaining equality by not wearing the hijab under Article 14. The Constitution itself has given varied perspectives to this one garment and a large majority believes that it should be left upto the person wearing it and the Constitution of India only supports the various perspectives drawn out of the wearing and the not wearing of the hijab

and everyone should that perspective which suits them because at the end of the day even the Constitution promotes the idea of better and free society.

The truth is that Article 25 might call it an essential religious practice, the orthodox Muslim families and women having firm beliefs in their religion might call it an obligation while the liberal people might call it a choice. Most researches conclude it to be a private affair and that it is to be decided by the women, however, no one answer can be reached because there will always be a difference in perspectives and in a matter as sensitive as this, there must be a harmonious construction of issues.

In a nutshell, through the above-mentioned we can analyse how the concept of Hijab has evolved not only in India but across the world. Apart from all the controversies, it has also become a new fashion trend where luxury brands taking the first mover advantage. Therefore, in my opinion Hijab has its perfect place in all the three aspects of it being an Essential religious practice, Spiritual expression and Personal autonomy, where education, mindset, lifestyle, income, and geographical factors also, playing a major role in how people from different societies think of Hijab.

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