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Case Comment: High Court Upholds Student Rights - Aishat Sifha v State of Karnataka

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INTRODUCTION

Muslim women cover their heads with a headscarf to express their beliefs, however wearing a headscarf is a controversial topic. Restricting their ability to do so violates their religious freedom and right to express their beliefs. These rights are basic in many legal systems and international human rights frameworks, representing the concept that people should be able to practice their religion and express their views without interference. Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights defend the right to free speech, including the freedom to seek, receive, and transmit information and ideas across borders. This includes the manifestation of religious beliefs via clothing, symbolism, and rituals. On the other hand, the practice is viewed as patriarchal, with women being compelled to wear hijabs. The Supreme Court of India considered whether a government decision that prohibited female Muslim students from wearing a headscarf or hijab inside of schools and colleges was constitutional in this particular instance. Following the Karnataka High Court's decision, multiple applications were filed with the Supreme Court of India, contesting the High Court's ruling. The petitioners asserted that the High Court's

interpretation of the basic religious practices’ doctrine was incorrect and that the prohibition on hijabs violated fundamental constitutional rights. The education department was notified that some students kept their religious observances, causing division and problems in the colleges and schools. As a result, the order was passed. The Government Order concluded that the ban on headscarves and other head-coverings does not violate Article 25¹ by referencing several Supreme Court and High Courts rendered decisions. The Preamble of the Constitution states that India is a secular country. Articles 25–28 provide the right to freedom of religion². Article 25(1)³ guarantees the freedom of conscience and the right to freely profess, practice, and promote religion. However, the state may restrict this right for reasons of public order, decency, morality, health, and other state interests. Article 26⁴ discusses the freedom to administer religious issues while maintaining public order, morals, and health. To avoid potential bloodshed, the state has previously restricted religious processions at periods of communal conflict. For example, during holidays such as Ram Navami or Muharram, when massive religious processions are frequent, the state may restrict the routes, dates, or size of these processions to minimize confrontations amongst religious communities. Also, in cases when religious leaders or groups have made provocative comments that might encourage violence or disturb public order, the state has intervened to limit such speeches. Article 27⁵ states that no one shall be compelled to pay taxes for the promotion or sustenance of any certain religion. Article 28⁶ discusses the freedom to attend religious instruction or worship in specific educational institutions.

FACTS OF THE CASE

Tehrina Begum and Aishat Shifa were second-year students at Kundapura’s Government Pre-University College. They both wear the hijab and follow Islam. These women were stopped at the institution's entrance on February 3, 2022, and told they would need to take off their headscarves to enter the college. The college administration denied them entrance because they

¹ Constitution of India 1950, art 25

² Sachi Ashok Bhiwgade, ‘Right to Freedom of Religion: Articles 25-28 of the Indian Constitution’ (*iPleaders*, 21 January 2020) <<https://blog.ipleaders.in/right-to-freedom-of-religion-articles-25-28/>> accessed 22 May 2024

³ Constitution of India 1950, art 25(1)

⁴ Constitution of India 1950, art 26

⁵ Constitution of India 1950, art 27

⁶ Constitution of India 1950, art 28

refused to take off their headscarf. Similar restrictions were enforced on other schoolgirls in other districts of Karnataka. The school rejected the students' request to cover their heads with the dupatta that comes with the uniform, claiming that they didn't need to wear a separate hijab made of a different colour or material. Although they were still able to wear the hijab on campus, they were no longer able to attend classes. It was stated that the abovementioned apparel violated the school's uniform requirement, preventing them from attending their lessons. On February 5th, the Karnataka government issued an order proclaiming that uniforms must be worn where there are requirements and that no exceptions may be made for wearing the hijab. The Appellant petitioned the Court to assess the legitimacy of a government order made under the Karnataka Education Act, 1983⁷. According to the Order, wearing religious symbols like headscarves interfered with student solidarity and uniformity. Furthermore, it argued that the ban on wearing headscarves in schools and universities did not violate Article 25 of the Constitution. The appellants, who were dissatisfied with the High Court's decision, claimed that the court erred in its interpretation of Article 25 and the Essential Religious Practices concept. They said that the headscarf was a fundamental element of their religious practice and that the restriction violated their constitutional rights.

ISSUES

1. Is wearing a hijab/headscarf considered an important practice of Islam guaranteed under Article 25 of the Constitution?
2. Mandating students to wear mandated uniforms is valid or not, whether it infringes on their basic rights, particularly those guaranteed by Article 19(1)(a) and Article 21.
3. Aside from being incapable and issued without power, is the Government order of 05.02.2022 considered arbitrary, and is violative of Articles 14 and 15?

ARGUMENTS FROM BOTH SIDES

Petitioners argued that wearing a headscarf is an essential religious practice in Islam and that the defendant's claim to prohibit the hijab in the classroom violates Muslim girls' rights under

⁷ Karnataka Education Act 1983

Article 25.⁸ They then contended that personal appearance and clothing choice are personal rights guaranteed by Articles 19(1)(a) and 21. The article gives all Indian people the right to free speech and expression. This freedom is vast and includes many other modes of expression, such as vocal, written, artistic, and symbolic expressions. Personal appearance, including dress choices, is viewed as a type of symbolic expression. People frequently utilize clothes to represent their identity, views, and connections, whether cultural, religious, or political. They further claimed that the hijab prescription violates women's autonomy and Article 14 by allowing gender-based discrimination, which Article 15 prohibits. According to them, Citizens have the right to express themselves through dress that aligns with their cultural traditions and identifies them as belonging to a specific community and culture, representing its values. Article 21 guarantees the freedom to make personal judgments, including those about clothes, without excessive interference from the state or others. Article 21's idea of living with dignity includes the freedom to dress in a way that reflects one's self-esteem as well as cultural or religious convictions. The respondents contended that Article 25's rights are not absolute that the authority to prescribe school uniforms is fundamental in the concept of school education and that the challenged government directive only allowed the prescription of dress codes by institutions themselves, not by itself. They argued that the simultaneous claims to wear hijab in the classroom under Articles 19(1)(a) and 25 are not only mutually incompatible but also devoid of each other.

JUDGEMENT AND RATIONALE

The High Court of Karnataka maintained the restriction on the wearing of the hijab, arguing that the state's desire to preserve consistency in educational institutions supports the restriction and that donning the hijab is not a required religious practice in Islam. Article 25(1) permits the state to place limits on the right to freedom of religion in the interest of public order, morality, and health; and the court determined that the ban on wearing the hijab is a reasonable restriction. The universal approach, according to the court, does not discriminate against any faith and instead fosters equality and the policy guarantees discipline and consistency, both of which are necessary for a positive learning environment. The Supreme Court's division bench

⁸ Constitution of India 1950, art 25

(Hon'ble Justices Hemant Gupta and Sudhanshu Dhulia) overseeing this matter, rendered a divided decision. As a result, the Court argued to be heard by a bigger bench of the Court, that the Chief Justice of India appoints.⁹ The Supreme Court remarked in this decision that the wearing of hijab should not have been addressed by establishing whether it is a fundamental religious practice. This is due to the country's democracy and the fact that educational institutions provide secular education. Furthermore, wearing a hijab does not violate public order, morals or health and protects a girl's privacy. The hijab is viewed as a physical barrier that allows a girl or woman to retain privacy by covering portions of her body that are deemed private, such as her hair and neck. This is seen as a means to shield her from unwanted attention and preserve her modesty, which is an important part of privacy in some cultures. Thus, the court ruled that there would be no restrictions on wearing hijab on school or college grounds.

ANALYSIS

Justice Gupta concurred with the High Court's decision and affirmed the constitutionality of the Government Order. The logic is founded on the assumption that the limits are transitory, proportionate, and designed to achieve legitimate educational purposes. These constraints are regarded as vital for sustaining the discipline, order, and equality required for a suitable learning environment. Furthermore, Justice Gupta stated that the Government Order was consistent with Article 14 since it sought to establish consistency, fraternity, and equality among students. On these grounds, he determined that the Government Order was constitutionally tenable and didn't violate the rights to free expression and privacy provided by Articles 19(1)(a) and 21. Whereas, Justice Dhulia determined that the Government Order violated Articles 19(1)(a) and 21. Justice Dhulia's interpretation was based on the inherent character of an individual's right to privacy and dignity, as protected by Article 21 of the Constitution. As a result, the Government Order, which ordered her to remove her headscarf before entering her school, violated her privacy and dignity. Finally, Justice Dhulia specifically disagreed with the High Court's interpretation of the original petition. He added that it was inappropriate to categorize the Government Order as simply restricting the exercise of the right to privacy and

⁹ Divyanshu, 'Case Analysis: Aishat Shifa v/s State of Karnataka' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-11643-case-analysis-aishat-shifa-v-s-state-of-karnataka.html>> accessed 23 May 2024

freedom of speech in schools. According to Justice Dhulia, it was critical for the High Court to first determine whether the Government Order met the established constitutional criteria of reasonableness to declare it constitutionally sound. Justice Dhulia declared the Government Order illegal because the State provided no legitimate or reasonable arguments for curtailing students' basic rights to freedom of expression and privacy.

Dr. Dhawan argued that the students' rights include the right to dress, free speech and expression that does not interfere with public order or morality, and the right to privacy, citing judgments in the National Legal Services Authority¹⁰ and K.S. Puttaswamy¹¹ case. It is argued that wearing a hijab is an essential religious practice and that the State's conduct is discriminatory based on religion and gender. The word 'Secular' was examined by a nine-judge Bench of the Supreme Court¹². It was determined that our Constitution does not ban the practice of any religion, whether privately or openly.

CONCLUSION

In India, it is much tougher for a girl student to attend school than for a boy in the household. The fundamental issue in this case is the wearing of the hijab in schools, is this an excessive or unreasonable demand in a democracy? The Karnataka Hijab Row is a complicated matter that brought up significant issues of human rights, religious freedom and the government's role in enforcing clothing standards. It is hoped that the decision will have significant effects on Muslim women's rights and religious freedom in India, even if the case is still pending in court. If the court finds in favour of the ban, it might set a precedent that allows for additional restrictions on religious garb in public places, notably in schools. This might result in increased restrictions on Muslim women's display of religious identity, thereby compromising their capacity to freely practice their faith. The ruling might impact how future laws and regulations are structured regarding religious liberties. The ruling will demonstrate how the Indian judiciary balances individual rights and state interests, especially in a varied and heterogeneous nation like India.

¹⁰ *National Legal Service Authority v Union of India* WPs (Civ) No(s) 212/2013

¹¹ *Justice K.S. Puttaswamy (Retd.) & Anr. v Union of India & Ors* WP (Civ) No 494/2012

¹² Sihvani A., 'S.R. Bommai v. Union of India : Case Analysis' (*iPleaders*, 16 January 2024)

<<https://blog.iplayers.in/s-r-bommai-v-union-of-india-power-of-presidents-rule-curtailed/>> accessed 23 May 2024