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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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Hijab: Is That An Essential Religious Practice?

Discussion With Regarding To Karnataka High Court

Decision On Hijab Ban.

Authored By- Imrankhan

ABSTRACT

Right to freedom of religion guaranteed under constitution of India. To apply it for a practice, the said practice has to be an essential religious practice or an integral part of that religion. The test to examine the same is that if that practice is stopped, the religion will cease to be a religion or its purpose will change. Whether the wearing of hijab is an essential religious practice? Not sure? Depends upon interpretation. But sure, right to follow Qur'an is an essential practice or integral part of Islam. This paper deals with what are the sources of Islam, how much authenticated it has to be, whether hijab is prescribed by Qur'an and Hadith, wearing hijab is religious practice or cultural practice, etc. This paper is a commentary of the judgement of Karnataka high court to the extent that deals with the wearing of Hijab and not deals with the validity of the order dated 05/02/2022.

FOR LEGAL RESEARCH & ANALYSIS

INTRODUCTION

Many religions and societies have the practice of wearing hijab or veil that cover their whole body¹. Many do as practice, many do as their wish. Islam mandates wearing hijab to its community women. Veil is in practice in many communities as cultural practice, religious practice long before Islam mandates it. To this day veil play a role in orthodox Judaism and Catholicism². It is worn by woman, as a pride, as an obligation, even due to force. But there is also woman who wear it as their choice even it is not an obligation for them to do. Veil is common in Islam to both men and woman as men has to veil himself from abdomen to thigh, easily covered by every clothes. But woman has to veil herself whole except her face and hands. So the play of hijab and its types are considered important.

Relevant Sources Of Islam

Before see what are relevant sources of Islam, we have to see what are the Sources of Islam. As accepted by the Karnataka high court and major scholars of Islam, the sources of Islam is considered to be 4 namely, Qur'an, it is the official religious text of Islam. Among the four sources, Qur'an is considered to be the primary source of Islam. It is believed as the words of God by the Muslim community globally³. Every law, principles, rights, duties, responsibilities, etc. of the people are dealt by the Qur'an⁴ and have to be derived by the Qur'an for the Muslim community. Those that are being derived have to be consistent with the Qur'an. Hadith, it is the most authenticated and reliable documents that must be relied upon when interpreting Qur'an. These are the proper reports of the prophet's sayings and deeds on interpreting Qur'an and contains many of the early Muslims who directly learnt from the prophet⁵. Ijma, it is the solution given to a particular problem by the consensus of Islamic scholars or agreement of Islamic jurists of particular time where that particular problem is not dealt directly by the Qur'an and Hadith. Ijma is not open to all people but limited to particular jurists lived in particular era⁶. Qiyas, it is the analogical reasoning

¹ <https://www.facinghistory.org/civic-dilemmas/brief-history-veil-islam>

² <https://www.facinghistory.org/civic-dilemmas/brief-history-veil-islam>

³ <https://www.bbc.co.uk/bitesize/guides/zpmm97h/revision/2>

⁴ <https://sites.udel.edu/msadelaware/major-sources-of-islam/>

⁵ http://www.oxfordislamicstudies.com/article/opr/t236/e0286?_hi=2&_pos=1#match

⁶ <https://blog.ipleaders.in/preliminary-sources-muslim-law/>

used to deducing judicial principles from Qur'an and sunnah⁷. It is used when there is a need to deal with a problem or an event in the modern world to solve it on the basis of Qur'an and sunnah. An example of Qiyas is the prohibition of marijuana based on the Prophet's statement: "Every intoxicant is Khamr and every form of Khamr is abominable." Since Marijuana has an intoxicating effect it can be classified as Khamr and thus abominable (prohibited)⁸.

Authenticated Sources Of Islam

Since the Karnataka high court have taken the book, [the holy quran : text translation and commentary](#) written by Abdullah Yusuf Ali, for interpretation of the Qur'an, we need to analyse the authenticity of this book compared to the very authenticated and most recognised and accepted texts i.e. al-Bukhārī, Muslim ibn al-Ḥajjāj, Abū Dā'ūd al-Sijistānī, Ibn Mājah al-Qazwīnī, Abū 'Īsā al-Tirmidhī and Abū 'Abd al-Raḥmān al-Nasā'ī for hadith texts and thafseer ibn katheer for Qur'an interpretation. The court stated in its verdict that it relied upon the book [the holy quran : text translation and commentary](#) due to its broad unanimity at the bar as to its reliability and authenticity. There are many number of text books written on the whole subject of Qur'an or about specific topic on it. Many books were written by scholars of islam and many are by non - scholars as well. The question arises here is whether its authenticity are more than the authenticity of the Hadith books? As preserved for subsequent generations these reports, or *ḥadīth*, take the form of usually short, unconnected pieces, each of which is preceded by a list of its authoritative transmitters⁹. The authenticity of the Hadith books specifically mentioned above was taken care by taking measures not to change, alter, or do anything that affects its originality in every aspect. The compilers were careful not to tamper with the texts as they received them from recognized specialists in *ḥadīth* transmission, and the collections reflect their spoken origins. The language is direct, conversational, active, often repetitive, with a characteristic use of formulaic expression¹⁰. The scholars who took this task of organising, verifying authenticity of Hadiths devoted their lives for this job to make this work more effective and authenticated. After two centuries of collecting, transmitting, and teaching *ḥadīth*, during which the quest for reports became one of the most

⁷ <https://www.britannica.com/topic/qiyas>

⁸ <http://ddeku.edu.in/Files/2cfa4584-5afe-43ce-aa4b-ad936cc9d3be/Custom/The%20Sources%20of%20Islamic%20Law.pdf>

⁹ http://www.oxfordislamicstudies.com/article/opr/t236/e0286?_hi=2&_pos=1#match

¹⁰ http://www.oxfordislamicstudies.com/article/opr/t236/e0286?_hi=2&_pos=1#match

respected occupations of the Muslim community, scholars intensified the work of codifying the bulk of the material. The ninth century CE produced six massive collections, which have won almost universal acceptance by the Sunnī community as the most authoritative. They are commonly known by the names of their compilers: al-Bukhārī (d. 870); Muslim ibn al-Ḥajjāj (d. 875); Abū Dā'ūd al-Sijistānī (d. 888); Ibn Mājah al-Qazwīnī (d. 887); Abū 'Īsā al-Tirmidhī (d. 892); and Abū 'Abd al-Raḥmān al-Nasā'ī (d. 915). Two other collections as well have always enjoyed great favor with the Sunnīs, namely those of Mālik ibn Anas (d. 795) and Aḥmad ibn Ḥanbal (d. 855)¹¹. So the Hadith books have authenticity and reliability all over the world by every muslim scholars from the date of its organising till present. The book with unanimity at bar level cannot overrule the globally accepted Hadith books. As these Hadith books are one of the official religious sources of Islam it only contains the work and ideas of the prophet, his companions and persons who are authorized to do it. But the book written by Abdullah Yusuf Ali and many other scholars like him have high probability of containing their own ideas, interpretations in their books. Probability of making the book on their point of view is high. So this is the reason why it is not advisable to rely on other sources other than the sources of islam as we already said. And there is no need to rely on other sources when there is authoritative text on Islam, same in the language of the court, English. Each Hadith book have its authors with high credential value where the credential value of the book of Abdullah Yusuf Ali is comparatively very low. Mujtahid Mutlaq (is a term refer to who) is an absolute jurist, usually the founder of a school, who follows his own opinion even with respect to the rules of interpretation. Imam Bukhari is one them¹². This doesn't mean that the author of the text can interpret the it in his own opinion, but his interpretations are subject to Qur'an and sure it will be for a jurist who memorise 7000 Hadiths.

¹¹http://www.oxfordislamicstudies.com/article/opr/t236/e0286?_hi=2&_pos=1#match

¹²

Prescription Of Hijab By Qur'an And Hadith

The Qur'an not in all cases gives a detailed explanation of what a verse mean. Some verses may be simple general expression which don't need any explanation and some verses will be vague in its expression. Reader cannot understand what is the purpose of this verse? Why it is revealed? And in Both the cases a reader to understand the objective, purpose, and meaning of a verse he must have to refer to Tafsir. Tafsir is the science of explanation of the Qur'an, the sacred scripture of Islam, or of Qur'anic commentary¹³. The Tafsir of the Quran is done by no ordinary person with basic astuteness and comprehension of Islam. Rather it is done by individuals after obtaining broad intellect and information about Islam. A writer of Tafsir is [a Mufassir](#)¹⁴. So there will be no question arise as to the credentials of the author of the tafsir. Although Muslims read the Quran and pursue it with interpretation regularly, the reading of Tafsir has its significance. The goal of a Tafsir is to discover the genuine implications of the sections/chapters of the Quran¹⁵. In one of the most authentic and famous tafsir called tafsir-ibn-kathir, verse 24:31of Qur'an is explained in the following words:

“And not to expose their ado ment except that which necessarily appears thereof and to wrap a portion of their head covers over their chests - Qur'an (24:31).

and not to show off their ado ment except that which is apparent, means, they should not show anything of their ado ment to non-Mahram men except for whatever it is impossible to hide.

Ibn Mas`ud said:

Such as clothes and outer garments, Meaning what the Arab women used to wear of the veil which covered their clothes and whatever showed from underneath the outer garment. There is no blame on her for this, because this is something that she cannot conceal. Similar to that is what appears of her lower garment and what she cannot conceal. Al-Hasan, Ibn Sirin, Abu Al-Jawza, Ibrahim An-Nakha`i and others also had the same view as Ibn Mas`ud.

¹³ <https://www.britannica.com/topic/tafsir>

¹⁴ <https://hidayahnetwork.com/10-reasons-why-learning-tafsir-is-important/>

¹⁵ <https://hidayahnetwork.com/10-reasons-why-learning-tafsir-is-important/>

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وَأَلْيَضُرْبَيْنَ بِخُمْرِهِنَّ عَلَى جُيُوبِهِنَّ

...

and to draw their veils all over their Juyub, means that they should wear the outer garment in such a way as to cover their chests and ribs, so that they will be different from the women of the Jahiliyyah, who did not do that but would pass in front of men with their chests completely uncovered, and with their necks, forelocks, hair and earrings uncovered. So Allah commanded the believing women to cover themselves, as He says:

يَا أَيُّهَا النَّبِيُّ قُلْ لِرِزْوَانِكَ وَبَنَاتِكَ وَنِسَاءِ الْمُؤْمِنِينَ يُدْنِينَ عَلَيْهِنَّ مِنْ جَلَابِيبِهِنَّ ذَلِكَ أَدْنَى أَنْ يُعْرَفْنَ فَلَا يُؤْذَيْنَ

O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks all over their bodies. That will be better, that they should be known, so as not to be annoyed.
(33:59)

And in this noble Ayah He said:

وَأَلْيَضُرْبَيْنَ بِخُمْرِهِنَّ عَلَى جُيُوبِهِنَّ

(and to draw their (Khumur) veils all over their Juyub.

Khumur (veils) is the plural of Khimar, which means something that covers, and is what is used to cover the head. This is what is known among the people as a veil.

Sa`id bin Jubayr said:

وَأَلْيَضُرْبَيْنَ

(and to draw), means to pull it around and tie it securely.

بِخُمْرِهِنَّ عَلَى جُيُوبِهِنَّ

(their veils all over their Juyub), means, over their necks and chests so that nothing can be seen of them.

Al-Bukhari recorded that Aishah, may Allah be pleased with her, said:

May Allah have mercy on the women of the early emigrants, when Allah revealed the Ayah:

وَأَلْيَضُرْبَيْنَ بِخُمْرِهِنَّ عَلَى جُيُوبِهِنَّ

(and to draw their veils all over their Juyub), they tore their aprons and Akhtamar themselves with them.

He also narrated from SafiyyahbintShaybah that Aishah, may Allah be pleased with her, used to say:

When this Ayah:

وَأَلْيَضُرْبَيْنَ بِخُمْرِهِنَّ عَلَى جُيُوبِهِنَّ
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(and to draw their veils all over their Juyub) was revealed, they took their Izars (waist sheets) and tore them at the edges, and Akhtamar themselves with them.”¹⁶ It is clearly explained in the text that there is two garments the Arab women used to wear, one is inner garment (normal dress) and another one is outer garment (the veil). Allah (God Almighty) mandates the woman to cover her inner garments using their outer garments and excepts certain portions that are not able to be covered.

¹⁶tafsir-ibn-kathir, verse 24:31

Wearing Hijab Is Qur'anic Injunction

Injunctions are commandments/ *اوامر* and Prohibitions/ *نواهي*. Commandments require the doing of a thing in a certain manner¹⁷. As we saw in the previous section, the Qur'an mandates a woman to cover her inner garments in a certain manner I.e with outer garments. The outer garments is therefore a Qur'anic injunction and it has to be followed by the muslim woman immaterial of their culture, nationality and domicile. The only requirement that need to be fulfilled in order for a woman to be vested with a duty of wearing an outer garment is that she has to be a muslim.

Constitution And Freedom Of Religion

Article 25 of constitution of India,

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 of the constitution of India provides protection to the freedom of conscience and freedom to profess, practice, propagate any religion. However these freedoms are subject to certain

¹⁷

limitations such as public order, health and morality. It is evident for a prudent man to say that wearing hijab don't have any business to infringe the above mentioned conditions. And the clause 2 of article 25 of the constitution of India empowers the state to make any law that restricts or regulates any kind of secular activities associated with religious practice. The word 'secularism' means separate from religion¹⁸. When the court said that the activity of wearing hijab is not mandated anywhere in the Qur'an, the said activity can be said by the court as a secular activity. But after referring to relevant sources of Islam, it is proved that wearing of hijab is mandated by Islam. So the restriction made on clause 2(a) of article 25 cannot be invoked by the activity of wearing hijab. Secondly clause 2(b) of article 25 empowers the state to make any law that provides social welfare and reforms. The court said this clause is not only confined to Hindu religion but also extends to all religion. This clause can deal the matter with a view to make social welfare and reform against forcible religious acts of wearing hijab. Of course no person is subject to those forcible acts of religion if they are of a mind that it deprive their rights and freedom. This clause empowers state to make laws for the protection of such kind of people. But the question arises that how the law should be? whether in the nature of protecting those people who don't want to wear hijab or in the nature of depriving all people including those who want to wear hijab. So this clause empowers the state to the extent only to protect those who seek protection and not to deprive those who want to wear hijab as a matter of Qur'anic injunction. On the other hand the Qur'an says

"Indeed this Qur'an guides to the path which is clearer and straighter than any other." - Qur'an(17:9).

The muslim community believes that Qur'an is a guidance and through following which the community can achieve the happiness of their God and be successful in here and hereafter.

"(the Qur'an is)A guidance and a mercy unto the righteous ones."Qur'an (31:3).

¹⁸ https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004092006210960varun_law_Freedom_of_religion.pdf

Malik reported: The Messenger of Allah, peace and blessings be upon him, said, *“I have left you with two matters which will never lead you astray, as long as you hold to them: the Book of Allah and the Sunnah of his Prophet. Source: al-Muwatta’ 1661”*¹⁹

The belief of the muslim community is vested in following the Qur’an and acting upon what is said in it. The doctrine or belief of any religion is protected under article 25 of the constitution of India. The case ‘acharya jagadhishwaranandaavadhuta’, supra, mentioned by the court in its judgement states that *The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion.* So it is evident that the muslim community is entitled to follow the Qur’an under Article 25 of the constitution of India.



¹⁹ <https://www.abuaminaelias.com/dailyhadithonline/2012/12/19/left-you-with-kitab-sunnah/>

Conclusion

“Let there be no compulsion in religion. The right course has become clear from the wrong. So whoever disbelieves in taught and believes in Allah has grasped the most trustworthy handhold with no break in it. Allah is all hearing and all knowing” Qur’an (2:256).

Compulsion is good. Compulsion is necessary. Compulsion is mandatory within religion so as to keep one in right path. This verse ask not to compel anyone to embrace the religion. But it also didn't prohibit one from compelling someone to do necessary acts by the religion. Similar to parents and children relationship. But socially if compulsion is not healthy for people let them do as per their wish. We don't have any right to compel a student not to wear hijab. Let them do as per their wish.

REFERENCE

- Qur'an
- Tafsir ibn kathir
- Karnataka HC judgement on Hijab ban

