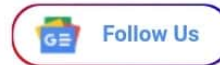


Hijab Controversy: A Litmus Test for Indian Democracy

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India as a multicultural society has faced many challenges since its inception as a democratic-republic state with respect to conflicts between uniformity and diversity. Human's psyche has always faced the fears of the unknown since birth. The quest for security makes one anxious to make everything certain and familiar. Differences and diversities are considered as sworn enemies for a certain and predictable life desired by human's mind. This desirability leads to create and develop institutions which have predictive values. Indian Constitution, for example, experimented with the desirability to make Union of India as stable state with the preservation and protection of cultural, linguistic, and religious diversities. Unity in diversity was agreed upon by the constituent assembly so as to nurture India as a secular and culturally vibrant society. The fundamental duties added in Indian Constitution through 42nd Amendment prescribed to value and preserve the rich heritage of Indian composite culture. One of the chief characteristics of the Indian

Constitution is that it takes the rights of minorities very seriously. Article 29 of the Indian Constitution recognizes minorities on the basis of “distinct language, script or culture”. Article 30 identifies the minority status on the basis of religion or language. Both the articles recognize culture as the common framework which may subsume all the categories identified under the provisions of these Articles of Indian Constitution. To protect the cultures of minorities, the Indian Constitution not only allows its preservation but also guarantees the fundamental entitlement to “establish and administer educational institutions of their choice”. The spirit of minority rights lies not in a compromise between majority and minority rather it is an essential concomitant of a multicultural-pluralistic society.

The Indian Constitution guarantees every person to have a fundamental right of freedom of conscience and freedom of “profession, practice and propagation of religion”. This right is reasonably restricted on the ground of public order, morality and health. In case of conflict between the right of religious freedoms and other fundamental rights, the latter rights prevails over the prior one. Since the very inception of the Indian Constitution, the right to have religious freedoms was categorized between and faith in the practice. The question of practice was dichotomized as essential and non-essential for religion. In the words of Dr. B. R. Ambedkar, “We ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious”. This categorization was further recognized by Justice B.K. Mukherjea in the Shirur Mutt case, when he expounded the doctrine of Essential Practice of Religion. In his words, “[I]t would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and models of worship which are regarded as integral parts of religion”. This doctrine elevated the status of the Constitutional Courts as the high priest in determining the essential practices to construe a religion. In

Aishat Shifa v. The State of Karnataka & Ors., this question was raised before the Supreme Court of India with respect to wearing hijab by two girls who follow Islam. These two girls were stopped from entering the classroom by the college administration on the grounds that they were wearing hijab. The Government order dated 5th of February, 2022 mandated that every Government School must have school uniform or students should wear clothes which are “in the interest of unity, equality and public order”. Both the girls filed the Writ Petitions before the Karnataka High Court, which were rejected on the grounds that wearing hijab by a Muslim women is not an essential practice of religion for Islam and thus prohibiting the students to enter into the classroom is a reasonable restriction permissible under Indian Constitution.

Split Verdict of the Supreme Court

Justice Hemant Gupta emphasised upon uniformity and equality as the rationales for school or college uniform, which are essential for secularism. As per his opinion, “The uniform is to assimilate the students without any distinction of rich or poor, irrespective of caste, creed or faith and for the harmonious development of the mental and physical faculties of the students and to cultivate a secular outlook”. His judgment relied upon discipline as a parameter to promote equality and secularism. On the contrary, Justice Sudhanshu Dhulia, inspired

by liberal doctrine of tolerance and reasonable accommodation, rejected the paternalistic approach of the State. While referring to the judgment of Karnataka High Court, Justice Dhulia was of the opinion that “schools are not required to have the discipline and regimentation of a military camp”. He was in agreement with Justice Gupta as far as discipline in schools is concerned but discipline at the cost of freedom, dignity, and privacy was not acceptable to him. In the end, both the judges rejected the doctrine of Essential Practice of Religion in deciding the case of wearing hijab, rather both the judges approached this case from two opposite point of views, i.e. disciplinary equality or liberal autonomy.

Conclusion

Michel Foucault, a French philosopher, expounded the multifaceted characters of power, which cannot be grasped in traditional sense only. The disciplinary or normalizing power exercised by schools, colleges, universities, or hospitals are also a manifestation of humanising power, which moulds and characterises human's psyche as per the certain parameter. What is gained and lost in regimentation to achieve uniformity?

Undoubtedly, the uniqueness of human's agency is compromised for the sake of achieving mechanical equality. Human's agency has a constitutive role in the progression of just and fair society. Instead of envying differences, a good citizenry virtue requires engagement in a public sphere to develop a political conception of good life. It is achievable only in a dialogic culture of persuasion, differences, and agreement. Every attempt to discipline human's conducts or eliminate cultural differences through rewards, punishments, or regimentation has only produced the ugly character of mistrust in the society. The hijab controversy is no exception to that. Instead of taking an assertive position on this issue, the State is supposed to be a guarantor of open public space for the sake of achieving unity in diversity or symmetry in asymmetry in cultural plurality.

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