



AN ANALYTICAL STUDY ON THE INTERSECTION OF RELIGIOUS FREEDOM AND EDUCATION IN INDIA

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Abstract

This analytical study examines the complex intersection of religious freedom and education in India, a nation characterized by its rich religious diversity and a constitutional commitment to secularism. The research delves into how the Indian legal framework balances the right to religious freedom, as enshrined in Article 25 of the Constitution, with the state's mandate to provide universal education, encapsulated in Article 21A. The paper explores key issues such as the role of religious instruction in schools, the rights of religious minorities to establish and administer educational institutions, and the tensions arising from the implementation of secular education policies in a religiously pluralistic society.

Through a comprehensive review of judicial interpretations, legislative measures, and policy developments, the study highlights the ongoing challenges in harmonizing religious freedoms with educational objectives. Notable cases, such as the Supreme Court's judgments on the right to wear religious symbols in educational institutions and the autonomy of minority educational institutions, are critically analysed to understand their implications on the broader discourse of religious freedom and education.

The research also addresses contemporary debates on the inclusion of religious education in public schools, the impact of government regulations on the operation of religious schools, and the efforts to promote educational inclusivity while respecting religious sensitivities. By evaluating the effectiveness of existing policies and suggesting possible reforms, this study aims to contribute to the discourse on ensuring equitable and inclusive education that respects religious diversity in India. The findings underscore the need for a nuanced approach that upholds constitutional values and promotes harmonious coexistence in India's multicultural educational landscape.

Keywords: Religious Freedom, Constitutional rights, Secularism, Educational Policy, Religious Instruction, Inclusive Education.

I. THE CONCEPT OF DHARMA

The moral values, righteousness and ethical values are involved in the concept of Dharma. Dharma demands purity of thoughts and actions. While considering the ancient life of people, it has come to knowledge that dharma had very important place in society as righteousness was the major goal of human life, called '*purusarthas*'. The word 'dharma' has been derived from etymological expression

‘dhr’ which means the conduct which is binding and supportive in upholding moral values. Dharma acts as the guiding principles for human conduct and ethics which may lead to good life. Dharma plays an important role in all aspects of life such as science, literature, religion, arts, sociality, spirituality, polity as well as morality. Dharma means social order. This results into worthy and quality life. The origin of dharma is found in Vedic age which regarded dharma as the principles necessary to bring order in the universe. Various religious books provide the concept of dharma as the rules to be observed in family and society. The concept of dharma varies from person to person, religion to religion, culture to culture, place to place and according to the time-period. Further, dharma is considered as one of the four goals of life which is termed as ‘right actions.

The Court in the case of *A. S. Narayana Deekshitulu v. State of Andhra Pradesh & Others*¹, quoted the concept of Dharma in following words:

“It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore, that which ensures welfare of living beings is surely Dharma. The learned rishis have declared that which sustains is Dharma. When Dharma word is used in context of duties of the individuals and powers of the King then it means Constitutional law or Rajadharma. When it is said that Dharamarajya is necessary for peace and prosperity of the people and for establishing an egalitarian society, the word Dharma means rule of law and not rule of religion. Any action, big or small, that is free from selfishness, is part of Dharma. Thus, loving human beings is Dharma.”

II. SECULARISM

India is a secular country where all religions have equal importance. India has no religion of its own. People from various religions live in this country. Hindu, Buddhist, Sikh, Parsi, Jain, Muslim, Christian and so on, people observing their religious faith live their life accordingly. The Constitution of India provides that secularism is basic structure of the Constitution.²

The concept of secularism has grown in the west. One Muslim Country in the Middle East decided to put an end to discrimination based on religion and that country is the Emirates. This is a Muslim country. There one can find a few Mosques, Churches, Sikh Gurudwara, Temple as well as Jewish Synagogue. In this country people from all religions are residing together in peace. Full freedom and great respect have been provided even to non-Muslims.³ The concept of secularism has developed a lot over the period of time. India is a democratic country which consists of multiple religions, faith, languages, region, clothing as well as food. Any kind of encroachment by the religion over the secularism is not permissible. Under the concept of secularism, all religions are treated equally. There is respect for all religions and the practices of all religions are protected. There would be no discrimination on the basis of religion, religious faith or practices. So, complete neutral approach is to be adopted.

The word ‘secular’ was inserted in Preamble of the Constitution of India by 42nd Amendment, 1976. It shows safety to personal laws of the people. These personal laws are based on particular religion. Judiciary has played its pivotal role in defining the word ‘secular’ as following:

As in the case of *Smt. Indira Nehru Gandhi v. Shri Raj Narain*⁴, the Apex Court held that “the secular character of the State is that the State shall not discriminate against any citizen on the ground of religion. Secularism is basic structure of the Constitution of India.” Further in the case of *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra & Others*⁵, the Court stated that “the secular State, rises above all differences of religion and attempt to secure the good of all its citizens irrespective of their religious beliefs and practices.” In *S. R. Bommai & Other v. Union of India & Others*⁶, the Bench which consisted of nine judges of the Apex Court, held that “the Constitution of

¹ (1996) 9 SCC 548.

² The Constitution of India, the Preamble.

³ How religion should be practices, available at: <http://www.nasdaily> (Visited on June 10, 2024)

⁴ 1975 SCC 1.

⁵ (1976) 2 SCC 17.

⁶ (1994) 3 SCC 1.

India does not prohibit the practice of any religion privately or publicly. The State is enjoined to accord equal treatment to all religions and religious sects and denominations.”

Justice H. R. Khanna, in the case of *Santosh Kumar & others v. Secretary, Ministry of Human Resources Development & Another*⁷, has stated that “secularism is neither anti-God nor pro-God. It treats alike the devout, the agnostic and the atheist. Secularism is not antithesis of religious devoutness. he would like to dispel the impression that if a person is devout Hindu or Muslim, he ceases to be secular.”

III. RELIGION AS PART OF EDUCATION

The need has been realised to teach young students their national values through curriculum in schools and colleges. This suggestion has been given by Justice Chavan Committee through its report. The topics of imparting religious and national knowledge should be such as freedom struggle of India, cultural heritage of India, respect for national identity as well as for Constitutional obligations. Religious knowledge can be imparted to students at primary, middle as well as secondary level education and also at college and university level. There is need to explain the concept of religion which is in vague condition now a days. The real philosophy behind every religious practices should be understood as the basic idea behind every religion is common and there is only difference of practices. Religion teaches us the co-operation and not hatred among various religions.

As far as the inclusion of religions related education is concerned, it can be made part of curriculum framework of educational institutions. In respect of this issue, the Court in the case of *Ms. Aruna Roy & Others v. Union of India & others*⁸, has held that “a word of caution is required here. Education about religions must be handled with extreme care. All steps must be taken in advance to ensure that no personal prejudice or narrow-minded perceptions are allowed to distort the real purpose of this venture and no rituals, dogmas and superstitions are propagated in the name of education about religions. All religions therefore have to be treated with equal respect which is called ‘sarva dharma sambhav’. There has to be no discrimination on the ground of any religion which is called ‘panthnirapekshata’.”

As far as the freedom of religion in educational institutions is concerned, the educational institutions which are fully funded and maintained by the State, are not allowed to give any religious instructions in the educational institution. This principle does not apply where the educational institution which is established under a trust or endowment though administered by the State. In the case of *DAV College*,⁹ it was held that academic studies of saints and Guru Nanak is not prohibited under Article 28(1) of the Constitution of India. Further, a person can not be compelled to take part in any religious practice unless he or his guardian gives consent thereto. The Court stated that “though it is a right conferred on the minority communities to impart education in their educational institutions in their regional language, but this right can not be absolute.” The educational institution which is imparting instructions in its regional language, must also lay down instructions in other languages which the students from different religions can understand. An educational institution can not discriminate between students of one community and the other on basis of language. Thus, in this case, the Court struck down the restrictive clauses of the educational institution which imparted education only in one language as violative of the provisions of the Constitution of India.¹⁰ Further in *Bijoe Emmanuel v. State of Kerala (National Anthem case)*¹¹, held that no one has right to infringe other’s fundamental right to religious freedom. The Apex Court, through its judgement in *P. A. Inamdar and Others v. State of Maharashtra and Others*,¹² has laid down the rule that the reservation policy of the educational institutions in respect of admission would apply only to the minority educational

⁷ (1994) 6 SCC 579.

⁸ (2002) 7 SCC 368.

⁹ *D.A.V College, Bathinda v. State of Punjab and Others*, 1971 AIR 1731.

¹⁰ Art. 29, 30.

¹¹ 1986

¹² 2005

institutions. Also, the reservation should be based on merit and opportunity should be given to students from all religions and linguistic communities in India.

In January, 2024, Justice A. Muhamed Mustaque, while delivering a judgment in Kerala High Court, has given the statement that private schools are required to desist from religious education at schools. This judgement is based on Article 28 of the Constitution of India. This statement has been criticised.

IV. FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA

Article 25 to 28 of the Constitution of India provides for freedom of religion as a fundamental right. The right to religion includes freedom of conscience, right to practice and propagate religion, right to manage religious affairs, right of exemption from paying taxes in respect of promotion of freedom, freedom of religious worship and so on.¹³ This freedom can not be availed in case there is danger to public order, health and morality.¹⁴ In *T.M.A. Pai Foundation & Others v. State of Karnataka & Others*¹⁵, it was held that the State has right to lay down any law in respect of religious practice and this right of State is provided under the Constitution of India.¹⁶ This law can be dealing with the economic, political, financial, or other activities connected with the religious practice.

In the case of *Indian Young Lawyers Association & Others v. State of Kerala & Others*¹⁷, the Court laid down the principle that the morality as ground of restriction under the Constitution of India means the constitutional morality and not the personal morality.¹⁸ Freedom to manage religious affairs include freedom to establish and freedom to maintain religious institutions. The religious community has right to manage matters of its religious affairs. The Community following any particular religion has freedom to acquire property for its religion as well as to administer the same.¹⁹ The Constitution of India provides freedom from payment of taxes by any person in respect of promotion, expenses and maintenance of any religious affairs.²⁰

In *S. P. Mittal v. Union of India*²¹, the Apex Court explained the concept of religious denomination which includes; collection of individuals who have common faith, who establish a common organisation and have their distinct name. Further in, *K. S. Puttaswamy v. Union of India*,²² the choice to wear and dress as one wants is protected under privacy jurisprudence.

V. MEANING OF THE TERM ‘HIJAB’

Hijab means the physical head scarf. This is a veil of protection and is considered as a spiritual veil. Hijab means a shield which is used by a person against negative influences. The purpose of wearing hijab is to observe the modesty and to follow the morality based on Islamic values. Further purpose is to attain blessings of God. This is believed that wearing of hijab should begin from the age of puberty. The head and hair should be covered. Hijab can be of two types; for men and for women. For men, this is called the hijab of the eyes. Under Islam, a man is required to lower his gaze when looking at a woman and this is called the hijab of the eyes. For women, the whole body of the woman should be covered including her hair.

VI. THE KARNATAKA HIJAB ROW

In a school at Karnataka, a group of Muslim students was restricted from attending the classes with hijab/head scarf.²³ Six girl students of a government run women’s college in Udupi district in

¹³ 25-28

¹⁴ 25(1)

¹⁵ Writ Petition (Civil) 317 of 1993.

¹⁶ Article 25(2)(a)

¹⁷ Writ Petition (Civil) 373 of 2006

¹⁸ 25(2)(a)

¹⁹ Art 26.

²⁰ Art 27

²¹ 1982

²² (2017) 10 SCC 1.

²³ Smt. Resham & Another v. State of Karnataka & Others, 2022.

Karnataka were asked to remove their head scarfs and only then could enter class and could attend lectures. The school authorities called wearing of hijab as violation of school uniform policy and took the defence that as students of other religions are also following the uniform policy so should be done by Muslims. The students could wear hijab in the campus but not in the class room. This restriction by the school was based on the order passed by the government of Karnataka on February 5, 2022. This order was issued under the Karnataka Education Act, 1983.²⁴ This governmental order directed the College Development Committees, all over the Karnataka State, to lay down the student's uniform rules. This was also based on the Karnataka Educational Institutions Rules, 1995.²⁵

Some people called this ban as a political motive of the government. As when the ban was imposed, and the Muslim students opposed this ban then a group of Hindu student nationalists came forward with saffron scarves on their heads as a protest against wearing hijab. The defence taken by the Muslim students was that as they are Muslim and they feel proud in wearing burqa. The female students were not ready to remove their hijab as they pleaded that hijab is symbol of their modesty. This was also said that this ban violates Article 19(1)(a) of the Constitution of India which provides for freedom of expression as well as violation of Article 21 which provides for right to privacy. Women's autonomy under Article 14 is breached. The ban depicts gender-based discrimination.²⁶

The aggrieved students (Muslim women) approached the Karnataka High Court and filed the petition against the governmental order under which the wearing of hijab was banned in school class rooms.

Following issues were raised before the Court:

- Right to Equality
- Right to Practice Religion
- Right to access Education
- Right to Speech
- Right to Privacy
- Right to Dress and Dignity

The Karnataka High Court, through its verdict on March 15, 2022, imposed a temporary ban on all religious symbols at school and imposed permanent ban on wearing hijab in class. The reason given for this decision was that wearing of hijab is not the essential religious practice in Islam. The Court ordered reopening of educational institutions and directed the students to return to their classes. Further, pending consideration of all the issues, the students were restrained, regardless of their religion, from wearing saffron shawls, scarfs, hijab, religious flags and the like within the classroom. Following reasons were given by the High Court for its decision:

- Wearing hijab is not essential part of religious practice.
- Wearing hijab is only a cultural practice.
- Women wear hijab as a security and protection.
- The culture of wearing hijab is based on the socio-cultural conditions which were prevailing at the time the Quran was written.

However, this order of High Court was opposed worldwide such as by US. Pakistan, Human right bodies, human rights activists such as Malala Yousafzai and so on. Thereafter, in the year December, 2023, when the BJP government was replaced by Congress government, then this ban was rescinded by the new government.

The two Judge Bench of Supreme Court delivered a split verdict in this case. Justice Hemant Gupta upheld the hijab ban. He was of the opinion that the Karnataka government was well within its right to ban the hijab in educational institutions. He stated that the State government's policy upheld

²⁴ The Karnataka Education Act, 1983, ss. 7, 133.

²⁵ The Karnataka Educational Institutions Rules, 1995, Rule 11.

²⁶ The Constitution of India, art. 15.

fraternity among different communities. Allowing students to wear the hijab in a secular institution would create feelings of inequality among different students.

On the other side, Justice Dhulia stated that the education of the girl child was foremost on his mind. It is a matter of choice. Nothing more, nothing less. he points out that the focus of the hearings should have been on the right to equality and freedom of speech. In the case of *Fatima Hussain Syed v. Bharat Education Society and Ors.*,²⁷ there was a similar incident regarding the dress code, when a controversy occurred at Kartik High School, Mumbai. The Bombay High Court appraised the matter, and ruled that it was not a violation of Article 25 of the Constitution for the principal to prohibit the wearing of head scarf or head covering in the school.

After the abovementioned ruling, the Hon'ble Madras High Court, in *V. Kamalamma v. Dr. MGR Medical University, Tamil Nadu and Ors.*, upheld the modified dress code mandated by the university. A similar issue has been considered by the Madras High Court in *Shri. M Venkatasubbarao Matriculation Higher Secondary School Staff Association v. Shri M. Venkatasubbarao Matriculation Higher Secondary School*²⁸.

The case of *Kantaru Rajeevaru (Sabarimala Temple Review-5J.) v. Indian Young Lawyers Association & Ors.*, one of the arguments raised for such submission was that it has to be decided as to what is considered to be essentially religious, essential to religion and integral part of religion. The contention was that "religion" is a means to express one's "faith".

VII. MAHSA AMINI CASE

In September 2022, a young woman named Mahsa Amini, belonging to Iran's oppressed Kurdish minority, visited Tehran with her brother. Unfortunately, during their visit, Mahsa was stopped and arrested by Iran's morality police, also known as *gasht-e ershad*. These police officers had a practice of arbitrarily detaining women who did not comply with the country's veiling laws, which were both abusive and compulsory, leading to discrimination. Eyewitnesses reported that Mahsa was forcefully pushed into a van and physically assaulted by the police. She was then taken to Vozara detention centre in Tehran. Initially, Mahsa and her brother were informed that she was being transferred to Vozara for an educational class aimed at reforming the behavior of women who violated the Islamic dress code in the country. However, her brother protested against this unjust detention and was also subjected to police violence. Tragically, Mahsa experienced torture and mistreatment both in the detention center and during the transportation in the police van. As a result of the injuries sustained, she fell into a coma and was rushed to a hospital in Tehran by ambulance. Sadly, she passed away three days later, at the young age of 22. These incidents, where religion is used as a pretext for such atrocities, continue to happen worldwide. India is among the countries where discrimination based on religion persists.

VIII. CONCLUSION

The matter of religious faith and religious freedom is widely recognized as a matter of great public significance. In India, citizens have the freedom to openly practice, profess, and spread their chosen religion, faith, or religious beliefs. From the State's perspective, an individual's religion, faith, or belief holds no relevance. The State views all individuals as equal and deserving of equal treatment. Equality cannot be achieved if the State shows preference or support for a specific religion, race, or caste, as this would result in unfair treatment of other religions, races, and castes. The Constitutional guarantees of social justice, freedom of belief, faith, or worship, and equality of status and opportunity can only be realized if the State completely disregards an individual's religion, faith, or belief when interacting with them, their rights, duties, and entitlements. Therefore, secularism goes beyond mere religious tolerance; it embodies the active principle of treating all religions equally.

In relation to the hijab issue, the 1983 Act does not contain any provisions allowing educational institutions to mandate a uniform for students. The 1995 Rules do not apply to Pre-University

²⁷ AIR 2003 Bom 75.

²⁸ (2004) 2 MLJ 653.

institutions, but are primarily for primary and secondary schools, with no specified penalty for students not adhering to the uniform policy. Therefore, expulsion should not be considered. It is important to maintain a peaceful atmosphere. Educational institutions should exhibit tolerance towards students, enabling Islamic female students to practice their faith and attend classes wearing the hijab. The government cannot issue mandatory orders to committees regarding student uniforms. Clothing is a form of speech and expression. The right to wear the hijab is a matter of citizens' privacy. Institutions cannot force students to remove their headscarves. India does not have an official religion. Everyone has the right to profess and practice any chosen faith, although this right is not absolute and may be subject to reasonable restrictions. No individual, under the guise of religion, culture, or similar reasons, should be allowed to engage in actions that disrupt public peace. It is determined that wearing a headscarf or any head-covering garment does not violate Article 25.