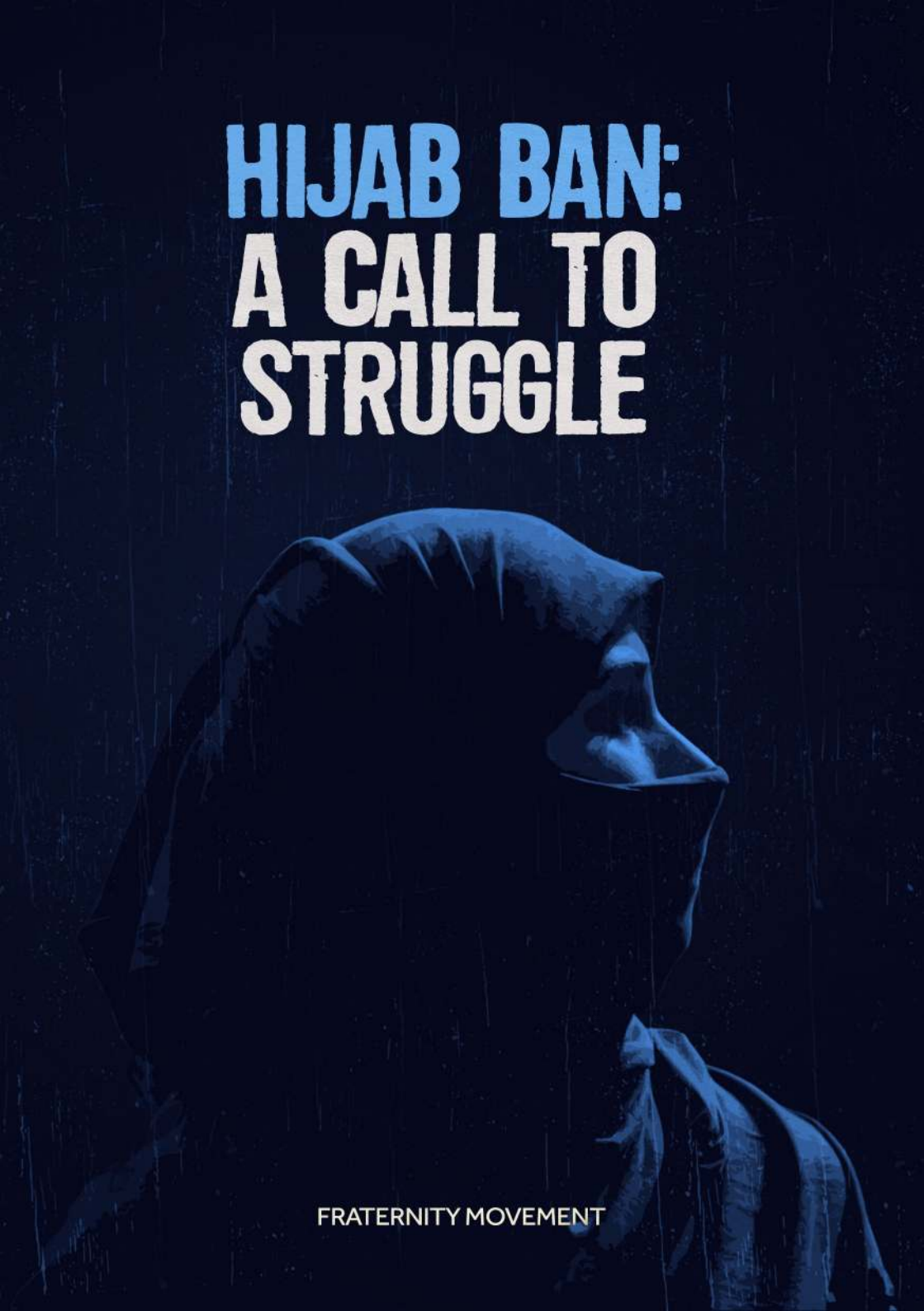
HIJAB BAN: A CALL TO STRUGGLE



FRATERNITY MOVEMENT

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Foreword

We are witnessing a vicious propaganda to defame the Hijab-wearing Muslim women led by the ruling Sangh Parivar regime. When this planned attack on the constitutional right of freedom of religion started in the state of Karnataka, the brave Muslim girls resisted it with utmost steadfastness. They have been barred from the educational institutions and humiliated in the public by the both Saffron goons and administrative staffs.

Fraternity Movement stands firmly with the struggling students in Karnataka. Hence, we believe that this struggle must be brought to the mainstream discourse in a time Islamophobia is on rise worldwide. It is high time to raise our voice against fascist rules and regulations in a democratic country.

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Credits:ANI

Hijab Controversy: A Tool to Manufacture the 'Other'

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Indian Muslim women have launched a lonesome campaign to occupy public areas and assert their existence. The Hijab controversy has less to do with religious requirements and much more with the profound unease from seeing Muslim women using public spaces in India. The absence of Muslim women in leadership positions created the ideal environment for the myth that "Muslim women need to be saved". The far-right spread this islamophobic myth to promote a stereotype of the vile and vicious Muslim man.

Many conventional conceptions are challenged by the visual metaphor of demonstrative Muslim women in support of the Constitution and democratic ideals during the Anti-CAA struggle. As a result, there have been terrible consequences. With the introduction of 'Bulli Bai' in 2022 and 'Sulli Deals' in 2021, it took a particularly nasty turn when pictures of powerful Muslim women were put up for online 'auction'. The Right has started hyper-sexualizing Muslim women as a response to their ineffective propaganda of representation as helpless objects. It is detestable to prevent Muslim women from entering the public sphere unless they blatantly remove symbols of their identity and faith. Its only objective is to disseminate a well-planned agenda in order to deny Muslim women educational opportunities and employment prospects.

The Udupi Debacle

On December 31, 2021, a group of Muslim girls from the Government Pre-University College in Udupi of Karnataka state protested against being expelled from their classrooms for wearing the hijab. This protest brought the hijab debate to light. The discrimination against students who wear hijabs began in September 2021, according to the facts of the case as reported in a writ suit filed on behalf of six aggrieved females before the Karnataka High Court. Since then, they have been required to remain outside the classroom and have their absences recorded. Three of the petitioners were allegedly assaulted inside the college, and threats were made "to spoil their education altogether," which prompted the students to seek legal help.

The hijab was not contentious before September 2021 but was instead created and subsequently communalized. However, the case is currently in court. The escalation of the local issue also shows how the BJP can create controversies for communal polarization and how these controversies are a strategic component of alienating Muslims by framing a story around the binary of 'us versus them' with the aid of right-wing media. According to analysts, the entire affair is a ruse to gather political capital and win the support of students who will be casting their first votes in the 2023 Karnataka assembly elections.

The Hindutva Force of Bommai

Dakshina Kannada and Udupi districts in Karnataka are frequently in the news for moral policing, cow vigilantism, and the bogey of 'love jihad.' They have attempted to boycott Muslims and have made unsubstantiated claims of forced religious conversions. While a strong network of Sangh Parivar affiliates plays a provocative role in the region, the region's relatively high proportion of Muslims has also helped catering identity politics.

Any examination of the events surrounding the hijab dispute must consider the political fact that the activities of the Hindu right-wing in Karnataka have increased significantly since Basavaraj Bommai assumed the post of Chief Minister. Bommai's justification of moral policing as a "response" was the most glaring indication of his intentions to the cadre of various Hindutva organizations.

Bommai has shown boldness in adhering to the Sangh Parivar agenda during his term in Karnataka. In addition to his signaling to the cadre of Hindutva organizations that the state would support them, the Protection of Right to Freedom of Religion Bill, 2021, and the Karnataka Religious Structures (Protection) Act, which safeguards unlawfully built religious structures, have explicit goals. In all this, genuine concerns of education, political economy, and welfare were being marginalized.

A Government Order Mimicking Apartheid

The State government issued a directive on February 5 stating that students should only wear the uniform without headscarves in government-run schools, while College Development Councils (CDC) will have the authority to make decisions regarding the matter in government-run pre-university colleges. Before it was formally announced, on February 3, government representatives had already arrived at educational institutions and had started prohibiting Muslim girls from wearing headscarves. As a result, on that morning, 20 ladies were prevented from accessing the Gov-

ernment Pre-University College in Kundapur, Udupi district. Despite the institution's rules permitting wearing headscarves, on February 4, a government-sponsored college in Kundapur forbade Muslim students from wearing hijabs. While some colleges allowed girls who wore hijabs on campus, they were forced to sit apart, similar to scenes from apartheid.

The Resistance

Three scenes from the February 8 events have come to epitomize the unrest:

1. A group of students hoisting saffron flag at the Government College in Shivamogga.
2. Bibi Muskan Khan's defiant "Allah Akbar" chant in the face of a horde of saffron-clad Hindu students.
3. The spirited resistance of a band of around 25 students wearing blue shawls chanting "Jai Bhim".

Muskan's brave yell of 'Allah Akbar' in response to the crowd of men coming at her chanting 'Jai Shri Ram' demonstrates her bravery and presence of mind in the face of fascist intimidation. Journalist Alishan Jafri responds to those who wish she had yelled 'Jai Hind' instead: "Would they wish Gandhi had said 'Jai Hind' instead of 'He Ram' when he was shot dead by Nathuram Godse?" It should be noted that, if a person is attacked for being Muslim, he or she must defend himself or herself as a Muslim, not as an Indian, not as a global citizen, and not as a defender of human rights.

A Critical Overview of Karnataka High Court Ruling

In a disappointing move, the High Court of Karnataka has ordered the students who had rightfully battled for the right to cover their heads in class to return home. The court denied the girls who sought their rights,

which found that wearing a headscarf is not an essential religious practice. How can the court find that it is not a part of religion without reading any literature from experts and academics that can provide credible information on Muslim scholars and religious regulations throughout the eleven-day hearing?

At first scrutiny, it is clear that the materials filed to the court in this case for argument have only partially referenced earlier rulings. However, the court used Abdullah Yusuf Ali's The Holy Quran - Text, Translation, and Commentary to refer to the necessity of the hijab. The petitioners pointed out that the court had already disregarded other religious literature that demonstrated the importance of the hijab.

The court used Sara Slinger's essay "Veiled Women: Hijab, Religion, and Cultural Practice" to demonstrate that hijab is only a cultural practice, although the decision does not refer to its authenticity. The most critical element, however, is that no one mentioned the book or the authors during the one-day proceedings. However, the court incorporated a portion of the ruling from outside that did not emerge during the trial. Is it not unusual to see that the papers and articles that were not presented to the court make an appearance in the judgment of this case?

The main concern is how a verdict about Muslims as a whole can be made based only on a petition from a handful of students. The fact that these lawsuits were not public interest litigation should be emphasized. On paper, the state government left the matter to the discretion of schools and universities. Still, the court went beyond the government directive and proclaimed a blanket ban on the hijab in classrooms throughout the state. It was unexpected that the court expanded the debate by rejecting the petitioners' justifications for opposing an executive order.

In court, Prof Ravi Varma Kumar raised several critical concerns, including why Muslim females are singled out by name. He questioned why the government only hates and discriminates against hijabs and not bangles, bindis, or crosses. Don't such symbols violate public order in the same instance by the same reasoning? He also questioned why the court exclusively chose Muslim girls. Isn't this a breach of Article 15? That is, it is

a matter of civil freedoms for freedom of clothing, not only a problem of hijab. The court never tried to discuss or offer a head for this argument. In a single line, the court rejects the argument that religions, too, require a uniform order, stating that no Article 14 or15 may be cited in such cases. The court ruled that imposing the same clothing code on all students regardless of faith, language, or gender could not be considered sectarian. The court's decision that states what is required in schools is homogeneity, not variety, has shocked us again. The court dismisses the premise that classrooms should represent society's diversity. The court reasoned that imposing a uniform clothing rule on all would benefit the secular notion contained in the Constitution. The division bench also ruled that the hijab permits the social isolation of children. However, the court did not depend on any credible document studies or the judgments of educational specialists. The fact is that, except for the subjective demands of judges, there is no legal, scientific basis for what the classroom should be. The court's decision that secular aid is required by the Constitution to be provided to all raises another severe concern. The debate comes here is whether Indian secularism envisions a total prohibition on religious displays in public or not. Is this judgment consistent with Indian secularism's basic philosophy of tolerance over bigotry? This court decision disregards a person's name typically indicates religious, cultural and linguistic ethos. Will the High Court declare that religious names contradict the secular concept upon which the Constitution is based? The court's justification for assuming that a person's diversity may also lead to societal division is unclear. It cannot be viewed on any basis other than the judges' own views.

Hijab Ban: The Struggle Continues

Another critical argument of the ruling is that the ban on the hijab is for the emancipation of Muslim women. Did anyone request a petition for the liberty of Muslim women? No. The court does not explain how Muslim women's rights are being infringed upon or how their rights to wear hijab are being abused. This is not a case where religious practices are being questioned. In this case, Muslim women went to court to request the right to wear a headscarf. Hence, on what basis does the court decide that Muslim women need to be freed from the hijab?

It would not be incorrect to say that the court is intruding on women's agency and right to choose. The restriction violates fundamental rights, equality, and religious freedom, as envisioned in Articles 14 and 25 of the Constitution. The state has the power to interfere with religious freedom on the grounds of public order, morality, and health. In any case, the head-scarf does not claim any of the above.

Any solution to the hijab issue that restricts it to religious symbols is not only primordial but also fails to recognize the significance of the fabric for individuals who wear it. The hijab is not an antiquated and patriarchal need but a decision made by many young Muslim women in coastal Karnataka and elsewhere. This quest for self-definition is inextricably linked to access to education. Forbidding wearing the hijab in such a style of striving is not a progressive move, as some people think it is, but an attack on their self-worth and dignity.

Field Survey Report

25-28 February 2022

Introduction

In the light of the recent Hijab ban imposed in the schools and college campuses of Karnataka, a delegation of the Fraternity Movement travelled around seven cities during the period from 25 to 28 February 2022, collecting testaments of the situation from Muslim youth subjected to violence that followed the ban.

The team included Fraternity Movement national secretaries Aysha Renna and Afreen Fatima; National Executive members Raihana Cheroopa and Nizamuddin; Activists Ladeeda Farzana and Shiyas Perumathura, and Fraternity Kerala state secretary Nujaim PK.

In December 2021, six students of Government PU College in Udupi were prevented from entering their classroom because they were wearing hijab. This event later snowballed to other colleges in Karnataka. Since 14th February 2022, more than 67 Educational Institutions in around 24 districts across Karnataka have denied entry to hundreds of hijab-wearing students. Ever since, the hijab-wearing students have been forced to stand outside the school campuses protesting against the undemocratic demeaning law thrust upon them. Every day they are faced with frantic menaces from school authorities and horrendous attacks from right-wing schoolmates. Moreover, the leaking of their personal data - allegedly by school authorities - has added the trauma of threatening phone calls to the already harrowing ordeal of compromised family safety and privacy.

Report from the Ground

Viraj pet was the initial place visited on 25th February, where the team met with 75 students of classes 6th to 12th from Nellukeri Karnataka public school. This school is one of the institutions that imposed the islamophobic hijab ban on its students and denied students' entry into the campus. In the meeting held outside the school premises, the major concern raised by students was their denied entry to school with hijab. Hijab-wearing girls are made to stand outside with permission given to those willing to remove the scarf.

The delegation meets Muskan Khan

Press Meet at the Press Club of Bangalore

With Public Examination on the way, 10th and 12th standard students are struggling the most. Many who have their Lab Examination going on received strict orders from school that hijab-wearing students will not be permitted to attend the exams. Among the concerns, the students also mentioned the attitude of their Hindu Classmates. While some are helping and supporting these students by providing notes and materials, a section of students turns a blind eye to the struggles to their classmates.

3 Students from Bhartiya first grade school of Shanivarasanthe were met on the same day around 3 pm. Around 20 students from their school are barred from entering the campus despite the ongoing internal examination. Consequently, many students had to drop out due to the continuing

ban. Moreover, the students are experiencing severe mental trauma from the direct attack by people around them. They're often met with constant mockery and verbal abuse, even from teachers who harass them into giving up the fight. With some schools releasing students' personal data, they are also faced with anonymous threatening calls.

On 26th February, the team met with six girls from Udupi who filed a petition against the hijab ban in their college. These girls, like others, are also banned from entering their college premises, due to which they cannot even get their books back. On sending friends to collect their books, it was found that most books were missing. Furthermore, teachers refused to sign their records or accept assignments so long as they wore hijab. As the petitioners, these girls' mental trauma is beyond imagination. Due to the numerous anonymous threats they received, many had to change phone numbers. Shifa, a girl among the 6, had to endure the attack on her brother and vandalism of her father's shop in town.

Kundapura was the last place visited by the team, where they met students from 5 different colleges where wearing hijab has been an ordinary practice for the past 29 years. Colleges in Kundapura implemented the Hijab Ban after the interim order by the government on 1st February. Teachers here encourage the boys in school to wear saffron shawls to provoke the Muslim women halted at the college gate.

The team also met with two boys from Kushal Nagar Polytechnic college, who spoke out against the crime committed against their hijab-wearing classmates. They questioned the authority of the unconstitutional implementation of the ban and were met with a violent attack from ABVP goons inside their hostel.

As a part of the visit, the team visited and interacted with organisations like Muslim Okkutta, Association for Protection of Civil Rights, Bahutva Karnataka, Students Islamic Organisation of India and Solidarity Youth Movement. These organisations are concerned with how the situation is unfolding and being capitalised by Sangh Parivar organisations. They are trying to provide all necessary academic, legal and emotional support to the affected Muslim students.

Conclusion

The issue of the hijab Ban in Karnataka needs to be looked at as an organised ongoing process of obliteration of the Muslim community in India. We have found that hundreds of Muslim women are expelled from attending classes in the southern state, following the interim court order, in prima facia violation of human rights. The interim order is not only problematic to the beliefs and practices of the Muslim community but, in

fact, enables apartheid against Muslim women. They are being humiliated and dehumanised in the name of uniformity and order.

The apathy of the Karnataka government and the appalling statements by the BJP Karnataka ministers are furthering hate and islamophobia. The BJP Karnataka is trying to turn this rights issue into an international conspiracy similar to their propaganda concerning the Hathras case. Karnataka home minister ordered an investigation "to probe their links" with "terrorist groups ". The stereotypical suspicion surrounding Muslims is being invoked to rob the marginalised of their humanity and dignity.

Local and regional media channels are further harassing and intimidating the affected Muslim students. They are violating not only media ethics but all moral ethics. Saffron television channels are using this incident to demonise and stereotype Muslims to manufacture a collective apathy that will further normalise attacks on Muslims and their religious practices.
We found out that incidents of violence and physical assault in several districts, especially in Shivamogga, are directly unleashed on Muslim community members. Police have barricaded the affected areas by imposing section 144, making monitoring the situation and intensity of violence impossible. Several videos released on social media prove that the police were silent onlookers of the attacks.

The findings of the Fraternity movement indicate that the significant concerns of Muslim students in Karnataka include:

- Intrusion in the right to education
- Overwhelmed by anxiety and mental trauma
- ncreasing insecurity on the verge of of examination
- Security of Muslim community in general and Muslim women in particular
- Inappropriate and unethical media response
- Growing incidents of physical violence
- Tense situation in many districts

Demands

- The hijab ban must be immediately and unconditionally revoked. The discriminatory interim order that has become instrumental in furthering apartheid should be retrieved.
- Government should direct CDC and College administrations to ensure that students are allowed to appear for exams that they have missed, or that may be missed because of the ban.
- Law enforcement should arrange for the safe and dignified return of Muslim students.
- All FIRs on protesting Muslim students be repealed immediately.
- Right-wing outfits involved in communalising the issue and Hindu students who are heckling and intimidating Muslim women should face police action.
- The violence that is unleashed in Shivamogga and other areas should be impartially investigated, culprits should be punished, and those who have incurred property loss should be compensated.
- Some provisions should be implemented for the students to attend all the examinations they missed due to the hijab ban.

Credits: Salman Nizami

Why Karnataka HC's Hijab judgment merits a Constitutional challenge and scrutiny

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The judgment of the High Court of Karnataka in *Resham vs. State of Karnataka* declaring that wearing hijab or head scarfs by women is not an essential religious practice in Islam has received much criticism. Most of the discussions on the judgment revolve around the question if hijab

fulfils the 'essential religious practice' test, and its impact on the right to freedom of conscience and religious practice.

However, the judgment also gives an exposition of fundamental rights which unduly limits the exercise of the same at particular locations or contexts, which has long-lasting implications. This demands a closer reading of this judgment beyond the questions of essential religious practice.

An unusual reading of fundamental rights

The judgment puts forth a narrow and unusual reading of fundamental rights. The court creates a hierarchy of fundamental rights which is unprecedented. It makes a classification of substantive rights and derivative rights within the fundamental rights, and positions derivative rights at a lower pedestal than substantive rights. The court declares that the protection available to substantive rights cannot be stretched too far to cover the derivative rights. It further states that when it comes to derivative rights, courts are not required to look into questions of reasonableness of the restrictions as in the case of substantive rights. Such gradation within fundamental rights is a novel approach within the fundamental rights jurisprudence. Such loose framing of fundamental rights makes us question if fundamental rights are 'fundamental' enough.

In this case, the court declares that the case of the petitioners — that the State action banning hijab through dress code is violative of freedom of speech and expression, and the right to privacy — is an issue of derivative rights, and therefore the court is not required to delve into the questions if such restriction is reasonable.

What is a derivative right? How did the court come to the conclusion that the petitioners' case falls within the terrain of derivative rights? Where is the constitutional backing for the proposition that the courts need not look into the question of restrictions imposed on a fundamental right, if the question is in relation to a derivative right? These are questions for which we acannot find an answer from the judgment.

Qualified public space

Another dangerous proposition is the introduction of a concept 'qualified public space'. The High Court, in its exposition on hijab vis-à-vis Articles 14 ,19 and 21 of the Constitution makes a statement that the school is a 'qualified public space'. This terminology is used six times in the judgment. While this term is not clearly defined in the judgment, the court explains that just like a detenu or a convict do not have absolute fundamental rights in specific settings, a school is a qualified public space where the operation of fundamental rights is limited. According to the court, these are spaces where "substantive rights metamorphose into derivative rights". This is a dangerous proposition at several levels. Other examples of qualified spaces as given in the judgment include a court, a prison, a war room and a defense camp.

Firstly, the judgment portrays a school along the same lines as a court, prison, or a war room – how appropriate such portrayal is, is for educationists to answer. Secondly, the introduction of this concept of 'qualified public space' is problematic within and beyond the school settings. A concept or a sentence used in a judgment has the potential to stretch way beyond its original intent, and Constitutional courts having precedential value for their judgements should be cautious in this regard. The way in which undefined concepts like 'basic structure of the constitution', 'constitutional morality' and 'essential religious practice' have evolved over time, what other settings would be deemed as qualified public space by the courts in the future is concerning. Would a college or university be a qualified public space? Is a public office qualified public space? Is your workplace, whether private or public, a qualified public space? We cannot let our fundamental rights tread this dangerous path.

Thirdly, while the court does not define a qualified public space, it elaborates what happens to a fundamental right in a qualified space. *"Such 'qualified spaces' by their very nature repel the assertion of individual rights to the detriment of their general discipline & decorum"*. The Constitution did not envisage fundamental rights in such a flimsy manner so

as to get washed away in the interest of 'general discipline and decorum'. The fundamental rights can only be restricted in a manner provided by the Constitution. The restrictions on fundamental rights are not universal. For example, grounds on which an infringement of right to equality can be justified, is different from the reasonable restrictions that may be imposed on the freedom of speech and expression or the freedom of movement, which is different from the grounds on which an infringement of the freedom of conscience or religious practice may be justifiable. While there are different grounds under which an infringement of fundamental right may be justifiable, general decorum or discipline is not one of them. For example, a non-violent speech in the form of a placard, arm band, or slogan, or any such expression, can be easily covered as violative of general discipline or decorum; if that is a valid ground for restriction of a fundamental right, in whichever setting it may be, that would be the end of an era of peaceful protests.

Fourthly, the court held that the content and scope of a right is dependent on circumstances. Freedom of an individual is circumscribed by their position, placement and the like. The liberty and autonomy of an individual may be maximum within the confines of their home. This stands automatically curtailed in a qualified public space, where the exercise of freedom is limited by their function and purpose, consistent with their discipline and decorum. This is the response of the court to the averment of the State that *"schools are 'qualified public places' and therefore exclusion of religious symbols is justified in light of 1995 Curricula Regulation that are premised on the objective of secular education, uniformity and standardization".*

As we see above, the court determines a question on the exercise of a fundamental right by examining the character of the location of the citizen, without examining the reasonableness of the restriction. For every State action allegedly violative of a fundamental right, the court should assess a) whether the infringement is based on a valid ground, and b) if such infringement is justifiable/reasonable. A blanket classification that a fundamental right is ipso facto diluted at specific locations is not constitutional.

Class rooms as enclaves immune from constitutional protection

"[T]he prescription of dress code for the students that too within the four walls of the class room as distinguished from rest of the school premises does not offend constitutionally protected category of rights, when they are 'religion-neutral' and 'universally applicable' to all the students". (The emphasis is given in the judgment).

Here, there are two issues. Firstly, the court makes a distinction between a class room and the rest of the school premises. How such a classification helps the case is not clear. The requirement of a head-scarf of a person does not or cannot be distinguished from 'inside the class', 'within the school premises' or 'outside the school premises'.

Secondly, the court, giving special emphasis to the terms 'religion neutral' and 'universally applicable', says that a particular rule enforced in classroom does not offend the constitutionally protected rights when they are religion-neutral or universally applicable to all students. The court does not consider the fact that neutrality or universal applicability of rules might infringe the self-expression, choice or religious freedom of the parties, which is the core of the present case. Here, the court tries to create a separate category of 'class room' which is immune from constitutional protections.

The court goes into long detail about the quasi-parental authority of the schools and teachers. The court even quotes *Rex vs. Newport (1929)* wherein the caning of students smoking in public was held to be a reasonable punishment by the English Court of King's Bench, which noted that the authority of school extends to not just the school premises, but on the way to and from school.

It may be wondered whether these positions can stand in this era of child rights jurisprudence, and more importantly, again, the relevance of the same to the present case is unclear. But one thing is clear: the court has expounded the parental or quasi-parental authority of school and teachers,

and the duty of care upon teachers at multiple places in the judgment gives an impression that children are subservient citizens and devoid of constitutional rights.

Tinker vs. Des Moines

To substantiate its claim on qualified public spaces and limited rights of children in school, the court relies on the US Supreme Court judgment in *Tinker v. Des Moines Independent Community School District (1966).* It would be useful to quote the following paragraph from the high court's judgment.

"In US, the Fourteenth Amendment is held to protect the First Amendment rights of school children against unreasonable rules or regulations vide Burnside v. Byars. Therefore, a prohibition by the school officials, of a particular expression of opinion is held unsustainable where there is no showing that the exercise of the forbidden right would materially interfere with the requirements of a school's positive discipline. However, conduct by a student, in class or out of it, which for any reason whether it stems from time, place, or type of behavior-materially disrupts class work or involves substantial disorder or invasion of the rights of others, is not immunized by the constitutional guaranty of freedom of speech vide John F. Tinker v. Des Moines Independent Community School. In a country wherein right to speech & expression is held to heart, if school restrictions are sustainable on the ground of positive discipline & decorum, there is no reason as to why it should be otherwise in our land." (Emphasis supplied).

In Tinker vs. Des Moines, the facts of the case and the journey of the case are both material for our discussion in the present context. In 1966, a group of citizens decided to wear black armbands in protest against the hostilities of America troops in Vietnam, and in support of a truce before Christmas. Pre-empting the arrival of students with black armbands, the school adopted a policy prohibiting the use of armbands in school. Three students went to school wearing the black armbands knowing about the new rule, and these students were suspended. The students went to court challenging the rule and sought compensation against their suspension.

The case was decided against the students in the District Court (1966) and Court of Appeals (1967). This decision was overruled by the US Supreme Court in 1969 by a majority of 7:2. However, the high court conveniently cited the extract from the District Court judgement in 1966 to suit its conclusion. Tinker vs. Des. Moines (1969) is a celebrated decision in students' rights jurisprudence. The court's famous quote in its judgment reads: "… *the students and teachers shall not be expected to shed their constitutional rights of expression at the schoolgate".*

There is no quote better suited to describe the instant case. To the Karnataka high court's proposition on limited exercise of fundamental rights in qualified spaces, Justice Foster's concluding statement in the majority opinion in *Tinker vs. Des* Moines gives a befitting reply.

"Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom".

Uniformity trumps expression

The judgment incorporates long passages on the need for uniform for discipline in schools. The court goes as far as *Dharmashastras* to show that the practice of school uniforms is an ancient construct, way beyond Mughals or British. The judgment creates a narrative by carefully treading the concept of uniform, uniformity and homogeneity. The court creates an unholy nexus between secularism and homogeneity by holding that *"[t] the school regulations prescribing dress code for all the students as one homogenous class, serve constitutional secularism".*

The petitioners contended that the goal of education shall be plurality and not uniformity or homogeneity, and that classrooms should be a place for recognition and reflection of diversity of society; however, the court responded to these averments stating that they are just "hollow rhetoric", like 'unity in diversity'.

The court creates several questionable concepts. It states that a reasonable accommodation allowing the students to wear hijabs of the same colour as the uniform would amount to creating a sense of 'social separateness'. It holds that the accommodation asked for by the petitioners is not reasonable. It goes on to say that these regulations are with the object of creating 'safe spaces' where divisive lines would have no place. The way in which concepts of uniformity, social separateness, 'divisiveness and 'safe spaces' are tied in create a rather uncomfortable story. It equates difference with divisiveness – by doing so, it at once calls for elimination of diversity as well as terrorization of difference.

The conceptions of qualified public space, and derivative and substantive rights have the potential to limit the exercise of fundamental rights. The undue emphasis on uniformity and false equivalence of homogeneity with secularism may negatively affect the State-society relations in India. Unless challenged before the Supreme Court, and critiqued by the legal community, the seeds sown by this judgment may result in diminution of civil rights in future.

Courtesy: The Leaflet

Credits:
Salman Nizami

What the hijab ban is really about?

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17 February 2022

Another day, another scene of intimidation for the hundreds of Muslim girls and women across Karnataka who find themselves locked out of schools and colleges, threatened, isolated, and even segregated into classrooms. They face a challenging route in the courtroom as well, with the Karnataka High Court placing an interim stay on all religious clothing in classrooms. The court has effectively suspended the fundamental rights of a group of citizens, ensuring that until the case is resolved, the girls must choose to remain at home or step into classrooms without what they believe is an essential part of faith and modesty.

Is the question here of religious freedom; or of the hijab, of "uniformity" or of uniforms? Is it about the fact that coastal Karnataka is a heavily polarised region, where organisations like the Bajrang Dal and VHP have played off communities against each other while sowing the seeds for Hindutva majoritarianism? Right-wing supporters argue that the hijab violates uniform, and consequently, uniformity. The Karnataka government order says that students cannot wear clothes that violate public law, order and integrity. Can a tilak, Sikh turban or hijab violate public order? As one of the girls from Kundapura asked: Does my hijab make any noise?

The advocate for the students of a Kundapura college in the Karnataka HC case pointed out that religious symbols have always been a part of public life in India, alluding to the Indian model of positive secularism rather than the European model of negating religion from public life. Most fundamentally, on grounds of Articles 14, 21, 25 and the promise of the Right to Education enshrined in the Constitution, denying access to Muslim girls merely because they wear a headscarf is patently unconstitutional and illegal. Several judgments have defended the right to wear religious symbols in educational institutions, and the essentiality of hijab in Islam has been proven in courts.

With exams in two months, it appears that the entire burden of maintaining "public order" and defusing "polarisation" has fallen on young Muslim women. The state has failed to maintain public order, allowing young men to heckle these girls, harass them and physically corner them as they try to enter their schools. The dispute has been projected as a "controversy" or a "row" of competing protests. But the Muslim girls have been observing hijab and attending school and college for years. They have not protested their classmates wearing saffron scarves, or the BJP leaders who wear religious symbols in Parliament. All they seek to do is enter their classrooms.

Some commentators and BJP lawmakers in the state have begun to argue that the girls are mere "pawns" in the hands of some organisations. This is an age-old argument. Muslim women, in particular, are seen as incapable of choosing for themselves — whether it was in the case of the Shaheen Bagh protests, where it was alleged without any proof that the residents of the area were being paid Rs 500 each to sit there; or Hadiya, the ho-

meopathy doctor in Kerala who embraced Islam and was put under house arrest. The urge to rescue Muslim women, often from Muslim men, who are portrayed as oppressive and violently orthodox, is dominant in Hindutva discourse. But Muslim women who enter higher education and speak for themselves are a double threat; impossible to "rescue" and difficult to silence.

So, perhaps, it is not about the hijab, or about public order. Perhaps, it is the rising anxiety over Muslims and other minorities in the public sphere, who are fighting their way into educational institutions and jobs.

In 1960, a six-year-old Black girl, Ruby Bridges, became the first girl from her community to enter an all-white school in New Orleans, US. To be able to do so, she needed field marshals to defend her. Do we wish that Muslim women in hijab be heckled, attacked and humiliated as they enter schools and colleges? All because they follow their faith, a right enshrined in the Constitution.

Courtesy: The Indian Express

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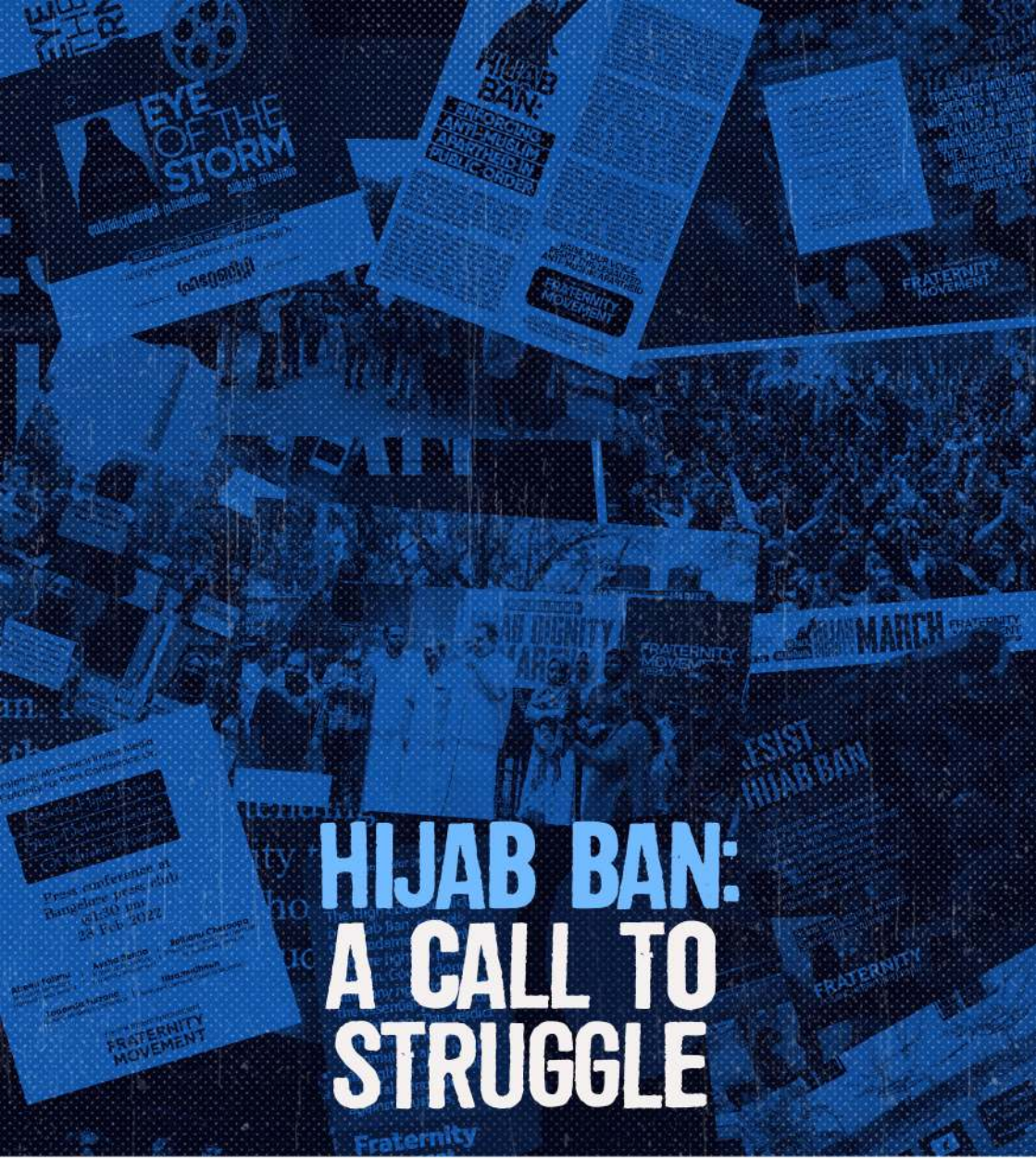

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FRATERNITY MOVEMENT OF INDIA
OCTOBER 2022
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