

HIJAB CONTROVERSY: A BASE FOR UNIFORM CIVIL CODE***-Pallav Vats & Shruti¹***

ABSTRACT

The UCC is a proposal pending for many years even after getting praise from Dr B.R. Ambedkar, due to religious and political reasons. Despite having a mammoth sized population and dissenting religious beliefs, we all are living peacefully due to the secular soul of our nation. The UCC is something that's always found itself as the topic of debate club societies but the recent 'Hijab' controversy in Karnataka become a base for UCC. The Karnataka Hijab controversy unveils the real problems of not following UCC.

UCC includes uniformity between all the religions. Not only will it strengthen the brotherhood between people with dissenting religious beliefs but also protect the rights of women in different religions where they find themselves discriminated against. However, Article 44 and Supreme Court from time to time always keep lobbying about UCC but to implement it in the whole country's 'political will' remained submissive.

According to the people who oppose UCC, it has certain issues and conflicts with religion. The Hijab controversy has given hope to sit and discuss all the good and evil effects of UCC and clears the path of implementation of UCC within the whole country.

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INTRODUCTION

Hijab is a head-covering mainly used by Muslim women. However, it is not an essential practice of Islam, but they wear it to maintain modesty. The whole Hijab controversy started when six girls of a government-run college in the *Udupi* district of *Karnataka*, started protesting after they were stopped from attending their classes for wearing hijab. When we get admitted to an educational institution we automatically agree to abide by the rules and regulations and Dress Code of the said institution. The rule stands for everyone, irrespective of community. Unfortunately, this issue suits the political agenda of many parties, radical institutions and some specific countries too. Protests, placard gangs and the future of India were protesting against the college administration, maybe on their own or somehow influenced by others. This all was as quick as a wildfire and protests were shifted to the whole country very systematically with the help of some radical organizations.

The UCC is something for which the Supreme Court and even Article 44 of our Constitution keep lobbying. Even *Dr B.R. Ambedkar* supported UCC during the debates of the constituent assembly². However even now the absence of political will and for various other reasons, UCC can't get implemented.

HIJAB BAN, NOT A NEW THING-

The purpose of the Hijab is to cover the head mainly, however with the passing of time it become a vote and sympathy gainer tool for various radical and political groups. Nowhere in the Quran³, is it mentioned that Hijab is *mandatory for all females* but in the upper class, Arab females the practice of veiling was popular. Soon it was propagated in all classes as the dominance of males were increased in society.

However, many countries have already imposed a ban on hijab,⁴ such as Russia, France, Bulgaria, Belgium, Netherlands and even Syria and many other countries, wearing of Hijab in college has been banned since 2010. Wearing a hijab in these countries can lead anyone to

²*Ambedkar And The Uniform Civil Code*, OUTLOOK INDIA, (last visited Feb 25, 2022), <https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068>

³*History of hijab in Islam: Why Muslim women wear hijab?*, JAGRAN JOSH, (last visited Feb 25, 2022), <https://www.jagranjosh.com/general-knowledge/history-of-hijab-in-islam-1644244440-1>

⁴Hindustan Newshub,

Trending news: Hijab is already banned in these countries, there is also a provision of fine in many countries (last visited Feb 26, 2022) <https://hindustannewshub.com/world-news/hijab-is-already-banned-in-these-countries-there-is-also-a-provision-of-fine-in-many-countries/>

punishment and pay a fine. Hijab or Burqa are banned in these countries due to security reasons, as there are many such terrorist incidents in the world including Sri Lanka⁵, France⁶ and European countries. Hijab is banned in these above-mentioned countries due to security alert and to eradicate radicalism.

In India, Hijab is not banned in any sense, but every citizen should respect the norms of any institutions, as when we take admission in any educational institution. UCC is the need of the hour otherwise the Hijab controversy will forever feed the people from the lobby of radicals and opportunists political parties.

HIJAB CONTROVERSY: A LAUNCH PAD FOR UCC-

The UCC became a matter of discussion in 1985 in India. It was the time when the *Shah Bano* case came into the limelight. In this case, Supreme Court held that *Shah Bano* should get alimony from her ex-spouse. In this case, the Supreme Court had quoted the uniform Personal laws. Personal laws were first framed during British rule, mainly for Hindu and Muslim citizens. However, the British doesn't implement UCC, as they feared that locals would rebel.

When we take admission to an educational institution we automatically agree to abide by the rules and regulations and Dress Code of the said institution, but the unnecessary protests are unchastening the environment of all educational institutions in India.

FREEDOM OF EXPRESSION; MOST MISUSED TERM IN INDIA-

Freedom of speech and expression has lost its charm due to many current incidents of unnecessary defamatory statements in the public sphere. Freedom of speech and expression is the most important rights enshrined in the Indian constitution. However, on daily basis, it is getting misused. In the name of freedom of speech and expression, any Tom, Dick and Harry are accusing anyone, maybe army man, Prime Minister or even Chief Justice of India⁷. There are some restrictions on the freedom of speech and expression, and we should all respect the

⁵ *Sri Lanka bans face veils after terrorist attacks*, THE WORLD FROM PRX (last visited Feb 26, 2022), <https://theworld.org/stories/2019-04-29/sri-lanka-bans-face-veils-after-terrorist-attacks>.

⁶ *Indivisibilité, Sécurité, Laïcité: the French ban on the burqa and the niqab - French Politics*, SPRINGERLINK, (last visited Feb 26, 2022), <https://link.springer.com/Article/10.1057/s41253-021-00164-8>.

⁷ *Tablighi case: Freedom of speech & expression most abused right in recent times*, (last visited on April 22, 2022) https://economictimes.indiatimes.com/news/politics-and-nation/tablighi-case-freedom-of-speech-expression-most-abused-right-in-recent-times-says-sc/articleshow/78550618.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

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same. In any case, freedom of speech and expression should not be engaged with the cause of radical and religious violence.

RADICAL BACKING OF HIJAB-

Not only is it about the students, but it is also about the freedom of school and business owners to create a dress code and ensure the dress code is followed by every employee and student irrespective of their religion.

Some banned organizations like PFI, SIMI, Jamaat-e-Islami Hind and Campus Front of India are also backing the wearing of Hijab. A Kerala based journalist *MP Basheer's*⁸ sensational audio clip went viral in which the journalist alleged Jamaat-e-Islami was involved in receiving funds from Saudi Arabia's universities. Even open threats to murder⁹ CJ *Ritu Raj Awasthi* of Karnataka HC were made. The whole scenario is pointing towards a big conspiracy.

JUDGEMENT OF KARNATAKA HIGH COURT-

March 15, 2022 was a historic day. A three-judge full bench of Chief Justice *Ritu Raj Awasthi*, Justice *Krishna S Dixit* and Justice *JM Khazi* of Karnataka High Court rejected the plea that the ban on Hijab violates rights guaranteed by the Constitution i.e., under Article 14 (equality before law), Article 15 (no discrimination over faith), Article 19 (freedom of speech & expression), Article 21 (protection of life & personal liberty) and Article 25 (freedom of religion). Karnataka High court dismissed the petitions filed by students from *Udupi*, *Kundapur* and *Bengaluru* and also a couple of PILs that had set off a nationwide debate.

The bench primarily framed 4 questions,

- Whether Hijab is an essential religious practice protected under Article 25,
- Whether school uniform is not legally permissible,
- Whether the govt. order of Feb 5 was issued without application of mind and was arbitrary, and
- Is any case made out to initiate disciplinary inquiry against the college?

⁸ REPORT WIRE (last visited Feb 26, 2022),

<https://www.reportwire.in/clubhouse-leaks-how-jamaat-e-islami-illegally-receives-funds-from-saudi-arabia-to-islamise-india>

⁹Death threats to Karnataka judges over Hijab verdict, ECONOMIC TIMES (last visited Feb 27, 2022)

<https://economictimes.indiatimes.com/news/india/death-threats-to-ktaka-judges-over-hijab-verdict-2-arrested/ArticleShow/90331514.cms>

However, in my opinion, the question which should be primarily raised should be

- Whether schools can prescribe uniforms or not?

Karnataka HC, dismissing a batch of petitions in this matter ruled¹⁰ that-

- Hijab is not an essential religious practice of Islam.
- Upheld a state government order on a uniform in educational institutions.
- Uniforms of school/college will be considered as a reasonable restriction that students can't object to.

It was a tough time for the nation as this Hijab controversy has become a turning point of religious tension in Karnataka as well as other parts of the nation and the world. This judgment will surely endorse the spirit of “uniformity” that school and college dress codes/uniforms promote. The crux of the judgement was-

The uniform is to ensure all students feel equal. It was indeed a tight slap to PFI, CFI & all those who want to communalize educational institutes. Radicalism should be kept away from the educational institutions.

NEED OF UCC-

Today, UCC is the need of the hour. After seeing this unnecessary ruckus and painful visuals of students protesting outside the classroom, anyone can realize this fact. UCC is also necessary due to following reasons-

- **Sense of real Secularism:**

There is a lot of difference between selective secularism and real secularism. In India, we are not availing secularism in its true form although we are living in a country that promotes selective secularism. In selective secularism, there is a lot of minority appeasement, it's more like pseudo-secularism. A UCC is the mirror image of real secularism which results will reflect a law-abiding society in which all citizens of India have to follow the same laws irrespective of their religion.

¹⁰ *Bangalore News Highlights: Karnataka HC upholds hijab ban in educational institutions*, (last visited Feb 28, 2022), <https://indianexpress.com/Article/cities/bangalore/karnataka-bangalore-news-live-traffic-weather-covid-7818659/>

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- **Everyone is equal:**

In India there are personal laws for a particular religion, there are different rules for different religions. A Muslim man can legally have multiple marriages but the other religion if doing so can be punished as per law. This doesn't seem equal in any sense, that's why UCC is necessary.

- **It will empower Women:**

In some particular religions, the status of a male is very dominating. A man can easily initiate a divorce against a women or they have to cover themselves unnecessarily. A UCC will also help in improving the status of women in India by neutralising the laws which are inclined toward men. The patriarchal society can be eliminated only through a UCC, which will also help in eradicating these old traditions which are discriminatory against women.

- **Every modern nation is adopting UCC:**

Every nation which aims to eradicate radicalization has a UCC. It signifies progressiveness. Now, this is the right time when we fully adopt UCC and fulfil the dreams of *Dr. B.R. Ambedkar*¹¹.

THE GOA MODEL-

Goa is the state where UCC is implemented successfully. However, in Goa also there are some dissimilarities in the procedure of marriage registration between Catholics and non-Catholics. It is indeed an uphill task to implement UCC nationwide but from taking inspiration from the Goa model and with the help of enough political will it can happen one day. Also, the Supreme Court from time to time keeps lobbying for a UCC as in the *Shah Bano*¹² and the *Sarala Mudgal case*¹³.

After this decision, Rajiv Gandhi, the then Prime Minister was the one who due to his political ambition, instead of lauding the Supreme Court for its bold decision, overturned the verdict in Parliament by enacting the Muslim Women (Right to Protection on Divorce) Act, 1986, just for the sake of minority appeasement (Muslim appeasement). A golden opportunity for improvement in personal law and the great struggle of *Shah Bano* goes in vain for the sake

¹¹*Ambedkar And The Uniform Civil Code*, OUTLOOK INDIA, (last visited Feb 25, 2022), <https://www.outlookindia.com/website/story/ambedkar-and-the-uniform-civil-code/221068>

¹² Mohd Ahmad Khan v/s Shah Bano Begum
1985 (1) SCALE 767; 1985 (3) SCR 844; 1985 (2) SCC 556; AIR 1985 SC 945

¹³ Sarla Mudgal v. Union of India, AIR 1995 SC 1531

of minority appeasement politics. A UCC will not be a dream anymore if society became more progressive and political parties care less about appeasement for the sake of votes.

OBSTACLES IN THE PATH OF UCC-

The path for UCC is not so easy. Even the UCC is already mentioned under directive principles for state policies in the constitution of India, but the structure of our Indian society always used to threaten the lawmakers to make any law that goes against our so-called secularism because radical religious groups get themselves ready with a wide range from flashing placards to the deadliest violent practice that one can imagine.

There are some reasons mentioned below which are considered as the major obstacles in the path of UCC-

- **Vast Personal Laws:**

India is a country in which many religions exist with their own sets of traditions, practices and personal law. For example, Hindus are governed by the Hindu Marriage Act of 1955, the Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act (1956) and the Muslims are governed by Personal Law (*Shariat*) Application Act, 1937, the Parsis and Christians also have their own set of personal laws. It's evident from the above that it is not easy for the lawmakers to make one uniform law that will implement on all people following different religions.

- **The Constitutional Barrier:**

India is a country having two sides, a progressive one that is ready to welcome a UCC while a regressive and radical one that is afraid of losing its political power. The constitution of India provides us with the fundamental right of every citizen of India, who has the right to practice and profess any religion. According to some constitutional experts if a UCC gets implemented then it will be a violation of fundamental rights. However, Art-44 of the DPSP states that the Government must ensure the application of a UCC, which still gives some hope.

- **The Absence of Education:**

Education is the most important element in building a nation. A good educated society will sustain its credibility in worst of the situation. The persons associated with these Radical groups and self-motivated religious groups are not so well educated that they

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can really differentiate between right and wrong. They only used to follow the command of their leaders. Getting brainwashed and following the commands of their leaders is the only motto of their life.

Lack of education cause delusion, person cannot able to differentiate between right and wrong. An educated society will never entertain such leaders who brainwashed people for their own egoistic ambition. An uneducated person is the soft targets for such radical leaders, they are easy to manipulate and easily get brainwashed by radicals. They don't want to see any logic behind any command, they only want to prove their loyalty towards their so called leaders. Many terrorist attacks like *Kasab*, *Mumbai serial blasts etc.* and bombing prove the above. Their confessions describe their mental state and slavery towards their leaders.

- **Some radical groups:**

Radicalisation in educational institutions is like termites eating the future. In India, before 80s there was no such thing like Hijab in schools/colleges, it all happened after the emergence of a Radical Islamist Organisation called as *dukhtaran e millat*¹⁴ a banned terrorist organization in Jammu and Kashmir valley. They radicalise and brainwashed the valley in such a way that *Burkha* and *Hijab* became a common thing in Jammu and Kashmir and later the normalisation of Hijab happens. This organization makes a so called imaginary Islamic dress code and forcefully implement that with the help of violence.

Radical Islamist groups in which some are banned also such as, PFI, SIMI, Jamaat-e-Islami Hind and Campus Front of India are also backing the wearing of Hijab, the backing of Hijab by these organizations indicates something very fishy. Even Kerala based journalist *MP Basheer*¹⁵ makes serious allegations on this whole Hijab controversy, as per him, the whole Hijab controversy is being funded by the Saudi Arabia.

¹⁴Southasiaterrorism,Dukhtaran-e-Millat,(march10,2022),
https://www.satp.org/satporgtp/countries/india/states/jandk/terrorist_outfits/dukhtaran.html

¹⁵ Clubhouse leaks: How Jamaat-e-Islami illegally receives funds from Saudi Arabia to Islamise India, REPORT WIRE (last visited Feb 26, 2022), <https://www.reportwire.in/clubhouse-leaks-how-jamaat-e-islami-illegally-receives-funds-from-saudi-arabia-to-islamise-india>

WHETHER POLITICAL WILL FOR IMPLEMENTATION OF UCC IS REQUIRED?

"I personally do not understand why religion should be given this vast, expansive jurisdiction, so as to cover the whole of life and to prevent the legislature from encroaching up on that field"- Dr B.R. Ambedkar (Constitution Assembly Debates)

Any country in the world revolves around politics. Politics revolves around ideology. Ideology may be Right, may be left or may be centrist. Implementation of UCC need political will, one wrong move in politics costs you to become opposition from party in power. Implementing UCC is not an easy task. A lobby consisting of some radical groups, political parties, depending on minorities and radical votes don't want UCC to get implemented. That's the reason many political parties ignore this issue, but this recent Hijab controversy and Karnataka HC judgement has given a new hope to get UCC implemented, may be the political will can implement the UCC on one day.

CONCLUSION-

It is evident that the whole Hijab controversy is just to create a ruckus in society, even Islamic country like *Syria* has also imposed a ban on wearing Hijab in colleges. In the name of freedom of speech, no one should get the license to radicalize the education system as some restrictions also come with freedom. It got the backing of radical Islamist groups, which indicates something very fishy. Karnataka HC's judgement gives some hope to the nation, moving toward a progressive India as it states that the Hijab is not a mandatory element of Islam and upheld the state govt. order. This judgement is a huge disappointment for radicals and new hope for the UCC as every modern nation has accepted a UCC.

UCC is the need of the hour, after visualizing unnecessary ruckus and painful visuals of students protesting outside the classroom anyone can realize this fact. There are some barriers in the path of the UCC such as some self-motivated religious groups, lack of education, the technicality of the constitution etc. However, the political will is also required to implement UCC, and the day political parties will care more for the country rather than votes, a UCC will get implemented nationwide.