THE RIGHT TO DRESS FREELY IN INDIA: NAVIGATING CONSTITUTIONAL FREEDOMS, INSTITUTIONAL NORMS, AND PUBLIC MORALITY

Dissertation submitted to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirements for the award of LLM Degree in Constitutional & Administrative Law

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This is to certify that **ANUVINDA .M,** REG NO: LM0124006 has submitted her Dissertation titled – "THE RIGHT TO DRESS FREELY IN INDIA: NAVIGATING CONSTITUTIONAL FREEDOMS, INSTITUTIONAL NORMS, AND PUBLIC MORALITY" in partial fulfilment of the requirement for the award of Degree in Master of Laws in Constitutional & Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the dissertation submitted by her is original, bona fide and genuine.

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DECLARATION

I, **ANUVINDA. M** do hereby declare that this dissertation work titled " THE RIGHT TO DRESS FREELY IN INDIA: NAVIGATING CONSTITUTIONAL FREEDOMS, INSTITUTIONAL NORMS, AND PUBLIC MORALITY researched and submitted by me to the National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of degree of master of laws in Constitutional & Administrative Law under the guidance and supervision of Dr. Nandita Narayan, Assistant Professor, the National University of Advanced Legal studies is an Original, Bonafide and Legitimate work. It has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this university or any other university.

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ANUVINDA. M

PREFACE

This dissertation emerges from a deep engagement with the evolving discourse on personal liberties within constitutional democracies, particularly the contested terrain of the right to dress freely in India. At a time when identity, autonomy, and dignity are increasingly scrutinized through the lens of societal morality and institutional conformity, the act of choosing one's attire becomes more than a mundane expression, it becomes a constitutional statement.

The impetus for this research lies in the growing number of legal and social controversies across India where the freedom to dress has clashed with institutional norms, religious prescriptions, and public morality. Whether in the context of school dress codes, religious attire, or gendered expectations, these tensions reveal fundamental questions about the scope of individual freedom, the nature of state power, and the role of the Constitution in safeguarding dignity.

This study undertakes an interdisciplinary inquiry grounded in constitutional interpretation, judicial precedent, and comparative analysis. It draws from Indian constitutional law—particularly Articles 19, 21, and 25, and from doctrines such as essential religious practices, constitutional morality, and proportionality. It also engages with international jurisprudence to illuminate alternative legal approaches to similar questions in diverse jurisdictions. Through this, it seeks to critically analyze how the freedom to dress intersects with broader fundamental rights like freedom of speech, personal liberty, religious freedom, and education.

This academic journey has been both intellectually challenging and personally enlightening. It was guided by a commitment to justice, inclusivity, and the protection of individual autonomy in a pluralistic society. The dissertation aims not only to contribute to the scholarly understanding of constitutional freedoms but also to serve as a call for deeper public and institutional introspection on how seemingly ordinary choices like dressing reflect, and indeed shape, the contours of our constitutional democracy.

I express my sincere gratitude to my guide, Dr. Nandita Narayan, whose unwavering support and insightful feedback made this research possible. I also acknowledge the National University of Advanced Legal Studies for providing a vibrant academic environment that fosters critical inquiry. Lastly, I am grateful to every individual whose lived experience, scholarly work, or judicial insight has informed this study in ways both direct and intangible.

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LIST OF ABBREVIATIONS

&	And
art.	Article
CONST.	Constitution
ECHR	European Court of Human Rights
ERP	Essential Religious Practices
NALSA	National Legal Service Authority
NEP	National Education Policy
OBC	Other Backward Classes
Ors.	Others
Para.	Paragraph
Retd.	Retired
RTE	Right To Education
v.	versus

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CHAPTER 1

INTRODUCTION

1.1. INTRODUCTION

"Man is born free, and everywhere he is in chains." [1]

– Jean Jacques Rousseau

This profound observation by Rousseau gets to the heart of the defining dilemma of contemporary constitutional democracies, ie., the constant balancing of personal freedom with social regulation. In the Indian constitutional system, this tension is specifically evident in the interpretation and application of the fundamental rights. India's Constitution, adopted in 1950, enshrines an ambitious vision of justice, liberty, equality, and dignity. In essence, it aims to liberate the individual from both colonial domination and the exploitative frameworks of society itself. The Fundamental Rights contained in Part III of the Constitution are intended to protect these ideals through ensuring individual freedoms while harmonising them with social interests through reasonable restrictions.

Among these rights, the right to life and personal liberty under Article 21[2] and freedom of speech and expression under Article 19(1)(a)[3] are fundamental pillars of self-determination. Even though the Constitution does not mention a "right to dress" in its text, the Indian judiciary has interpreted that the selection of clothing is an articulation of one's personality, identity, and dignity, hence placing it under constitutional protection. Dressing oneself is not merely a utilitarian act but is charged with cultural, religious, political, and personal meanings.

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[1] Jean-Jacques Rousseau, The Social Contract 15 (Maurice Cranston trans., Penguin Books 2004).
[2] INDIA CONST., art. 21
[3] INDIA CONST., art. 19(1)(a)

In this context, the freedom to dress as one chooses in India cuts across a multitude of constitutional protections and social norms. It involves Article 19(1)(a) as expressive conduct, and Article 21 as an issue of personal freedom and body integrity. Article 25[4], promising freedom of religion, comes into play where clothing is religiously meaningful. The Indian courts have, in some cases, grappled with whether religious dress bans or proscriptions, e.g., the hijab, the turban, or the kirpan, are justifiable. At the center of these determinations is the Essential Religious Practices (ERP) test, by which courts determine whether a specific type of dress is essential to the religion involved. Nevertheless, this test has produced unequal results and been accused of putting judges in the position of theological umpires.

Beyond the religious context, dress codes in schools have generated considerable controversy. Institutional codes are traditionally rationalized on grounds of discipline, uniformity, and neutrality. However, these codes tend to restrict personal expression and disproportionately target female students or religious minorities. This gives rise to constitutional issues regarding balancing the right to education under Article 21A with other constitutionally enshrined fundamental rights, including equality under Article 14 and personal liberty under Article 21.

Thus, the freedom to dress is far from a superficial concern; it is a deeply constitutional issue that reflects the broader struggle between autonomy and authority. Legal controversies over clothing, whether in classrooms, streets, or courtrooms, represent symbols of greater societal conflicts over identity, morality, and the boundaries of state power. In upholding the right to dress freely, the Indian constitutional vision must hold fi m to its commitment to human dignity and the celebration of diversity.

1.2. STATEMENT OF RESEARCH PROBLEM

The right to dress freely in India is a multifaceted issue influenced by constitutional provisions and societal norms. However, societal pressures and moral policing often challenge this right, particularly in contexts involving institutional and religious attire. This

[4] INDIA CONST., art. 25

interaction between individual rights and societal expectations necessitates an examination of how public morality, decency and institutional mandates impact the exercise of personal autonomy in matters of dress.

1.3. RESEARCH QUESTIONS

- What is the constitutional framework surrounding the right to dress freely and what is its association with Article 19(1)(a) and Article 21 in the context of personal liberty and freedom of expression.
- To what extent does the right to dress freely in educational institutions intersect with institutional policies, cultural norms, and the principles of individual autonomy and equality ?
- How has the Supreme Court of India interpreted the right to dress, and in what ways has it treated dress freedom as a derivative of other fundamental rights, particularly religious freedom under Article 25?
- How do the judicial responses to the right to dress freely compare across different countries ?
- How can the right to dress freely as an aspect of individual autonomy be balanced against concerns of public morality and decency?

1.4. RESEARCH OBJECTIVES

- To analyze the constitutional framework surrounding the right to dress freely and its association with Article 19(1)(a) and Article 21 in the context of right to privacy, personal liberty and freedom of expression.
- To examine the extent to which the right to dress freely in educational institutions is influenced by institutional policies, cultural norms, and the principles of individual autonomy and equality.
- To examine the judicial approach in interpreting the right to dress in India, focusing on the Supreme Court's treatment of dress freedom as a derivative of other fundamental rights, such as religious freedom under Article 25.

- To comparatively analyse the judicial and legal interpretations of the right to dress in other jurisdictions.
- To analyze how the right to dress freely as an aspect of individual autonomy can be balanced against public morality and decency concerns in India.

1.5. RESEARCH HYPOTHESIS

The right to dress freely as a facet of individual autonomy under Article 19(1)(a) and Article 21 of the Indian Constitution is restricted by public morality, decency and institutional norms.

1.6. RESEARCH METHODOLOGY

The research methodology intended to be applied is doctrinal and analytical in nature. Various sources such the Constitution, legislations, government policies, journals, articles, reports from official websites, research reports, etc., will be used for the purpose of the research.

1.7. SOURCES OF RESEARCH

Primary sources include the Constitution of India, Constituent Assembly Debates, Fundamental Rights Committee Readings, Relevant Judicial Decisions of the Supreme Court of India and the various High Courts of the States and also decisions of other relevant jurisdictions, and official websites of Government departments.

Secondary sources include books, scholarly articles, research reports, and newspaper articles,

1.8. LIMITATION OF THE RESEARCH

The study's primary limitation is the lack of primary sources in certain areas of interest with respect to right to dress freely. Also, the study deals with comparative analysis of judicial responses but it is limited to only a certain number of countries. This research has

been conducted mostly by following the doctrinal research method. However, in certain areas of the research, it was a necessity to include data obtained from elsewhere to substantiate the points made by the researcher. Even though there are many judicial decisions that deals with individual autonomy and state interference, but the research only includes sufficient case laws to establish the legal status of government policies in India.

1.9. CHAPTERISATION

CHAPTER 1 : INTRODUCTION

The introduction chapter provides an insight to the whole research work. It shares the rationale behind the research and a general idea as to the challenges faced by the right to dress freely in India. It provides the research questions and research objectives as well as the statement of the research problem. The objectives listed in this chapter are to navigate the research with focus. To state the way in which the research will be conducted the researcher has added research methodology in this chapter. Moreover, the chapter contains the research hypothesis and the sources on which the researcher relied on to conduct the research and also the literature researcher reviewed in pursuance of the research. Finally, the researcher ha included the limitation of the study to acknowledge the gap in the research.

CHAPTER 2 : THE RIGHT TO DRESS FREELY AS A PART OF FREEDOM OF SPEECH & EXPRESSION AND PERSONAL LIBERTY UNDER INDIAN CONSTITUTION

This chapter examines the constitutional underpinnings of the right to dress freely in India in the context of the broader guarantees of freedom of speech and expression under Article 19(1)(a) and the right of personal liberty under Article 21 of the Indian Constitution. It contends that clothing is not all about fashion but also an instrument of self-expression, symbolic communication, and identity. Borrowing from Indian and comparative jurisprudence, such as the cases of NALSA v. Union of India, Navtej Singh Johar v. Union of India, and American precedents such as Tinker v. Des Moines, the chapter sets the

benchmark that clothes can have political, individual, and gendered meanings and thus need constitutional protection.

CHAPTER 3 : THE INTERSECTION OF RIGHT TO DRESS FREELY AND RIGHT TO EDUCATION

Chapter 3 explores the complex intersection between the constitutional freedom to dress and the right to education in India, noting the conflicts created when institutional dress codes are implemented at the cost of personal identity, autonomy, and belonging. Using such cases as the Karnataka hijab ban and past controversies over dress codes, the chapter demonstrates how strict uniform rules can isolate students, girls and religious minorities most often, by making them choose between identity and learning. It critically analyzes the judiciary's reactions, pitting decisions upholding institutional norms against those upholding constitutional values.

CHAPTER 4 : THE RIGHT TO RELIGION & THE RIGHT TO DRESS

Chapter 4 analyzes the crossroads of the right to dress freely and the right to religion under the Indian Constitution. It traces how religious attire, like hijab, turban, or sacred thread, is a vital means of identification and expression of faith. But when dress codes are coercively enforced by communities or institutions, they can trample over individual liberty, most importantly for women and gender minorities.

CHAPTER 5: COMPARATIVE ANALYSIS ON THE JUDICIAL RESPONSES TO THE RIGHT TO DRESS

Chapter 5 provides a comparative overview of how judicial traditions address the right to dress, and how various constitutional traditions understand the dynamics between personal identity and state or institutional power. It contrasts India's Essential Religious Practices (ERP) test with the other such doctrines and tests used by the judiciary in other jurisdictions.

CHAPTER 6 : DRAWING A BALANCE BETWEEN THE RIGHT TO DRESS FREELY AS AN ASPECT OF INDIVIDUAL AUTONOMY & THE PUBLIC MORALITY

The Chapter 6 investigates the constitutional conflict between the right of the individual to dress freely, as part of autonomy, expression, and religious freedom, and the limitations placed by the notion of morality.

1.10. LITERATURE REVIEW

i. Gowri Ramachandran, Freedom of Dress: State and Private Regulation of Clothing, Hairstyle, Jewelry, Makeup, Tattoos, and Piercing, 66 Md. L. Rev. 11 (2007)

The article advocates for a nuanced understanding of how personal appearance intersects with legal rights and societal norms, calling for greater recognition and protection of individual choices in dress as essential to personal freedom and identity in the American legal system. The paper, suggests freedom of dress as an independent legal right. Personal choices regarding appearance such as attire, hair, cosmetics, jewelry, tattoos, and body piercing are included in this. Ramachandran believes that equality (anti-discrimination) or freedom of speech-based legal mechanisms are not sufficient to sufficiently safeguard these identities.

Rather, the article promotes a fresh theory of freedom of dress based on its special character as both an individual bodily preference and social or political statement. It investigates how this right might be instantiated in four broad contexts:

- Workplaces – Suggests mandating reasonable accommodations for dress-related decisions and bolstering Title VII claims with "sex-plus" and disparate impact theories.
- Public areas (streets) – Encourages strict examination of laws that restrict dress and asserts that dress should be given the same kind of foundational right protection as is accorded speech.
- Schools – Demands strong protection for dress decisions made by students, perhaps even more stringent than free speech protection.
- Prisons – Encourages a more limited accommodation policy because of overriding interests such as security and identification.

The article finally makes a persuasive argument for treating freedom of dress as an individualized and foundational freedom required for identity formation and self-expression, calling on lawmakers and courts to recognize and safeguard it on its own and not as part of other rights.

ii. Anish Datta, Syncretic Socialism in Post Colonial West Bengal : Mobilising and Disciplining Women for Sustha Nation State, University of British Columbia, 162 – 169, (2009)

The portion of the article titled " Dress Code and Female Body", deals with, as the title suggests, the issue of gender stereotyping of dress codes in institutions in the name of institutional discipline.

iii. Shoma Choudhury Lahiri & Sarbani Bandyopadhyay, Dressing the Feminine Body, 47 Econ. & Pol. Wkly. 20 (Nov. 17, 2012).

Mainly deals with certain dress codes in institutions which are only aimed at women but are enforced in the name of "discipline" and "institutional decorum".

v. Nandini Hebbar. N & Raveendra Kaur, Becoming Professional, Being Respectable : The Symbolic Politics Of College Dressing In South India (https://ppl-ai-file-upload.s3.amazonaws.com/web/direct-files/32102869/06858732-7a41-4280-945173b7ecb8b9e2/Becoming_professional_being_respectable.pdf)

The article explores the complex dynamics surrounding dress codes in engineering colleges in India. The authors also address societal anxieties regarding women's bodies and behavior, particularly in the context of rising incidents of sexual violence.

vi. Sha'Mira Covington & Katalin Medvedev, Dressing for Freedom and Justice, 6 Clothing Cultures 215 (2019), https://doi.org/10.1386/cc_00013_1.

The paper "Dressing for Freedom and Justice" by Sha'Mira Covington and Katalin Medvedev (published in Clothing Cultures, 2019) discusses how Black American protest attire has existed as an act of political statement and resistance throughout history.

Applying social semiotics and Critical Race Theory (CRT), it examines the media representation of the clothing of Black protestors within various historical movements.

The authors follow the history of protest clothing from the slave era to the contemporary Black Lives Matter (BLM) movement, highlighting how dress is a non-verbal language communicating identity, resistance, and calls for justice.

vii. Ruthann Robson, Dressing Religiously, in Dressing Constitutionally: Hierarchy, Sexuality, and Democracy from Our Hairstyles to Our Shoes 128 (Cambridge Univ. Press 2013).

Ruthann Robson's article "Dressing Religiously" discusses the intricate intersection of religious dress with constitutional law, particularly in the U.S. legal context. It critically analyzes how religious dress, like hijabs, niqabs, turbans, yarmulkes, and tattoos that symbolize spiritual affiliations, is dealt with by the First Amendment's Free Exercise and Establishment Clauses, and by Title VII and RLUIPA (Religious Land Use and Institutionalized Persons Act).

The piece takes issue with the double standard under which religious attire is afforded more legal protection than secular attire, in its constitutional critique of religiosity favoritism. Comparative cases such as those of Ariana Iacono (afforded protection for her wearing a nose stud for religious purposes) and Danielle Bar-Navon (denied protection for secular body modification) show how religious purpose justifies expression otherwise forbidden.

Robson contends that legal protection for religious apparel is uneven, doctrinally muddled, and many times mirrors cultural, gendered, and religious hierarchies. Although laws are designed to secure religious freedom, they too often accomplish this by favoring favored beliefs over others, and particularly those that are outside the prevalent norms. The article calls for a better principled and fair approach towards deciding claims regarding dress and religious expression.

CHAPTER 2

THE RIGHT TO DRESS FREELY AS A PART OF FREEDOM OF SPEECH & EXPRESSION AND PERSONAL LIBERTY UNDER INDIAN CONSTITUTION

2.1. INTRODUCTION

The Constitution of India enshrines and safeguards the fundamental rights of its citizens, ensuring protection against arbitrary interference by the State. These rights are enumerated in Part III of the Constitution, beginning with Article 12, which defines the term "State." Spanning 24 articles, Part III is comprehensively categorized under six distinct heads, each encapsulating a specific set of rights that are intrinsic to individual liberty and dignity.

Among these, Article 19(1) guarantees six fundamental freedoms to all citizens, including the right to freedom of speech and expression under Article 19(1)(a). This freedom encompasses the liberty to articulate a person's thoughts, opinions, and beliefs through speech, writing, visual representation, or any other form of expression. Over time, the judiciary has significantly broadened the ambit of this right, recognizing it to include freedoms such as the freedom of the press[5], commercial speech[6], the right to broadcast[7], access to information[8], the right to critique, and even the right to remain silent[9].

Article 21 of the Constitution, which guarantees the right to life and personal liberty, has similarly been broadly interpreted by the judiciary. It has been held that the right to life transcends mere physical existence, encompassing the right to live with dignity and the conditions necessary to develop one's personality fully.[10]

Within this constitutional framework, the freedom to dress however one chooses emerges as an essential facet of Article 19(1)(a) and Article 21. The choice of attire is not merely a

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[5] Romesh Thappar v. State of Madras, 1950 AIR 124
[6] Hamdard Dawakhana v. Union of India, 1960 AIR 554
[7] Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, 1995 AIR 1236
[8] State of U.P. v. Raj Narain, 1975 AIR 865
[9] Bijoe Emmanuel & Ors. v. State of Kerala & Ors, AIR 1987 SC 748
[10] Kartar Singh vs State Of Punjab, 1961 AIR 1787

matter of personal choice but a powerful means of self-expression and symbolic communication. It reflects identity, conveys beliefs, and can serve as a statement of opinion. Therefore, it becomes imperative to critically examine the constitutional positioning and protection of the right to dress freely within the broader discourse on fundamental rights.

2.2. EXPLORING THE RIGHT TO DRESS AS A PART OF FREEDOM OF SPEECH & EXPRESSION AND PERSONAL LIBERTY

When looking into the evolution of clothing, it could be seen that it was a crucial part of the culturalization of the human body, which has greatly influenced the formation of our human niche and encouraged self-domestication. Our ancestors were able to access a greater range of resources and ecological niches by wearing clothing, which allowed them to live in a greater variety of environments. Clothing evolved alongside humans, and it developed into a potent medium for social and personal identification as well as cultural expression, in addition to being a practical need for comfort and protection. This helped in forming larger and more complex societies, as individuals began identifying and cooperating with members of their group, tribe, or community based on shared clothing styles and symbols.[11] This can foster a sense of solidarity and unity.[12] Thus, from the beginning of the history of clothing, dresses were not just a mere accessory but a symbol of personal identification and expression.

2.2.1. DRESS AS A SYMBOLIC SPEECH

The right of speech and expression, as a pillar of personal freedom in India, has roots both in ancient culture and contemporary constitutionalism. From the Vedic chant "sangachadwam, samvadhatham…" to the coexistence of diverse philosophical schools like Buddhism and Jainism, India has long upheld a culture of dialogue. The contemporary constitutional promise came during the struggle for independence and was formalized in Article 19(1)(a) of the Indian Constitution. Article 19(1)(a) states,

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[11] Gilligan et al., Science Advances, vol. 10, eadp2887 (2024).
[12] Proceedings of the 6th International Scientific and Practical Conference, Mar. 19–20, 2024, Seattle, U.S., https://doi.org/10.51582/interconf.19-20.03.2024.020.

All citizens shall have the right-

(a) to freedom of speech and expression;[13]

The remnants of different kinds of dresses were found by archaeologists from the areas of palaeolithic civilizations, the earliest form of civilization. The story behind the utilization of clothes has changed over time. The beginning of clothing might have told the story of comfort and safety from the extreme climates, but it has been later retold as social and psychological factors guided the desire for clothing rather than just climate concerns. This could be inferred from the skeletons of an adolescent, an adult man, and a child excavated from the 34,000-year-old site of Sunghir near Moscow, Russia. The skeletons were covered with around 13000 beads made from mammoth ivory, which were laid in an orderly way, which suggests that they were sewn into fitted clothing.[14] Once the clothes were put to decorations, it can be inferred that dresses were no more about climate issues. Thus, the motive behind the dress one wears has evolved over time. Now, choosing a dress to wear is not just a simple choice of comfort, it has evolved into a form of non-verbal communication of a person's identity, his ideology, his conduct and what not.

Long over half a century ago, the US Supreme Court set out that the freedom of speech as protected under the First Amendment of the US Constitution included within it symbolic speech as well, which means that speech doesn't always have to be verbal, non-verbal communication or conduct will also be considered as speech.[15] Symbolic speech, as a concept, first came into the light through United States vs O'Brien[16]. On 31st march of 1966, David O'Brien burned his draft card on the Southern Courthouse. He was therefore convicted for violating the United States Code under the offence of intentional destruction or mutilation of such a certificate, which was a criminal offence under the Code. O'Brien said that his behavior qualified as First Amendment-protected free speech. In agreement with him, the Court of Appeals reversed his conviction. The Supreme Court, however,

[13] INDIA CONST., art. 19(1)(a)
[14] Ian Gilligan, Sapiens, anthropology Magazine,
[15] Tinker vs Des Moines, 393 U.S. at 508, (1969), students wore black armbands in school to protest the Vietnam War. The school suspended them. The US Supreme Court ruled that wearing black armbands was a form of symbolic speech protected under the First Amendment.
[16] United States vs O'Brien, 391 U.S. 367 (1968)

disapproved and upheld his conviction. However, Supreme Court's decision was not in favour of O'Brien, it introduced something much important in the long term. The Court considered the burning of draft card as a form of speech and considered the legality of the restriction imposed on it by the Statute. The Court ruled that incidental restrictions on First Amendment rights might be justified if there was a significant enough governmental interest in controlling the nonspeech element when "speech" and "nonspeech" elements were incorporated in the same course of action. After carefully reviewing federal statutes, the Court determined that there must be a "sufficiently important governmental interest" before the Government may violate the first amendment. The Court determined in O'Brien that the government's obligation to build and sustain armies was a strong enough justification "to hold valid the federal statute which prohibited the burning of a draft card." Therefore, even though O'Brien's conviction was upheld, this case serves as the model for all cases involving symbolic communication.[17] The most spoken case when discussing about symbolic speech is Tinker's case, which came after O'Brien. In protest of the Vietnam War, three petitioners, junior high and high school students, wore black armbands to class. The school's policy was that anyone wearing an armband would be asked to take it off, and if they didn't, they would be punished until they came back without it. The three students filed a lawsuit in the US District Court after being suspended from school. On the grounds that the rule was appropriate to uphold school discipline, the court ruled in favor of the school administration, and the Eighth Circuit[18] agreed. The US Supreme Court, however, reversed the lower courts' decisions and upheld the first amendment rights. The Court went into some detail about "the connection between the right to free speech and passive expression".[19] It came to the conclusion that "reasonable regulation of speech-connected activities in carefully restricted circumstances" was permissible by the first amendment. However, proving the existence of a legitimate state interest was required in order to pass the test. In this instance, there was no evidence in the record to support the

[17] Ellen S. Podgor, Symbolic Speech, 9 IND. L. REV. 1009 (1976).
[18] The 13 intermediate appellate courts, also known as Circuit Courts of Appeals, are referred to as the "circuits of appeal" in the US federal court system. Each of the twelve regional circuits that comprise the United States' 94 federal judicial districts has its own court of appeals. Three judges make up appeals courts, which do not employ juries. They act as a mediator between district courts and the Supreme Court, reviewing rulings from federal district courts. The Eighth circuit has appellate jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.
[19] 393 U.S. at 508

state's purported interest in avoiding the disruption that armbands could have produced. "Clearly the prohibition of expression of one particular opinion, at least without evidence that is necessary to avoid material and substantial interference with schoolwork and discipline, is not constitutionally permissible," Justice Fortas said in his majority ruling.[20] As these cases assert, a piece of clothing or dress can also be a symbolic speech, when they are worn to express an idea or belief. Many people have used clothes as a form of protest or expression of their support in any issue. Courts have acknowledged this in a number of cases, determining whether dress limitations violate free expression rights by using the O'Brien Test or other First Amendment concepts. In the leading case of Cohen vs California, the words "Fuck the Draft" was printed on Mr. Cohen's jacket as he stood in a hallway of the Los Angeles County Courthouse. Despite the fact that there is no violence or disturbances, Cohen was accused by the State of California of "maliciously and willfully" disturbing the peace. Cohen was given a 30-day jail sentence after being found guilty of this felony. In an opinion that turns only square corners, Justice Harlan reversed the conviction on First Amendment grounds.[21] The matter was straightforward for Justice Harlan: "We deal here with a conviction depending purely upon 'speech,' not upon any separately identified conduct."[22] Here, the court considered Cohen's act of wearing the t-shirt with the words in question as an aspect of his freedom of speech. He was expressing his opposition to the Vietnam war. Thus, the Court safeguarded two components of speech; the emotive(the expressing of feeling) and cognitive (the exposition of ideas).[23]

In India, also, Article 19(1)(a) guarantees the right to speak and express one's view through various means, including symbolic conduct. As established earlier, freedom of speech and expression, being one of the fundamentals for a democratic society, isn't just confined to words. When the father of our nation, Mahatma Gandhi, began using and encourage among Indians the use of the 'swadeshi' dress dhoti and conducted nationwide ignition of foreign clothes, in both circumstances, clothes were more than just a form of fashion. Certain present-day examples reflect that the post-independence era has borrowed this approach as

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[20] Id. at 511
[21] Ronald J. Krotoszynski Jr., Cohen v. California: Inconsequential Cases and Larger Principles Favorite Case Symposium, 74 Tex. L. Rev. 1251 (1995). https://scholarship.law.ua.edu/fac_articles/237
[22] Id.
[23] Cohen v. California, Oyez, https://www.oyez.org/cases/1970/299 (last visited Apr 2, 2025).

well. Consider the Manipuri woman's traditional wrap, the phanek, which became a symbol of resistance during the 2009 Manipur protests and mobilization against the government's extrajudicial killings.

The Indian judiciary has, on several occasions, accounted for the same. While addressing a number of constitutional concerns pertaining to the transgender community, the court in the landmark case of NALSA v. Union of India[24] makes the crucial finding that people express their gender identity through their clothing and mannerisms, which is a fundamental right protected by Article 19(1)(a) of the Constitution.[25] The court cites the US cases City of Chicago v. Wilson et al. and Doe v. Yunits et al. as instances where judges ruled that a person's fundamental right to autonomy and expression includes the ability to express their gender identity through their clothing choices. The court comes to the following conclusion after citing these cases:

> *"Principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc."*

The court expanded the application of Article 19(1)(a) to encompass nonverbal communication through the NALSA ruling. Similar to Tinker, where the students' black armbands symbolized their anti-Vietnam fervor in the provided setting, in the societal context, a person's clothing choices could convey to the general public a significant aspect of their gender identification. Therefore, it was sufficient for the contested behavior or action to convey to the audience a part of the individual's identity.

The ruling in Navtej Johar v. Union of India[26], which addressed Section 377 of the Indian Penal Code, which made homosexual sexual activities illegal, further developed this concept. Chief Justice Misra and Justice Khanwilkar knocked down the part on the grounds of discrimination, privacy, and autonomy, but they also struck it down on the grounds of

[24] National Legal Services Authority v. Union of India, (2014) 5 SCC 438
[25] Id., at para 62
[26] Navtej Johar v. Union of India, AIR 2018 SC(CRI) 1169

free speech infringement.[27] According to the court, the section made many members of the LGBT community live their lives in secret because they were afraid of being harassed by the police. This chilling impact violated the freedom of expression. There had been a violation of the right to free speech since the rule made it impossible for someone to express a part of who they were to the public. In her concurring opinion, Justice Indu Malhotra referenced the NALSA ruling that states people have the freedom to express their gender identity however they see fit through their clothing, mannerisms, and other choices.

Thus, the dress a person chooses to wear can symbolize many things, be it his political ideology or protest, as in Tinker v. Des Moines, or his identification as a particular gender or his individual status, as in the NALSA case. As per Principle 1(19) of the Yogyakarta Principles[28], as referred to in the NALSA case, *"Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means,"*.[29] Thus a person's attire or dress can be said to be a form of symbolic speech, as protected under the freedom of speech and expression in the Constitution.

2.2.2. THE PERSONAL LIBERTY TO DRESS

Article 21 of the Constitution states, *" No person shall be deprived of his life or personal liberty except according to procedure established by law".* The Article deals specifically with personal liberty and not the concept of liberty in the general sense.

The concept of personal liberty, initially perceived narrowly as freedom of the body from physical restraint, as enunciated by A.V. Dicey in the English context, was also thus interpreted by the Indian judiciary in early cases such as *A.K. Gopalan v. State of Madras*[30],

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[27] Id;at para 247

[28] The Yogyakarta Principles, developed in 2006 by human rights experts, clarify how international law applies to sexual orientation and gender identity. Endorsed by global and regional bodies, they guide States in upholding the rights of all individuals, regardless of gender identity or sexual orientation.

[29] Id; Principle 1; Principle 1deals with the right to the universal enjoyment of human rights

[30] A.K. Gopalan v. State of Madras, AIR 1950 SC 27

when personal liberty was equated with freedom from bodily coercion. Judges like Justice Mukherji and C.J. Kania perceived it to be the opposite of physical restraint, demonstrating a negative liberty understanding. But this knowledge has matured over the years. In *Kharak Singh v. State of U.P.*[31], the court started broadening the connotation of personal liberty to more than mere physical freedom. This development reached its climax in milestone rulings such as *Maneka Gandhi v. Union of India*[32], where the Supreme Court established that personal liberty includes many aspects of individual autonomy such as the right to go abroad, and subsequently, the right of privacy as fundamental to Article 21. Therefore, the Indian judiciary slowly but surely made the transition from a strict, physical definition of personal liberty to a broader, multi-layered one that safeguards several aspects of individual freedom.

As it has been acknowledged in the earlier section, a dress is not just a fashion element. It is also a form of personal and political expression of oneself. Personal liberty can be considered another aspect of a person's choice of a dress.

John Stuart Mill, in his work "*On Liberty*"[33], strongly advocates for individual freedom, asserting that the only justified reason for limiting a person's actions is to prevent harm to others. He writes, "*the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others*."[34] This principle directly supports the right to dress freely as a form of personal liberty. Mill emphasizes that an individual is "*sovereign over his own body and mind*," meaning that choices about appearance, including clothing, fall entirely within a person's own control. He further argues for the "*liberty of tastes and pursuits; of framing the plan of our life to suit our own character*," which clearly includes freedom of expression through dress. Even if society deems a person's clothing choice as "*foolish, perverse, or wrong*," Mill insists that such opinions are "*good reasons for remonstrating with him, or reasoning with him, or persuading him*," but not for compelling or punishing him. Therefore, under Mill's philosophy, the freedom to dress according to one's beliefs, identity, or preferences is a

[31] Kharak Singh v. State of U.P, 1963 AIR 1295
[32] Maneka Gandhi v. Union of India, 1978 AIR 597
[33] John Stuart Mill, On Liberty (Dover Publ'ns 2002) (originally published 1859).
[34] Id.

fundamental aspect of personal liberty that should not be interfered with unless it causes direct harm to others.

It was not so long ago that the Kerala High Court confirmed that every person has the freedom to wear what they want; the right to wear any dress is an extension of personal freedom under Article 21 in Civic Chandran v. State of Kerala. Personal liberty, as acknowledged in the previous sections, has outgrown the absence of physical restraint aspect and now includes many other rights that push a person to live their life with dignity. The court put forth three aspects of the right to privacy in the Indian context when holding the ruling of Puttuswamy.[35] The three aspects, to be put in the apex court's words, are :

- *"Privacy that involves the person i.e. when there is some invasion by the State of a person's rights relatable to his physical body, such as the right to move freely;*
- *Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognizes that an individual may have control over the dissemination of material that is personal to him. Unauthorised use of such information may, therefore lead to infringement of this right; and*
- *The privacy of choice, which protects an individual's autonomy over fundamental personal choices."*[36]

Thus, the right to privacy is not just bound to bodily privacy(the physical aspect of privacy) or information privacy, but it also embraces the privacy to choose. This means that it safeguards choices essential to your identity and self-respect, such as who you marry, what religion you practice, what you wear, and whether or not to have children.

The court backs its reasoning by referring to the Preamble of the Constitution, which begins with the statement, *"We, the People of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic…"*[37] . The court reasons that unless people in a democracy are allowed to completely develop so that they can make informed decisions that impact their everyday lives and their choice of how they are to be

[35] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
[36] Id., at para.81
[37] INDIA CONST., preamble

governed, the fundamental value of the country being democratic would be meaningless. Therefore, if a person chooses to wear a particular attire, he is guaranteed legal protection under the right to personal liberty in the Constitution.

Before quitting Puttuswamy, digging into further discussion on the Preamble performed by the court would be constructive. The preamble provides for *"LIBERTY of thought, expression, belief, faith, and worship;."* Chapter III, which deals with the fundamental rights is filled with references to this core principle. Articles 19(1)(a), 20, 21, 25, and 26 contain it.
The Declaration of the Rights of Man and of the Citizen of 1789, which defined "liberty" in Article 4 as "the ability to do anything that does not harm others," is where this fundamental constitutional value originated. As a result, the exercise of each man's natural rights is unrestricted except insofar as it guarantees the enjoyment of those same rights by other members of society. Only the law may establish these limits. The court then goes on to the next core idea of the Preamble, that is, "Fraternity", calling it the most important of all.[38] Fraternity assures the dignity of the individual. The dignity of the individual includes in itself the right of the individual to reach his or her full potential. And only when a person has autonomy over basic personal decisions and control over the sharing of personal information can this growth occur. Thus, the court makes it clear that the right to individual choices, including the right to dress freely, is a part of the right to privacy, which in turn is a part of the right to personal liberty under Article 21 of the Constitution. Court also states, *"if the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained under Article 21 read with Article 14 if it is arbitrary and unreasonable;"*

The Supreme Court, in *Shafin Jahan v. Asokan K.M.*[39], reiterating Puttuswamy's ruling, stated that each person's right to make decisions on issues essential to pursuing happiness is a key component of the liberty that the Constitution protects. It additionally asserts, *"the Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and*

[38] Id; at para 85
[39] AIR 2018 SC 1136

partnership are within the central aspects of identity." The Delhi High Court took a similar stand in M.D.Nemat Ali & ors v. State & Ors., when it held, *"Article 21 of The Constitution of India gives Protection of Life and Personal Liberty to all persons whereby it is the inherent right of every individual to exercise personal choices,.."*

The judiciary has, thus, on different occasions iterated that personal choices, which include the right to dress freely or wear any attire, are an important aspect of personal liberty under Article 21 of the Constitution. We have come a long way from an understanding of personal liberty that protected only against physical or bodily restraint imposed by the State. The scope of the right to personal liberty has evolved to be sufficiently broad as to encompass all facets of life integral to the formation of an individual's identity.

2.3. CONCLUSION

The freedom of dressing, as discussed in this chapter, is not so much an issue of fashion or external choice, but an essential constitutional issue deeply rooted in the concepts of liberty, dignity, and self-expression. It receives protection mainly under Articles 19(1)(a) and 21 of the Indian Constitution, which collectively comprise the cornerstones of personal autonomy in a democratic society. Although on the surface it seems peripheral, the right to wear what one wishes is truly a strong articulation of identity, faith, gender, culture, and protest. It is both symbolic and meaningful, reflecting the self and used as a language to speak to society.

In the past, the understanding of the right to life and liberty of the person under Article 21 was restricted to bodily liberty. This minimalist conception, evident in early rulings such as A.K. Gopalan v. State of Madras, concerned itself with the lack of physical restraint. But Indian constitutional law has come a long way in the intervening decades. Beginning with Maneka Gandhi v. Union of India, the Supreme Court has come to interpret "liberty" in an expansive and purposive sense, associating it with dignity, autonomy, and substantive fairness. The decision established that freedom is not to be interpreted as freedom from imprisonment or restraint, but as the right to make individual choices integral to one's

existence and self-realization. This shift in interpretation paved the way for a larger reading of individual liberties, not only the right to privacy, bodily control, and by extension, individual appearance and dress.

In Justice K.S. Puttaswamy v. Union of India, the Court categorically held that privacy is an integral part of the right to life and liberty under Article 21. Privacy in this context encompasses the autonomy of the individual to intimate and personal decisions without external influence. Justice Chandrachud's statement that "privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation" indicates the constitutional significance of individual autonomy regarding appearance and lifestyle. The right to dress falls under this broadened perception, it is among the intimate sphere of choice protected from intrusion by the state or society.

Additionally, Article 19(1)(a) ensures freedom of speech and expression, and courts in the past have stretched its application to cover symbolic acts in addition to verbal or written expression. In NALSA v. Union of India, the Court recognized that appearance and clothing are indispensable aspects of gender identity. Denial of the right to dress in line with one's gender expression was understood as a denial of basic rights under Articles 14, 15, 19, and 21. Likewise, in Navtej Singh Johar v. Union of India, the Court determined that sexual identity and concomitant expressions, such as dress, conduct, and mannerisms, are safeguarded under constitutional protections of dignity and equality. These decisions cumulatively illustrate that clothing is a valid means of self-expression, worthy of constitutional protection.

International precedent also upholds this argument. The United States Supreme Court in Tinker v. Des Moines Independent Community School District upheld the fact that the wearing of black armbands to protest the Vietnam War constituted symbolic speech entitled to First Amendment protection. The court upheld that students did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." This principle holds that clothing decisions, when exercised as an aspect of political or social expression, possess substantial constitutional value and should not be arbitrarily restricted.

The philosophical foundations of the right to freely dress are also significant to discuss. Isaiah Berlin's concept of "negative liberty" prioritizes freedom from external intervention, most notably the State, on the making of individual choices. This construct serves well in explaining why dress, being an individual choice, should be spared coercive state intervention except where such intervention passes stringent constitutional tests. John Stuart Mill's "harm principle" is an added support to this line of reasoning: limits on individual freedom are only permissible when one's conduct harms others. Offending sensibilities or going against traditional norms alone is not considered harm in a pluralist constitutional democracy.

Kantian ethics, where the foundation is human dignity, supports the understanding that people should be treated as ends in themselves and not as a means to an end. When society or the State requires uniform appearance norms or criminalizes nonconformity to prevailing cultural fashion, it is turning citizens into means of enforcing a shared identity. These measures are inherently incompatible with the concept of constitutional morality, which aims to promote individual dignity and respect for diversity.

It is equally important to discuss the boundaries of this right. Like every fundamental right, the right to dress is not an absolute one. The Constitution allows for reasonable restrictions in the cause of public order, decency, and morality. These, though, need to be narrowly construed and applied with caution. The sloganizing cry of "public morality" cannot be used to justify limiting constitutional rights, particularly where such morality is determined by patriarchal or majoritarian norms. Constitutional morality must triumph over societal morality, as the Supreme Court has underscored in S. Khushboo v. Kanniammal. Thus, any limitation of the right to dress has to satisfy the tests of legality, necessity, and proportionality.

This balancing exercise is most essential in situations where dress codes are enforced by the State or institutions. As much as there may be a need for discipline or uniformity in institutions, it cannot be at the expense of constitutional freedom. Recent controversies over hijab bans in schools highlight the tension between institutional control and personal

liberties. Courts and lawmakers must move with caution to avoid letting administrative ease or majoritarian unease infringe on constitutionally guaranteed rights.

Finally, the freedom of dress is a confluence of the freedom of expression and the freedom of personal liberty. It is a double right, a expression of both speech and choice, and is constitutionally situated at the center of the vision of a decent, self-governing, and diverse society. Its preservation is not a means of advancing a given culture or ideology but of maintaining the very ground of democracy: that all persons have the right to live their lives in an authentic way, to speak their minds, and to offer themselves to the world as they are. As Justice Chandrachud rightly put it in Puttaswamy, “The Constitution is a living document.it seeks to foster a culture of liberty and freedom in thought and action.” Freedom of dress is an integral thread in this constitutional weave, one that has to be watched over jealously, particularly in periods when conformity is insisted on in the name of culture, discipline, or order.

CHAPTER 3

THE INTERSECTION OF THE RIGHT TO DRESS FREELY AND THE RIGHT TO EDUCATION

3.1. INTRODUCTION

In a democratic constitution, the right to education is not just a statutory right but also a powerful tool for empowerment, social justice, and individual growth. It is in school and college classrooms that children and young people start learning about their place in the world and their entitlement to mold it. But education does not occur in a vacuum, it is inextricably linked with identity, culture, and the lived experiences of students. The clothes one wears to school are often more than fabric; they are carriers of belief, markers of gender, expressions of dignity, and symbols of belonging.

However, in recent years, there have been confrontations where the institutional requirements of uniformity have collided with the diverse identities that students carry into schools. If the practice of dressing according to religious, cultural, or gender identity becomes an exclusionary criterion for accessing educational institutions, then it is an issue of pressing constitutional concern. These tensions strike at the heart of the Indian Constitution's guarantees of autonomy, equality, and freedom of expression.

The debate on dress codes in schools, especially in a multi-secular society such as India, forces us to reconsider how individual rights can co-exist with institutional discipline. When education is made conditional on adapting to dress standards that ignore identity, the ideal of inclusive education starts falling apart.

3.2. THE FUNDAMENTAL RIGHT TO EDUCATION IN INDIA

The history of the right to education in India is a journey from a non-justiciable right to a justiciable right. When the Constitution of India came into force, the right to education was

incorporated in the Constitution as a Directive Principle of State Policy, under Article 45, which read as:

"The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years."

This had to be achieved within ten years, ie, by 1960. However, it took the State another forty years to accomplish this. The landmark judgement of *Unnikrishnan v. State of Andhra Pradesh*[40] lead the way to changing the right to education to the status of a justiciable right. Consequently, a 2002 constitutional amendment made primary education a fundamental right for all children between the ages of 6 and 14, and the Right of Children to Free and Compulsory Education Act, 2009[41] came into effect on 1 April 2010.

3.3. INSTITUTIONAL DRESS CODES & UNIFORM POLICIES

In August 1993, one of the students of Asutosh College, Calcutta, was reprimanded by the college principal for wearing 'salwar kameez' instead of 'saree'.[42] In 2005, Anna University banned casual clothing for students, enforcing a strict dress code to promote a "positive and safe college atmosphere". The mandate applied to 553 affiliated colleges, and the guidelines specified acceptable clothing styles, colours, and lengths. Non-compliance faced penalties, including suspension or fines.[43] In 2014, in England, the headmaster of the Academy of the Isle of Wight sent more than 250 female students home from lessons because their skirts were too short. The girls were all aged between 11 and 18 years. Boys at the school were also sent home if their shoes were not made from leather. Other students were removed if their trousers were "too tight". The reason for his act, as stated by the

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[40] Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors., 1993 AIR 2178
[41] Henceforth called the Right to Education Act, 2009
[42] Anish Datta, Syncretic Socialism in Post Colonial West Bengal : Mobilising and Disciplining Women for Sustha Nation State, University of British Columbia, 162 – 169, (2009)
[43] Nandini Hebbar. N & Raveendra Kaur, Becoming Professional, Being Respectable : The Symbolic Politics Of College Dressing In South India (https://ppl-ai-file-upload.s3.amazonaws.com/web/directfiles/32102869/06858732-7a414280945173b7ecb8b9e2/Becoming_professional_being_respectable.pdf)

headmaster, was "to prepare them for the world of work".[44] Similarly, recently, The Times of India reported the punishment meted out to a 13-year-old girl for wearing leggings instead of a salwar to school in Gaighata, North 24 Parganas. She was stripped of her leggings in front of the whole class and made to attend classes thereafter.[45] These instances, though separated by geography and time, reflect a common tension between institutional authority and individual autonomy, particularly in educational settings. They raise critical questions about whether enforcing dress codes, often under the guise of discipline, decorum, or employability, undermines the fundamental right to education, especially for those whose identities or choices do not conform to prescribed norms.

3.3.1. HISTORY OF UNIFORMS & DRESS CODES IN SCHOOLS

The Grammar schools, which originated alongside the early Christian missions in Anglo-Saxon England, primarily to educate poor but promising boys in Latin for service in the Church, may be considered as one of the earliest examples of having uniforms in educational institutions. There are records of the grammar school providing its students and teachers with gowns. In 16th century Britain, education was seen as the long-term solution to poverty,[46] and as a result, charity schools were founded. The uniform at Christ's Hospital, one of the first charity schools, represents an early example of institutional clothing designed to address both practical needs and social expectations. At a time when clothing was costly and often beyond the reach of the poor, the uniform provided students with essential attire, promoting a presentable appearance while also allowing the institution to manage costs through standardized, bulk-produced garments.[47] Charity school uniforms, particularly at Christ's Hospital, were deliberately designed to reflect humility, servitude, and low social status, reinforcing the wearer's dependency and place in the social

[44] James Edgar, Hundreds of girls with skirts 'too short' sent home to prepare them for 'world of work', The Telegraph, June 18, 2014. https://www.telegraph.co.uk/education/educationnews/10908930/Hundreds-of-girls-with-skirts-too-short-sent-home-to-prepare-them-for-world-of-work.html

[45] Sumati Yengkhom, "Traumatised School Girl Refuses to Attend Classes", The Times of India, Kolkata edition, 30 June 2012.

[46] In sixteenth-century Britain, widespread poverty driven by inflation, population growth, and unemployment was often blamed on laziness and ignorance, leading to poor laws that punished vagrancy.

[47] Nathan Joseph, Uniforms and Nonuniforms: Communication Through Clothing (Greenwood Press 1986).

hierarchy. Female modesty was emphasized more heavily, with simple, neat clothing intended to signal chastity and moral discipline.[48]

In India, school uniforms go back to the period of British administration. Uniforms were like the counterparts of those in England. It mainly included salwar kameez for girls and trousers and shirts for the boys.

The historical evolution of school uniforms reveals their deep entanglement with broader social objectives, ranging from discipline and modesty to social control and cost-efficiency. What began as a practical and symbolic tool in charity schools to signify humility and social order later expanded into a near-universal practice, particularly in colonial and post-colonial contexts like India. While uniforms were initially meant to equalize appearances and instill discipline, they have also carried implicit messages about gender, class, and moral conduct.

3.4. THE INTERSECTION OF RIGHT TO EDUCATION AND DRESS FREEDOM

India doesn't have a standard uniform or dress code policy. However, different states are authorized to deal with the school uniforms, as education is a state subject as per Schedule 7 of the Constitution. This has led to different institutions now having different dress standards, and these regulations may reflect administrative goals, local cultural values, or ideas of decorum and discipline.

At the same time, the right to education is enshrined as a justiciable fundamental right under Article 21A, and is closely linked with the right to dignity, non-discrimination, and personal liberty. When institutional regulations impose restrictions, a student's clothing choices, especially those that reflect their ethnic or religious identity, may become a point of contention. This brings up difficult constitutional issues: Can a student's freedom of dress be restricted by the state or its institutions for the sake of uniformity? If so, what impact does this have on the student's ability to receive an education, particularly if adhering to a clothing code prevents them from attending or participating?

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[48] Id.

The recent Karnataka Hijab Ban case was based on a regulation that the Karnataka government had passed with respect to uniforms in educational institutions in the state. On January 1, 2022, six female students from Government PU College in Udupi brought the hijab controversy to light by claiming that they were not permitted to attend the upcoming pre-board exams or enter classes while wearing the hijab. During a press conference, the kids claimed that despite their request for permission, college officials would not allow them to hide their faces in class. Their first demonstration against college officials quickly grew into a statewide problem. Similar demonstrations were reported from other Karnataka towns. What began as a localized administrative dispute in one college soon escalated into a significant constitutional issue. Before examining the legal and social implications of that case in detail, it is necessary to first understand how the right to dress freely intersects with the broader constitutional promise of education, especially when the enforcement of dress codes risks the exclusion of certain groups.

3.4.1. CONSTITUTIONAL TENSIONS AT THE INTERSECTION OF RIGHT TO EDUCATION & RIGHT TO DRESS

Significant constitutional issues are brought up by the relationship between the right to education and the freedom of dress, particularly when following a dress code becomes a requirement for admission to school. When schools impose dress codes that require students to choose between their right to attend school or college and their cultural, religious, or personal identities, a legal conflict arises.

Article 21A of the Indian Constitution ensures the right to free and compulsory education for children between the ages of 6 and 14 years. However, this right does not exist in isolation. There are concerns regarding whether it is constitutionally acceptable to deny students admission to educational institutions based only on their clothing, especially when that clothing is a manifestation of their cultural identity, personal autonomy, or religious beliefs.

In *Environmental & Consumer Protection Foundation v. Delhi Administration*[49], the court was tasked with deciding whether the lack of sufficient facilities and human resources infringed upon the Constitution's guarantee of free and compulsory education. The court observed, *"wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution."*[50] By extending this logic by the court, it is the action or inaction of the schools that leads to the non-attendance of children in school which causes the violation of the right to education as guaranteed under Article 21A. So, the two girls who were disallowed to continue in school by their father because the school refused to allow headscarves on school premises can be considered a violation of the fundamental right to education.[51] The decision of the father to withdraw his daughters from school was not autonomous, but reactive. A consequence of an inflexible policy that excluded the students unless they complied with the uniform norm. In Fathima Tasneem, the court, however, took the stand that collective rights of the citizens would be given primacy over individual rights of the petitioners. Even so, like Amartya Sen put forth, *"If the world does perish, there would be not much to admire in this development in the perspective of nyaya, even though the austere niti leading to this result could be defended with very sophisticated arguments of different kinds."*[52] The two ideas he visualises are worth mentioning on this note. The two Sanskrit words, *'niti'* and *'nyaya',* are distinguished as 'organizational propriety' and 'realized justice', respectively. The example he advances is interestingly connected here. It goes, *"setting up many more schools for children in educationally deprived countries would be an important niti, but what would be celebrated in the perspective of nyaya is the achievement that boys and girls are actually educated and have the freedom that comes from that accomplishment."*[53] So, in this framework, Article 21A represents niti, but unless educational institutions enable all children to actually attend school without discriminatory barriers, the right remains unfulfilled in terms of nyaya.

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[49] (2012) INSC 584; Writ Petition (Civil) No. 631 of 2004
[50] Id.
[51] Fathima Tasneem v. State of Kerala,2018 SCC OnLine Ker 5267(India).
[52] Amartya Sen, The Idea of Justice (Belknap Press of Harvard Univ. Press 2009).
[53] Id.

The National Education Policy 2020[54], which replaced the old Policy of 1986, sets forth the goal of an equitable and inclusive education system. Education is seen as the greatest tool to achieve social justice and equality.[55] The policy addresses the still prevailing socio-economic disparities, which is broadly categorised based on gender identities (particularly female and transgender individuals), socio-cultural identities (such as Scheduled Castes, Scheduled Tribes, OBCs, and minorities), geographical identities (such as students from villages, small towns, and aspirational districts), disabilities (including learning disabilities), and socio-economic conditions (such as migrant communities, low income households, children in vulnerable situations, victims of or children of victims of trafficking, orphans including child beggars in urban areas, and the urban poor).[56] The NEP highlights the urgency with which gaps in participation, access, and learning outcomes must be addressed. It thus recommends a comprehensive framework to achieve inclusion and equity in school education. Crucially, the policy affirms that inclusion extends beyond mere physical access to schools and encompasses the creation of safe, enabling, and culturally respectful environments for all learners. In this context, the regulation of student dress, which often intersects with cultural, gender, religious, and personal identity, becomes highly significant. As established in the preceding chapter, dress is not merely a matter of personal style but a vital form of self-expression and identity. Thus, denying students access to education on the basis of their dress runs counter to the inclusive ethos of the NEP and effectively constitutes exclusion and marginalization.

The RTE Act also provides inclusive education as one of its key features. Every child between the ages of six and fourteen has the right, under Section 3, to free, compulsory education in a neighborhood school until they have finished their primary education. The idea of neighbourhood schools can be traced to the National System of Education as elaborated in the Kothari Commission report.[57] Its goal is to serve as a common area where all children, regardless of caste, class, or gender, can learn together in the most inclusive way possible. In order to make the school a common place for education, it is intended to

[54] Hereinafter referred to as NEP
[55] NEP, section 6.1
[56] Id
[57] Indian Government, Report of the Education Commission, 1964-1966 (Govt. of India 1996).

be a place for inclusion. Within the RTE Act, this idea has been integrated. The objective, as dealt with under NPE, is to create not just physical access but also social integration, making the school a microcosm of a just and inclusive society. This vision, however, is undermined when access to education is restricted on the basis of a child's attire. Dress, being a critical marker of cultural, religious, gendered, and personal identity, cannot be separated from the right to inclusion. If children are excluded from the school space due to their clothing, the very essence of the neighbourhood school and the inclusive promise of the RTE Act is compromised. Such exclusion directly contradicts the Act's mandate to ensure that schools are spaces free from discrimination, where all children can exercise their right to education with dignity and equality. Therefore, any restriction on dress that results in the denial of access to education is not only a violation of personal liberty but also an infringement of the statutory right to education guaranteed by the RTE Act.

Thus, fundamental constitutional issues pertaining to access, autonomy, and identity are revealed by the intersection of the freedom of dress and the right to education. The RTE Act and NEP 2020 both stress that inclusion in education must be substantive, involving more than just physical presence; it also involves establishing fair, supportive settings for all students. In addition to undermining the principles of social justice and equity inherent in national policy, educational institutions run the risk of violating constitutionally protected rights when they enforce clothing standards that lead to exclusion. Therefore, respecting the right to education necessitates recognizing the variety of identities that students bring with them, including the freedom to express their identities via clothing.

The Karnataka hijab ban[58] has been one of the most well-known and contentious instances in recent years, drawing attention to the intricate relationship between personal liberties and educational opportunities. The apex court has given a split verdict on the case. Justice Sudhanshu Dhulia, who held that the ban was unconstitutional, posed a profound constitutional question directed toward the school administration and the State, *"What is more important to them: Education of a girl child or Enforcement of a Dress Code ?"*[59] He observes that there were real negative effects from the hijab ban's implementation.

[58] Aishat Shifa v. State of Karnataka, [2022] 5 S.C.R. 426
[59] Id., at para 65, decision of Justice Sudhanshu Dhulia

Many females were forced to leave their schools and pursue education elsewhere, frequently at institutions where the level of education may not be as high as that of their original schools, while others were unable to take their board exams.[60]

The plea of the petitioners was simple, as put by Sudhanshu Dhulia, J., the freedom to wear a hijab while attending school. He observes, in a democracy like India, this should not be too much to ask.[61] He goes on to acknowledge that wearing the hijab is a form of personal expression that is firmly ingrained in religious, cultural, and individual identity. It is not a danger to institutional discipline or a disturbance of public order. It would be a misinterpretation of the nature of fundamental rights itself to claim that her rights stop at the school gate.[62] Within the confines of state-run institutions, the Constitution does not envision rights as conditional or derived. Each person's rights to privacy, dignity, and freedom of religion carry over into the classroom.

Sudhanshu Dhulia, J., referred to the seminal ruling of Navtej Singh Johar v. Union of India, providing strong support for this idea. The Court upheld that the essence of the Constitution is individual liberty and that it makes no demands for mainstream assimilation or cultural conformity. Instead, it defends pluralism and promotes diversity. The Court held that the ability of Indian democracy to support dissent, respect cultural diversity, and protect people's rights to live according to their identities is what makes it stable.[63] Therefore, he concludes that to compel a student to choose between education and identity is not merely a policy decision, it is a constitutional violation.

However, Justice Hemanth puts forth a much more straightforward approach, quoting, *"I do not find that the Government Order takes away any right of a student available to her under Article 21 of the Constitution, or that it contemplates any barter of fundamental rights. The right to education under Article 21 continues to be available but it is the choice of the student to avail such right or not. The student is not expected to put a condition, that unless she is permitted to come to a secular school wearing a headscarf, she would not*

[60] Id.
[61] Id., at para 67
[62] Id., at para 68
[63] Id., at para 74

attend the school. The decision is of the student and not of school when the student opts not to adhere to the uniform rules."[64] He presents the reasoning that it is the students who are dealing with their fundamental rights conditionally. He observes that it is the discretion of the students whether to attend the classes or not, which is at play here and not of the school management, and therefore, the institution cannot be held liable for violating the students' fundamental rights. This argument, however, presumes that the student's decision is fully voluntary, paying no attention to the asymmetry of power between individual students and institutional policy. It also turns the student's exercise of her constitutional rights into a species of non-compliance, as if it were not a rightful claim to recognition and accommodation. Such a reading arguably reduces the rich interdependence among rights, specifically the relationship between the right to education and the freedom of religion or expression, to discrete silos that are not mutually reinforcing, but instead competing guarantees of a liberal constitutional order.

While Justice Hemanth's argument gives precedence to rules of the institution over individual assertions, it also points to the broader constitutional challenge before us, how to balance the rightful interest of educational institutions in upholding discipline and uniformity with the corresponding, equally valid rights of students to assert their identity, dignity, and faith through attire. The tension between them is not a question of differing tastes but touches more profoundly upon how the State and its institutions accommodate diversity within a constitutional framework of values. Neither institutional order nor individual liberty can be absolute in a plural society devoted to both equality and autonomy. The dilemma, then, is how to create a principled balance, one that honors institutional goals without erasing the lived experiences and constitutional rights of students.

3.5. BALANCING INDIVIDUAL RIGHTS AND EDUCATIONAL DISCIPLINE

In 2005, the European Court of Human Rights ruled in the case *Leyla Şahin v. Turkey*[65], where a medical student had been prevented from attending university classes and exams for wearing a headscarf. The court did not disagree with the regulation by the state, on the

[64] Id., at para 175, decision of Justice Hemanth Gupta
[65] 44 Eur. H.R. Rep. 99 (2005)

grounds that the prohibition served legitimate purposes, such as maintaining institutional secularism and equality, and fell within the margin of appreciation of the state. The ECHR also held that the restriction of religious freedoms in the form of religious attire was proportionate to the aim of promoting democracy through the maintenance of secularism.[66] Interestingly, the dissent was based on the ground that the majority should've established that the ban on wearing headscarves was to secure compliance to secularism and met a "pressing social need".[67]

Here, it could be seen that the court used the doctrines of legitimate purpose and proportionality to support its decision. Along these lines, relying on constitutionally established doctrines could be one way to build up a balance between the institutional policies and the fundamental right to dress.

3.5.1. DOCTRINE OF LEGITIMATE PURPOSE

Legitimate Purpose, by definition, is a valid, justifiable, and acceptable reason for doing something. Both the doctrines of substantive due process and equal protection, which concern with the justification of government limitations upon individual rights, and with unwarranted differences in treatment amongst classes of persons, respectively, frequently use the same rational basis test, which inquires whether the law is rationally related to a legitimate government purpose.[68]

N.P.Adams in his Legitimacy and Institutional Purpose[69], deals with institutional legitimacy. He observes that an institution's legitimacy, its moral or rightful ability to exercise power, resides in part in its purpose, particularly when we look beyond the state to institutions like schools, corporations, or international institutions. The central thought here is the deontic status[70] of a purpose of an institution, i.e., whether the purpose is:

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[66] Id.
[67] Id.
[68] D. Don Welch, Legitimate Government Purposes and State Enforcement of Morality, 1993 U. ILL. L. REV. 67 (1993).
[69] N.P. Adams, Legitimacy and Institutional Purpose, 23 Critical Rev. Int'l Soc. & Pol. Phil. 1 (2019), https://doi.org/10.1080/13698230.2019.1565712.
[70] Id.

- Morally impermissible (wrong, such as pursuing discrimination),
- Morally permissible (permitted, but not obligatory), or
- Morally mandatory (something the institution is morally obliged to do, such as safeguarding rights).

So, when it comes to the restrictions imposed on dressing by the educational institutions, the legitimacy of institutional dress codes needs to be evaluated in relation to the moral purpose the institution fulfills. It can be argued, using the aforementioned institutional theory, especially accounts that connect legitimacy with institutional purpose, that the stricter the moral mandate of the purpose, the more room an institution has to impose certain limitations, including dress ones. For example, institutions that serve morally required purposes, like public schools with an aim for inclusive education, can justifiably impose narrowly confined dress codes when such codes are strictly necessary to the achievement of those purposes. In contrast, institutions with merely morally permissible goals, such as branding or internal discipline, face a much higher justificatory bar to restrict individual freedoms. Institutions with morally impermissible purposes, like enforcing sexist gender norms, have no moral basis to enforce dress codes at all. In democracies that value self-determination and dignity, the right to dress freely may be limited only when institutional purposes are legitimate and sufficiently heavy, and no less restrictive means exist. Thus, a careful balance must be struck, where institutional authority to regulate dress is proportionate to the moral urgency of its purpose and always subordinate to constitutionally protected rights.

3.5.2. DOCTRINE OF PROPORTIONALITY

Even when a regulation is found to serve a legitimate purpose, it must further undergo the proportionality test, a constitutional doctrine that prevents overbroad or excessive limitations on fundamental rights. In Modern Dental College and Research Centre v. State of Madhya Pradesh[71], the Supreme Court of India articulated the four-pronged proportionality standard as follows:

[71] Modern Dental Coll. & Research Ctr. v. State of M.P., (2016) 7 SCC 353

(i) The measure must pursue a legitimate objective;
(ii) It must be rationally connected to that objective;
(iii) It must be the least restrictive means to achieve the objective; and
(iv) It must strike a balance between the adverse impact on the rights holder and the importance of the goal pursued.[72]

Applied to dress codes in educational institutions, this framework ensures that any restriction must be demonstrably necessary to further a compelling institutional aim, such as maintaining safety, preventing disruption, or promoting equity. Moreover, the measure must not disproportionately infringe on constitutionally protected rights under Articles 19(1)(a) and 21. A policy that arbitrarily prohibits religious or cultural attire, or imposes uniformity in a manner that erases identity or reinforces gender stereotypes, is unlikely to pass constitutional muster.

For instance, a blanket prohibition on hijabs or other religious garments, absent a demonstrable threat to institutional discipline, would likely be found disproportionate. The burden of proof lies with the institution to justify that such a restriction is both necessary and the least impairing alternative. Importantly, the proportionality doctrine prevents institutional autonomy from being wielded as a shield for authoritarian or discriminatory practices.

The principles of legitimate purpose and proportionality are therefore essential constitutional checks in assessing institutional limitations on the right to dress freely, particularly in the education sector. While institutions clearly have the power to establish rules for purposes of discipline and order, that power is neither absolute nor unfettered. It has to be exercised to be morally defensible and constitutionally proportionate.

In pluralistic, dignitarian, and autonomous democracies, freedom of dress is a fundamental component of self-expression and identity. Educational institutions, with their charge of moral obligation to provide inclusive and fair learning, therefore have to walk carefully when policing appearance. Any limitation has to constitute a compelling and appropriate

[72] Aharon Barak, Proportionality: Constitutional Rights and Their Limitations 3–5 (Cambridge Univ. Press 2012)

institutional interest, and must be narrowly tailored to the least restrictive means of furthering that interest without unfairly burdening students' rights.

Therefore, constitutional doctrines not only direct judicial review but also provide normative limitations that maintain the integrity of institutional procedures so that they do not undermine the cardinal principles of liberty and equality enshrined in the Indian Constitution.

3.6. CONCLUSION

The convergence of the right to education and the right to freedom of dress poses one of the most intricate and consequential constitutional challenges in modern India. It is indicative of deeper strains between institutional uniformity on the one hand and individual autonomy, identity, and equality on the other. As discussed in this chapter, the right to education, ensured by Article 21A of the Constitution and translated into practice through the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) and the National Education Policy 2020, cannot be regarded as a standalone legal right. Instead, it should be read in a spirit of holism and inclusivity that upholds the pluralistic and democratic spirit of the Constitution, in consideration of the socio-cultural, religious, and individual identities of the learners that it would like to empower.

Spaces of education, especially those in the public sphere, are not constitutionally allowed to function as homogenizing agents that stifle diversity in the name of discipline or uniformity. The imposition of rigid dress codes that lead to the exclusion or stigmatization of students, particularly girls and those belonging to religious or cultural minorities, are not merely administrative decisions. They raise serious constitutional issues under Articles 14 (equality before the law), 19 (right to freedom of speech and expression), and 21 (protection of life and personal liberty). The refusal of access to education on grounds of failure to adhere to a stipulated mode of dress must thus be subject to the highest level of judicial scrutiny since such actions have the potential to destroy the very foundation of education as an instrument of empowerment and social justice.

It is best exemplified in the judicial rulings from the range of Environmental & Consumer Protection Foundation v. Union of India, which placed the State's duty to ensure even opportunities for education, to more recent and controversial cases such as Fathima Thasneem v. State of Kerala and the hijab ban row in Karnataka. The variation in court reasoning in these cases highlights the absence of a uniform constitutional model of conflict resolution between institutional norms and human rights. In certain decisions, institutional autonomy has been given primacy over individual dignity; in others, the courts have held that exclusionary policies towards education cannot be justified under a constitutional model that enshrines equality and inclusivity.

The proportionality doctrine provides a useful constitutional means for resolving such conflicts. This principle, as well established by the Indian judiciary to be a part of the constitutional review's basic structure, mandates that any limitation on a fundamental right must satisfy four important conditions: (1) there must be a legitimate purpose; (2) there must be a rational nexus between the means chosen and the objective pursued; (3) necessity of the restriction, i.e., there must not be a less restrictive alternative; and (4) proportionality between the rights of an individual and the public interest. Applying this framework, it becomes evident that blanket dress codes that lack nuance or sensitivity to religious and cultural expression fail the tests of necessity and proportionality. A policy that compels students to choose between their education and their identity is constitutionally indefensible unless it addresses a clear, demonstrable, and imminent threat to the functioning of the institution.

Reasons cited for strict uniformity commonly appeal to ideas of discipline, secularism, or equality. These reasons should not be permitted to amount to smokescreens for enforced conformity. A secular system of education is not one which excludes religion, but one which is neutral and embraces all religions and belief systems. Equality does not entail sameness; it entails respect for difference and a positive obligation to accommodate diversity. Likewise, discipline cannot be used to justify rules tending towards the systemic exclusion of marginal groups. As the Supreme Court noted in Indian Young Lawyers Association v. State of Kerala (Sabarimala case), the Constitution does not accept majoritarian morality as a reason for restricting fundamental rights.

In addition, the function of education in the Constitution is not merely the imparting of knowledge, but the integrated growth of personality, critical thinking, and actualization of the full human potential. It is aimed at developing democratic citizenship based on liberty, equality, and fraternity. Within such a model, schools and colleges are required to be inclusive spaces where students not only learn from textbooks but also from one another's experiences and identities. Uniforms and codes of conduct can be useful in encouraging unity, but as soon as they cross the threshold into erasure or exclusion of cultures, they are no longer of any educational value and are merely used as tools of exclusion.

The expenditure of girls' and women's lives in such situations is most noteworthy. Dress codes, particularly dress codes that govern modesty or religious dress, commonly disproportionately target female students, upholding patriarchal ideals of decorum and authority over women's bodies. Withholding education for non-conformity to dress codes increases gender discrimination and negates the constitutional guarantee of equal opportunity. These prohibitions could be regarded not just as contraventions of Article 21A but also as indirect contraventions of the right to gender justice under Article 15, which specifies the prohibition of discrimination based on sex.

It is also important to note that the right to dress, as part of personal freedom and expression, is already constitutionally established under Articles 19(1)(a) and 21. In that respect, denial of that right in the education context will have to be justified on a much higher level of caution. Educational institutions, though within their right to police behavior for valid reasons, cannot make orders that undermine the substance of the fundamental rights secured by the Constitution. The Supreme Court's definition of "constitutional morality" in a number of recent judgments, such as Navtej Singh Johar, Puttaswamy, and Sabarimala, serves to strengthen the notion that individual rights should take precedence over social or institutional orthodoxy.

In sum, a constitutional democracy that professes to uphold inclusion, pluralism, and equality cannot allow access to education to be conditional on surrendering identity. Educational access has to be real, not conditional; empowering, not exclusionary. Dress codes in schools must therefore be treated with constitutional sensitivity, honoring the

dignity and diversity of all students. Limits on the freedom to dress, particularly those affecting access to education, need to be narrowly drawn, supported by strong justifications, and subjected to the most rigorous standards of constitutional review. Any departure from this norm is likely to vitiate the redemptive power of education as the Constitution's framers envisioned it.

It is only when schools and colleges mirror the country's diversity and celebrate the uniqueness of each student that we can actually live up to the constitutional ideal of Nyaya, justice in its richest, broadest meaning.

CHAPTER 4

THE RIGHT TO RELIGION AND THE RIGHT TO DRESS FREELY

4.1. INTRODUCTION

Throughout plural traditions, religious dress codes are public proclamations of faith, discipline, and cultural affiliation. Whether as the hijab, the turban, the tilak, the habit, or the sacred thread, such clothing conveys much more than individual taste,it is a semiotic code that conveys membership, piety, and integrity.

In such cultures as India, where legal secularism and religious pluralism exist in close and precarious balance, dress becomes a location of both personal agency and socio-legal struggle. The Indian constitutional order protects the freedom of religion[73] and the right of personal liberty[74], both of which can be used potentially to justify the wearing of religious dress. However, these are not absolute or unqualified rights. They work within a system of constitutional constraints, public order, morality, health, and others' rights, which enable the State to control religious practices in specific situations. In such an environment, apparel that has religious meaning is not just private speech; it crosses over into constitutional territory.

Simultaneously, contemporary institutions, most notably schools, workplaces, and state authorities, tend to implement seemingly neutral policies like uniforms, dress codes, or rules on identity verification that by default conflict with personal religious duties. These confrontations leave the individual in a dilemma, ie, to select between institutional accommodation and divine faith. Though the State can insist on such prohibitions serving secular or administrative purposes, for the individual, the ban on religious dress frequently equates to a negation of identity and of belief. This conflict between institutional

[73] INDIA CONST., art. 25
[74] INDIA CONST., art. 21

conformity and individual freedom reveals an underlying constitutional issue; whose values are being honored, and at what expense?

The judicial reaction to these conflicts has been mixed. Indian courts, heavily dependent on the ERP test, have been concerned most often with whether a religious clothing is "essential" to a religion instead of whether the person's belief in its practice is genuine and constitutionally assured. The test places a strict, theologically based requirement that does not recognize the personal and pluralistic manner in which religion is practiced and lived. It also puts judges in the unseemly position of resolving intricate theological controversies, a task arguably at odds with the judiciary's secular ethos.

In these circumstances, religious garb is more than a question of doctrinal requirement but a token of dignity, identity, and self-expression. Its regulation, especially by legal or institutional fiat, must thus be analyzed not merely through the prism of public interest but also in the light of the fundamental values of personal autonomy and constitutional morality. The balancing act between these competing interests, between tradition and modernity, uniformity and diversity, belief and legality, is at the core of the constitutional contest over the right to dress in a religious style.

4.2. RIGHT TO DRESS AS AN ASPECT OF THE RIGHT TO RELIGION

4.2.1. RELIGION & NORMATIVE DRESS CODES

After the 1979 Islamic Revolution, Iran made the hijab mandatory for women as part of its effort to build an Islamic society. The law applied to both Iranian citizens and foreign visitors, with early penalties including lashes. Over time, legal enforcement intensified, with workplace hijab made compulsory in 1979 and public hijab mandated by 1985.[75] In 2005, the morality police (Gasht-e-Irshad) were formed to monitor dress codes. From 2018, Iran shifted toward non-custodial enforcement, offering educational sessions for violators.

[75] Syed Fraz Hussain Naqvi And Ammara Zaheer, MAHSA AMINI AND THE ANTI-HIJAB PROTESTS IN IRAN: A POST-TRUTH ANALYSIS, Regional Studies, 40:2, Winter 2022, pp.36-57

However, under Article 638 of the Islamic Penal Code, penalties still include fines, jail time, and discretionary punishments for dress code violations.[76]

On a similar note, the Taliban has recently codified morality laws in Afghanistan. As per the laws, women should wear attires that fully cover their bodies. The laws even instruct drivers not to transport women who are not "covered".[77] The justification provided by the Taliban was that they respect women's rights in accordance with the interpretation of the Quran.[78]

However, the situation is not the same in India. India, as a secular state, guarantees each religion the freedom to manage its own affairs. Accordingly, religious dress codes may be viewed as expressions of this autonomy. In the Indian socio-legal environment, religion is an omnipresent force that shapes not just private belief systems but also public expression of identity, such as dress. In each religious tradition, mandated forms of clothing have both symbolic and prescriptive roles, to connote faith compliance, communal belonging, and in many cases, moral obligation. For example, the hijab or burqa in Islam, the turban and kara in Sikhism, the sacred thread or saffron robe in Hinduism, and the modest white garment among some Christian and Jain denominations serve as religiously motivated dress codes that possess spiritual, cultural, and social significance.

Nevertheless, tensions arise when such codes are imposed on individuals who do not voluntarily subscribe to them, thereby interfering with individual autonomy and freedom of expression.

4.3. JUDICIAL RESPONSES ON RESTRICTIONS ON RELIGIOUS DRESSES

In *Fathema Hussain Sayed v. Bharat Education Society*[79], the petitioner, a Muslim girl minor who was in the sixth standard at Karthika English School, challenged a school principal directive not to attend classes with a headscarf. The restriction, made on 28 November 2001, was after the petitioner chose to wear a headscarf from June 2001, as a

[76] Id.
[77] A. Faizur Rahman, A Case Of Codifying Totalitarianism, The Hindu, November 5, 2024
[78] Id.
[79] 2002 SCC OnLine Bom 713

part of her religious beliefs. She had maintained that the practice was obligatory under Islamic principles, especially for female children over the age of nine as mandated in the Holy Quran.

The petitioner had submitted that wearing the headscarf did not violate the school uniform prescribed nor interfere with school order. Accordingly, she averred that the ban infringed her constitutional rights under Article 25 of the Indian Constitution.[80]

The Bombay High Court, dismissing the petitioner's plea under Article 25, held that the Muslim girl student's wearing of a headscarf in an all-girls school section could not be considered an essential religious practice under Islam. Citing Quranic verse 31, the Court found that the lack of a head covering in such a segregated educational setting did not equate to a denial of any religious requirement.[81]

The Court emphasized that the directive promulgated by the school principal did not intrude upon the core of the Islamic faith. It held that the act of wearing a headscarf in the context provided was not a mandatory religious act and, as such, the school's restriction could not be deemed to be a violation of the petitioner's fundamental right to freely practice and profess her religion according to Article 25 of the Constitution.[82] The Court therefore found no merit in the argument that the restriction invaded the petitioner's constitutional rights.

According to the ruling in *Amnah Bint Basheer v. Central Board of Secondary Education*[83], a woman's right to choose her attire in accordance with religious precepts is a fundamental right safeguarded by Article 25(1) of the Indian Constitution, provided that the dress code is an integral component of her faith. As a result, it might be easy to maintain that the petitioners' fundamental right to wear whatever they want is unaffected.[84]

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[80] Id.
[81] Id.
[82] Id.
[83] 2016 (2) KLT 601
[84] Id.

In *P.Chinnamma v. Regional Deputy Director of Public* Instruction[85], P. Chinnamma, who was a teacher with a Roman Catholic Mission school, objected to an order that she couldn't dress in a nun's religious habit after she had been ejected from the sisterhood. Even though restored to her position as a teacher by education authorities, her restoration was conditional upon the rules of the convent, i.e., she should not wear the attire of a nun. She contended that this infringed her constitutional rights, particularly her freedom of religion and speech.

The Andhra Pradesh High Court nevertheless rejected her writ petition with the holding:

- No procedural prejudice was done because the education department's subsequent clarification was not a new appeal warranting notice.
- The Mission could, under Articles 26 and 30 of the Constitution, regulate its religious and educational affairs, including laying down dress codes for its employees.
- Having been expelled as a nun, she was not entitled to claim the privilege of wearing the religious habit, since it was an emblem of institutional religious status, rather than personal religion.[86]
- The Mission, as a private entity, even though supported by the State, was not "State" for the purposes of Article 12, and fundamental rights claims could therefore not be enforced directly against it.

In *Zainab Abdul Qayyum Choudhary v. Chembur Trombay Education Society*[87], the Bombay High Court heard a constitutional challenge filed by nine female students of a private educational institution against its dress code policy that banned clothing with exposed religious affiliations, such as the hijab and niqab. The petitioners argued that the instructions trampled on their fundamental rights under Articles 19(1)(a) and 25 of the Constitution of India.

[85] AIR 1964 AP 277
[86] Id.
[87] 2024 SCC OnLine Bom 1925

The Division Bench, consisting of A.S. Chandurkar and Rajesh S. Patil, JJ., sustained the validity of the dress code. The Court held that the restrictions were designed with the aim of upholding institutional discipline and religious neutrality in the campus. It noted that the students had not shown that wearing hijab or niqab was an "essential religious practice" within the Article 25 meaning, a test set by the Supreme Court in its case law on religious freedom.[88]

In addition, the Court emphasized that the inherent rights of educational institutions to set up and manage their affairs under Articles 19(1)(g) and 26 need to be weighed against the rights of individuals, especially when institutional autonomy is being asserted in the general public interest. The dress code, since it is uniformly applied across all students regardless of religion, caste, or creed, was considered a non-discriminatory policy to maintain secularism and inclusivity within the campus.[89]

The reliance by the petitioners upon the University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012, and other guidelines favoring inclusiveness, gender sensitization, and access to education was held to be misplaced. The Court held that the dress code did not violate these norms since it did not target any particular group and did not limit access to education.[90] Pronouncedly, the institution had also offered changing rooms to meet the needs of the female students, and the limitation was only in the classroom environment, thus not encroaching on their rights in other settings outside the school environment.

In *M. Ajmal Khan v. The Election Commission of India,* the Madras High Court addressed a challenge to the insertion of photos in the electoral rolls, more specifically regarding Muslim Gosha (veiled) women. The petitioner contended that wearing the purdah was a religious requirement based on the Quran and that asking veiled Muslim women to have their photographs printed in voters' lists encroached upon their basic right of religious freedom under Article 25 of the Constitution.

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[88] Id.
[89] Id.
[90] Id.

The Court rejected the petition. It held that the directive of the Election Commission to put photographs on electoral rolls was a reasonable step toward making elections secure from impersonation and fictitious voting. The Court held that this administrative step was not in contravention of Article 25 because the measure furthered an imperative public interest. It also dismissed allegations of intrusion into privacy, highlighting that the law was necessary and reasonable for the preservation of election credibility.

The recent and the most controversial case in this regard is the Karnataka Hijab Ban case, the merits of which with respect to the right to education aspect has already been covered in the previous chapter. Through this section, the religious rights facet shall be analysed.

The Supreme court gave a split verdict in the case of *Aishat Shifa v. State of Karnataka*, popularly known as the Karnataka hijab ban case. Justice Hemant Gupta, in his verdict on the case, reaffirmed the constitutional validity of the State's authority to prescribe a uniform for educational institutions. He held that permitting students to add or remove items from the prescribed uniform, like wearing a hijab, would negate the very object of having a uniform. Schools, he noted, are institutions designed to instill discipline and equip students for life as citizens. The uniforms help to promote equality among the students by erasing differences on the basis of caste, creed, wealth, or religion, and help to instill a secular and harmonious atmosphere.

He claimed that the freedom of expression under Article 19(1)(a) does not cover wearing a headscarf in the context of a school uniform. Because hijab is only prohibited during school time, students are otherwise free to wear it. He argued that in a secular school supported by the State, the government can impose a uniform policy without exemptions on the basis of religion.

Refuting the contention that the wearing of hijab is an essential religious practice protected under Article 25, and that its ban violates identity, conscience, and dignity protected by Articles 19, 21, 29, and 51A(f), Justice Gupta dismissed this argument. He considered that although the schools have to take on students without discrimination based on religion, yet students are still obliged to obey the rules and uniform by the institution. So, students have

no right to disobey the dress code as a religious freedom issue, particularly in state-sponsored secular schools.

At the same time, the verdict given by Justice Sudhanshu rejected the essential religious practice approach and held,

"In my opinion, the question of Essential Religious Practices, which we have also referred in this judgement as ERP, was not at all relevant in the determination of the dispute before the Court. I say this because when protection is sought under Article 25(1) of the Constitution of India, as is being done in the present case, it is not required for an individual to establish that what he or she asserts is an ERP. It may simply be any religious practice, a matter of faith or conscience! Yes, what is asserted as a Right should not go against "public order, morality and health," and of course, it is subject to other provisions of Part III of the Constitution."

4.3.1. ESSENTIAL RELIGIOUS PRACTICES AND THE RIGHT TO DRESS

Ofrit Liviatan highlights a unique dualism in Indian secularism, marked by both state neutrality and intervention.[91] The state promotes religious liberties, both individual and collective rights, while intervening to reform conservative religious practices that cause social stagnation. Liviatan adds that the Indian judiciary has often utilized "innovative judicial constructions,"[92] though these result in tensions and contradictions. At the center of this is the "visionary" test, differentiating 'essential' from 'non-essential' religious practices so that only the latter can be regulated by the state.[93]

The Essential Religious Practices Test is a judicial framework developed by Indian courts to determine the constitutional validity of religious practices. As articulated by legal scholars Rajeev Dhavan and Fali Nariman, the test involves a three-step inquiry[94]:

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[91] Ofrit Liviatan, Judicial Activism and Religion-Based Tensions in India and Israel, 26 Ariz. J. Int'l & Comp. L. 583, 588–90 (2009).
[92] Id.
[93] Id.
[94] Rajeev Dhavan & Fali Nariman, The Supreme Court and Group Life: Religious Freedom, Minority Groups and Disadvantaged Communities, in Supreme But Not Infallible: Essays in Honour of the Supreme Court of India 263 (B.N. Kirpal et al. eds., Oxford Univ. Press 2000).

1. Whether the practice in question is religious in nature;
2. Whether the practice is essential to the religion;
3. Whether the practice aligns with constitutional values and limitations.

Through this process, the judiciary assumes interpretative authority, even over religious figures, to decide which tenets are fundamental to a faith. Practices deemed non-essential and inconsistent with constitutional principles, such as equality or public order, may thus be restricted or struck down.[95]

The Supreme Court has relied on this test to deal with several cases addressing the tensions between religious rights and other Constitutional rights. The Shirur Mutt case[96] was the first to establish the Essential Religious Practices (ERP) Test in India. The petitioner challenged the Madras Hindu Religious and Charitable Endowments Act, 1951, claiming it violated Article 26. The Supreme Court drew a distinction between essential and non-essential religious practices, holding that only essential practices are constitutionally protected. Citing Adelaide Company v. Commonwealth, the Court clarified that the State may impose restrictions on religious freedom under Articles 25 and 26 for reasons of public order, morality, and health.[97] It also emphasized that Article 25(2)(a) allows the State to regulate secular aspects associated with religion and to enact laws for social reform, even if they interfere with religious customs. While religious denominations have autonomy over religious affairs and property management, the Court held that such administration is subject to legal regulation and cannot be entirely transferred to a secular authority without violating Article 26(d).[98]

The test is claimed to have originated from B.R.Ambedkar's speech where, among other things, he observed,

"The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be

[95] Dushyant Kishan Kaul, The 'Essential Practices' Test: Examining the Constitutional Impact of Inordinate Judicial Intervention on Religious Freedoms, 29 Int'l J. on Minority & Group Rts. 350 (2022).
[96] Hindu Religious Endowments. Madras vs. Sr. Lakshmindra Swamiar of Shri Shriur Mutt, AIR 1954 SC
[97] Id.
[98] Vikash Kumar Upadhyay & Tarkesh J. Molia, Judging the Freedom of Religion in India on the Touchtone of Test of Essential Practice Test, 22 LAW & WORLD 8 (2022).

saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion."

Dr. Ambedkar was afraid that in India, religion pervades nearly every aspect of life, as opposed to the West where religious and secular concerns are more distinct. He feared that if everything were considered religious, then the government could not enact legislation to make society better, because the legislation would appear as if it is interfering with religion.[99] So he believed that only items which are religious in a real and inherent sense should receive protection in the constitution. Things which are more social or secular in nature but to which there is some religious link should remain open to government control.[100]

Article 25 of the Constitution of India expresses this concern. It grants individuals the freedom to practice and follow their religion but begins by explicitly stating that such freedom is qualified by public order, morality, health, and other rights under the Constitution.

Although these qualifications are present, Ambedkar's concept of checking first if something is really religious still holds. That's because if all this gets categorized as religious, then it's very difficult for the government to be able to say that social reform legislation is justified. And once something is enshrined as a religious right, the government needs to satisfy a high threshold in order to limit it. So it makes sense to consider first: is this practice actually religious according to the way the Constitution intended to safeguard, or not?

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[99] Gautam Bhatia, "Essential Religious Practices" and the Rajasthan High Court's Santhara Judgment: Tracking the History of a Phrase, Indian Const. L. & Phil. (2015), https://indconlawphil.wordpress.com/2015/09/01/essential-religious-practices-and-the-rajasthan-high-courts-santhara-judgment-tracking-the-history-of-a-phrase/.

[100] Id.

The first few judgements that came after the enactment of the Constitution had actually used the concept as it was actually intended by Ambedkar. In *Shirur Mutt case*[101], it was held by the Supreme Court that in order to find out what is fundamental to a religion, one would have to look to the test of that religion itself. The activities of giving food to idols, reading scripture, or conducting ceremonies, even if they entail expenditure of money or services, remain acts of religion. These fall under Article 26(b) as questions of religion. The Court therefore distinguished between religious and secular activity, and the word "essential" was used to mark that boundary.

This role was reaffirmed the same year in *Ratilal v. State of Bombay*[102], where the Court laid stress upon the fact that extraneous authorities, including the State, have no jurisdiction to determine what aspects of a religion are essential. These have to be determined from within the religion itself. The State cannot, therefore, meddle with religious practices in the name of regulating religious establishments or trusts. This strengthened religious communities' autonomy in determining their essential practices.

A change occurred with *Ram Prasad Seth v. State of UP*[103], as the Allahabad High Court examined whether bigamy was an essential religious practice under Article 25 in Hinduism. The Court studied the religious books of Hinduism and decided that bigamy was not part of the religion. This was a change from previous decisions, as the Court now considered how significant a practice was within the religion, as opposed to merely whether it was religious or not.

This change was momentous. The term "essential" shifted from describing the nature of the practice (religious or secular) to its significance in the religion itself. This, seemingly minor, grammatical shift had enormous implications: it allowed the judiciary to decide what the center of a religion's test is, rather than leaving that up to the religion's adherents themselves. It effectively subjected religious test to judicial consideration.

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[101] The Commissioner Hindu Religious Endowment Madras v. Shri Laxmindar Tirtha Swamiyar of Shirur Mutt, 1954 AIR 282
[102] Ratilal Panachand Gandhi v. State of Bombay, AIR 1953 BOM 242
[103] Ram Prasad Seth v. State of UP, AIR 1957 ALL 411

This was upheld in *Qureshi v. State of Bihar*[104], where the Supreme Court decided that cow sacrifice during Id was not a fundamental practice of Islam. The Court was unable to find cogent evidence to establish that it was obligatory and hence declined to uphold it under Article 25. This showed how the judiciary could withhold constitutional protection by holding a religious practice not to be fundamental.

Additional support was provided in *Syedna Saifuddin*[105], where the Court overruled a law prohibiting religious excommunication, holding that such a law infringed on necessary religious practices. The Court explained that while Article 25(2) permits reform legislation, it does not authorize the State to encroach upon necessary religious practices. Thus, the essential practices test, in its original conception, did not entail that courts find what is essential to a religion but merely determine whether practices are religious or secular in light of the religion's own teachings. This approach involved less judicial interference.

However, when it comes to religious dress codes, the judiciary has taken differential opinions with respect to the essentiality of the dress codes in the religion. In *Resham & Ors. v. State of Karnataka*[106], a 3-judge bench allowed the hijab ban by the Karnataka government. It held that hijab is not an "essential religious practice" of Islam, hence its banning was not against Article 25. The court considered the school uniform prescribed as a valid regulatory measure. At the same time, in Amnah the strict dress code required by CBSE to prevent cheating in medical entrance exam, due to previous years' malpractices was challenged by certain muslim girl students, who were appearing for the exam. The girls objected because the dress code conflicted with their religious practice of wearing a hijab and long-sleeved clothing. They challenged this under Article 25. The apex court observed, *"It is a farz to cover the head and wear the long sleeved dress… exposing the body otherwise is forbidden (haram)"*[107] and held hijab an essential religious practice.

Thus, the essential religious test, as it is being interpreted and used now, may not always be a great solution when dealing with religious practices and choices that may not be

[104] Qureshi v. State of Bihar, 1959 SCR 629
[105] Sardar Syedna Taher Saifuddin Saheb vs The State Of Bombay, 1962 AIR 853
[106] Resham & Ors. v. State of Karnataka, (2022) SCC OnLineKar 315
[107] Id., at para 29

essential to the religion but are integral to the faith of an individual, like religious attires. Religious dress is a deeply personal expression of identity, belief, and dignity. Though based in religious or cultural practice, the decision to wear a particular attire, e.g., the hijab, turban, or tilak, is more often a product of personal belief than universally codified dogma. In this regard, religious attire is less about compliance with centralized directives and more about the freedom to express one's faith or conscience in one's own terms. Subjecting religious attire to the ERP test undermines this individual freedom by essentially delegating constitutional validation to majoritarian or institutionalized religious readings. It establishes a pecking order whereby practices approved by organized religious institutions are afforded legal protection, but idiosyncratic or personally significant expressions of religion are not.

Scholars such as Rajeev Dhavan and Fali Nariman have been critical of this strategy on the grounds that the ERP test sets judges in an uncomfortable and constitutionally questionable position of deciders of religious test.[108] In dress cases, this means courts analyzing scriptures or religious writings to determine whether, for example, hijab or turban is "essential" to Islam or Sikhism. This is a perilous task, given that religious tests are normally internally contested, without a single authoritative interpretation.

In religious dress cases, it is not a question of whether or not a practice is theologically required, but whether someone genuinely believes in complying with it and whether the interference of the state with belief is constitutionally justified (e.g., public order or discipline). For instance, whether a woman wears a hijab out of religious obligation or personal choice, the constitutional question remains the same: is the restriction on her clothing choice proportionate, reasonable, and necessary in a democratic society?

Therefore, applying the ERP test to cases involving dress ends up with misplaced emphasis on religious orthodoxy rather than constitutional liberties. Justice Sudhanshu in his decision in the Karnataka Hijab ban case, observed that the ERP test is not mandated under Article 25(1). He held that it is not necessary for petitioners to establish that the right they

[108] Supra, note 94

are seeking under Article 25 is an essential religious practice. Applying this logic, the essentiality of a religious practice may not always be the right call in a dispute.

4.4. DOCTRINE OF REASONABLE ACCOMMODATION

The test of reasonable accommodation doctrine is often confused with the essential religious practices test. However, in real sense, it is much wider that the latter. In its literal sense, "accommodation" refers to adopting any religious practice as it is.[109] Any religious practice that is reasonable can be readily accepted by the general public. However, if it is deemed unreasonable, it will either be changed or overturned.

In situations where a general law happens to burden a religious practice, the courts may invoke the test of reasonable accommodation as a suitable constitutional response.[110] The test requires a test of whether the purposes of the law can be met by making adjustments of slight scope that decrease interference with religious practice, so long as such adjustments do not undermine the law's underlying public purpose. As an example, courts may inquire whether safety regulations such as helmet requirements might qualify Sikh men who wear turbans.[111] Indian courts, and most others, have been unwilling to compel the state to significantly abridge its policies, though. When law and religious practice directly collide, e.g., when laws regarding corporal punishment or sexual orientation discrimination are involved, the accommodation is even less plausible. In such a case, the courts analyze whether the religious practice can be considered private with no effect on others' rights or well-being.[112] Courts also analyze whether membership is effectively voluntary since exemptions will rarely apply where group dynamics within the group limit individual freedom or autonomy.[113] Even paternalistic statutes, intended mainly to shield individuals from harm by themselves, are not readily amenable to religious exemptions since courts recognize the larger social consequences of personal harm.[114] Religious accommodation is, therefore, neither absolute nor automatic, but one that depends on the

[109] Dr. Payal Thaorey, Legal Recognition of Test of Reasonable Accommodation Under Parasol of Religious Freedom in India, Oct.–Dec. 2018, at 93, Bharati L. Rev.
[110] Id., at 104
[111] Id.
[112] Id. at 105
[113] Id.
[114] Id., at 106

type of law, the effect of the religious practice on others, and the degree to which the law can be modified without compromising public values.

The reasonable accommodation test provides a more context-specific, proportionate, and constitutionally based model. It relocates the question from theological centrality to legal justification, that is, whether the state can both pursue its legitimate objectives and with minimal damage inflict on religious expression, especially when such expression is individual and not intrusive, such as religious dress. This model upholds both personal dignity and constitutional principles, and it is a better paradigm for negotiating between state norms and religious attire in a multi-cultural society.

The ERP test, by demanding that petitioners establish the "essentiality" of a practice under canonical texts or institutional dogma, disproportionately benefits codified, hierarchical views of religion. Consequently, intensely individual, genuinely held practices, such as religious dress, are frequently not protected if they fail to meet judicially palatable theological criteria.

By contrast, taking on the reasonable accommodation test would base the analysis not in theological essentialism but in constitutional principle. Reasonable accommodation considers whether a neutral law unfairly burdens someone's religious freedom and whether such burden could be alleviated without weakening the State's legitimate aim. This test is concerned with the effect on the person rather than the intrinsic coherence of religious teaching, a response better attuned to the liberal, rights-based tradition of the Constitution.

Essentially, reasonable accommodation is more in line with the Constitution's vision for a secular one, not of a religion-free public space, but of an area where all religions are accorded equal treatment, and personal faith is shielded from unreasonable State intervention.

4.5. CONCLUSION

As this chapter has illustrated, the constitutional freedom to dress consistent with religious belief holds a contested position between freedom and control. The present inclination toward the Essential Religious Practices test, whereby courts are asked to decide whether

a practice constitutes the core of a religion, tends to exclude individualized expressions of faith that do not fit within established religious orthodoxy. This method has yielded unpredictable and sometimes exclusionary outcomes, especially in religious attire cases. The test requires theological justification where constitutional justification is sufficient, making individual freedoms the subject of institutional religious dogma or judicial discretion. In contrast, the doctrine of reasonable accommodation provides a more balanced and constitutionally appropriate model. It balances the subjective aspect of belief while determining if State restrictions are proportional, necessary, and least impairing.

A shift from the test of Essential Religious Practices to the doctrine of reasonable accommodation would confer some significant advantages on Indian constitutional jurisprudence. In the first instance, it would reclaim individual autonomy by placing more value on the lived experience and subjective conviction of individuals as opposed to institutional religious orthodoxy, thus reaffirming the right to conscience and expression of faith that Article 25 was intended to safeguard. Second, it would encourage judicial humility by relieving courts of the constitutionally problematic role of being theological arbiters, precluding the need for judges to analyze religious texts in order to decide whether religious practices like the hijab or turban are “essential” to a faith. Third, it would posit a more proportionate and expansive model of adjudication, enquiring whether the goals of the State, like maintaining discipline in schools or avoiding malpractice, can be achieved with minimal incursion on religious freedom, and not by way of absolute prohibitions. Fourth, the approach of reasonable accommodation would be more in consonance with the doctrine of constitutional morality that seeks to uphold liberty, dignity, equality, and fraternity over popular morality or religious majoritarianism. Lastly, it would promote more robust protection of non-conforming and minority expressions of religion, which tend to remain outside the ambit of the ERP regime, thus making India a stronger advocate for pluralism and substantive secularism.

CHAPTER 5

JUDICIAL APPROACHES TO RIGHT TO DRESS : COMPARATIVE ANALYSIS

5.1. INTRODUCTION

Legal understandings of personal appearance also tend to serve as a reflection of the constitutional values a culture decides to privilege. In courtrooms across jurisdictions, the seemingly straightforward issue of "what one wears" is a rich field of negotiation among liberty, identity, authority, and order. Judicial reasoning in these matters tends not to exist in a vacuum but instead is influenced by deeper tides, like religious pluralism, historical memory, secularism, nationalism, and the self-image of the state. Each country offers a distinctive approach rooted in its unique constitutional tradition. India, for instance, oscillates between a commitment to individual liberty and judicial constructions like the Essential Religious Practices (ERP) test, which sometimes prioritizes institutional religious interpretations over individual conscience. France, on the other hand, adopts a strict model of laïcité (state secularism), where public neutrality often overrides religious accommodation in the name of republican values. In contrast, the United States follows a more libertarian model, often emphasizing individual autonomy and minimal state interference under the First Amendment, though with its own set of doctrinal limitations.

Dress regulation is often the site at which the individual's claim to autonomy is met by the state's interest in uniformity, discipline, or public morality. What is constitutionally significant in such conflicts is not simply their cultural or symbolic weight, but the legal frameworks through which they are resolved. When people appeal to dress as a right, whether it's based on religious belief, gender identity, race or ethnicity, or personal dignity, the judicial decision is more than a ruling on clothing. It's a decision about identity, belonging, and the permissible boundaries of expression in a constitutional democracy.

These controversies call upon the judiciary for more than technical legal analysis; they call for an interpretive vision. A court has not only to determine whether a specific mode of dress is lawful, but also under what doctrinal framework such a determination should take place. Should the examination be based on the genuineness of the claimant's belief, the requirement of the practice, the reasonableness of the prohibition, or the impartiality of the law? Each of these methods brings with it normative implications, whose voices are amplified, whose identities are validated, and in what way the line between the private and the public is demarcated.

This comparative terrain reveals not just different answers, but different questions: What is the appropriate role of the state in regulating self-expression? What methods should courts adopt to balance competing rights? When, if ever, is it legitimate for a liberal democracy to dictate the terms of visibility and identity in public spaces?

5.2. COMPARATIVE ANALYSIS

5.2.1. UNITED STATES

The American legal system strongly emphasizes safeguarding individual religious liberty, particularly under the First Amendment, which ensures both the free exercise of religion as well as prohibits government establishment of religion. U.S. courts are generally more tolerant towards religious dress and impose limitations only in instances where they are for compelling government interests and narrowly tailored.

A landmark case in this regard is *Tinker v. Des Moines*[115], where a group of students gathered in the house of 16-year-old Christopher Eckhardt in Des Moines in December 1965 to organize a public display of their support for a truce in the war in Vietnam. They would wear black armbands during the holiday season and fast on December 16 and New Year's Eve. The administrators at the Des Moines school discovered the plan and discussed it on December 14 to develop a policy indicating that if any student was wearing an

[115] Tinker v. Des Moines Independent Community School District is 393 U.S. 503 (1969)

armband, he or she would be requested to take it off, failure to comply leading to suspension. On December 16, Mary Beth Tinker and Christopher Eckhardt attended school wearing their armbands and were sent home. The next day, John Tinker did exactly the same and was met with the same outcome. The students didn't go back to school until after New Year's Day, the scheduled conclusion of the demonstration.

On behalf of their parents, the students brought suit against the school district for infringing the students' right of expression and for an injunction prohibiting the school district from disciplining the students. The district court dismissed the suit and found that the school district's conduct was reasonable to maintain school discipline. The U.S. Court of Appeals for the Eighth Circuit affirmed without opinion.

Justice Abe Fortas authored the opinion of the 7-2 majority. The Supreme Court ruled that the armbands were pure speech that is entirely distinct from the conduct or actions of the people engaging in it. The Court further ruled that students did not forfeit their First Amendment right to freedom of speech once they arrived at school property.[116] In order to warrant the repression of speech, the school officials have to be able to demonstrate that the activity at issue would "materially and substantially interfere" with the functioning of the school. Here, the school district's actions clearly were motivated by a fear of potential disruption rather than some actual interference. As a result, dress is considered as a symbolic speech and is thereby protected by the First Amendment.

Similarly, in *Home Depot USA, Inc. v. Morales*[117], the National Labor Relations Board (NLRB) ruled that Home Depot could not prohibit employees from wearing Black Lives Matter buttons. It referenced the National Labor Relations Act (NLRA), which states that companies cannot limit employee speech meant to enhance the work conditions of all and is not obscene or derogatory, thus reiterating that dress is a form of speech.

Employment Division v. Smith[118], in which the U.S. Supreme Court ruled that typically applicable laws that are not aimed at religion specifically do not violate the Free Exercise

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[116] Id.
[117] Home Depot U.S.A., Inc. v. Morales, 373 N.L.R.B. No. 25 (2024).
[118] 494 U.S. 872 (1990)

Clause even when they happen to burden religious practice. This ruling prompted major legislative backlash, particularly the Religious Freedom Restoration Act (RFRA) of 1993, which demands strict scrutiny for laws imposing a substantial burden on religious exercise.[119]

When it comes to religious dress, the courts have frequently sided with individuals asserting their right to wear religious attire in public and private spheres. For example, in *EEOC v. Abercrombie & Fitch Stores, Inc.*[120], Samantha Elauf, a practicing Muslim who wore a hijab, applied for a job at Abercrombie & Fitch, in 2008. Although she wore the hijab to her interview, she did not explicitly request a religious accommodation. The company's "Look Policy" prohibited head coverings, and based on her appearance, she was not hired.[121]

The Equal Employment Opportunity Commission (EEOC) sued Abercrombie, alleging that the refusal to hire Elauf violated Title VII of the Civil Rights Act of 1964[122] , which prohibits employment discrimination based on religion.

The U.S. Supreme Court held (7-2 ratio) that an employer can be held liable under Title VII even if the applicant did not explicitly request a religious accommodation, as long as the need for accommodation was a motivating factor in the hiring decision. The Court emphasized that Title VII does not require knowledge of a conflict, but prohibits decisions based on a desire to avoid accommodating religious practices.

However, restrictions have been allowed in narrowly defined contexts, such as in uniform policies or dress codes, when justified by safety or security concerns, provided they are neutrally applied. In *Webb v. City of Philadelphia*[123] , Kimberlee Webb, a Muslim and police officer, sought to wear a hijab during work hours. She was denied her request due

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[119] Employment Division, Department of Human Resources of Oregon v. Smith, Oyez, https://www.oyez.org/cases/1989/88-1213 (last visited May 19, 2025).
[120] 575 U.S. 768 (2015)
[121] Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc, Oyez, https://www.oyez.org/cases/2014/14-86 (last visited May 19, 2025).
[122] Title VII of the Civil Rights Act of 1964 (Title VII) (Pub. L. 88-352), as amended. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.
[123] 562 F.3d at 258

to Directive 78, which does not allow religious symbols or garments as part of the Philadelphia police uniform. She was sent home after wearing the hijab to work and was later suspended.

Webb brought suit under Title VII of the Civil Rights Act, claiming religious discrimination. The District Court found for the city, holding that uniformity and neutrality were critical to police integrity and cohesiveness. On appeal, the Third Circuit affirmed the decision, concluding that permitting religious clothing would create an undue burden on the department, threatening uniformity, impartiality, and discipline.[124]

The court noted that although Webb did have a genuine belief, the police department's interest in having a neutral and cohesive force was more important than the accommodation request.[125]

An air force rule that forbade employees from donning headwear indoors as part of the uniform policy was at issue in *Goldberg v. Weinberger, Secretary of Defense*[126]. An Orthodox Jew and ordained rabbi, the employee was working as a psychologist on an air force installation. He wore a skullcap (yarmulke) indoors while on duty and a service cap outdoors. His commander told him that he was violating the air force uniform rule and that a court-martial might be held against him if he continued. According to the employee, the rule violated his First Amendment right to freely practice his religion. The regulation was affirmed by a majority of the Supreme Court. According to the majority, the court ought to show greater deference when it comes to military provisions as opposed to those that have civilian applications. "The professional judgment of military authorities regarding the relative importance of a particular military interest should be highly respected," they said. Ensuring "instinctive obedience, unity, commitment, and esprit de corps" was of justifiable interest to the military.[127] No specific faith was the target of the rule.

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[124] Kendyl L. Green, Courts Rule Too Narrowly Regarding the Right to Wear Religious Clothing in Public, 29 Hastings Women's L.J. 261 (2018).
[125] Id.
[126] 475 US 503 (1986).
[127] Id.

Overall, United States jurisprudence is a balancing philosophy, one tipping towards personal autonomy and religious accommodation, yet permitting some restriction based on the compelling state interests of safety, security, and order.

5.2.2. CANADA

Canada, while comparatively young as a completely independent country, has established a sophisticated legal response to the right to clothing and dress as expression. With the Canadian Charter of Rights and Freedoms as its guide, which guarantees "freedom of expression" in Section 2(b), the courts have uniformly recognized clothing as a potentially expressive behavior. Nevertheless, this liberty is not limitless and can be limited under Section 1 of the Charter, as long as such limitations are "reasonable" and are able to "demonstrably justified in a free and democratic society."

One of the most salient settings in which clothing expression has been challenged legally is the courthouse. In *El-Alloul v. Attorney General of Quebec*[128], a woman was prohibited from being heard in court unless she removed her hijab. The ban was upheld by the trial court on the basis of judicial dress code authority. The decision was overturned by the Quebec Court of Appeal, which stated that a courtroom dress code cannot impose upon sincerely held religious beliefs unless it is in pursuit of an overriding public interest. Although the court was aware that face coverings like the niqab could cause genuine concerns regarding the credibility and identification of witnesses, it stressed there is a strong presumption of support for preserving religious clothing expression, particularly where such expression does not hinder the administration of justice.

Clothing expression is also a consistent issue in Canadian labour conflicts, with unions taking a key role in protecting employees' rights. Specifically, dress code disputes frequently occur in the health industry, where hospitals enforce dress codes purportedly in the interest of cleanliness. Arbitration boards generally adjudicate such disputes in terms of collective bargaining contracts, which allow for only "reasonable" employer regulations.

[128] El-Alloul c. Attorney General of Quebec, 2018 CarswellQue 8475 (Can. Que.).

In addition, the Canada Labour Relations Board (CLRB) has long protected employees' rights to display union symbols, like badges, despite employer resistance. In *IC.T.U. v. Ottawa-Carleton Regional Transit Commission*[129], the CLRB held that union-related expression could be inflammatory or disruptive but that wearing union badges was a symbolic exercise of the statutory right of freedom of association and was protected. Any discomfort felt by employers was secondary to the constitutional right of workers to union representation.

The most relevant Canadian precedent with respect to educational instituions' dress restrictions, here is *Multani v Commission Scolaire Marguerite-Bourgeoys*[130]. G was a Sikh student at a school in Canada. He believed that his faith demanded that he wear a kirpan constantly. A kirpan is a religious item that looks like a dagger and must be made of metal. The governing board of the school asserted that the wearing of the kirpan broke the school's code of conduct, which did not allow weapons to be carried. It invoked issues of safety. It was proposed that G might be allowed to wear a kirpan, provided that it was of non-metallic material. G denied this and later initiated legal proceedings for the violation of the freedom of religion provisions in the Canadian Charter of Rights and Freedoms.

All the members of the Supreme Court of Canada overturned the finding that the incursion of religious freedom was justified under section 1 of the Charter. There was no doubt about the fact that the wearing of the kirpan constituted religious meaning to G, and that it constituted a sincerely held belief. G also felt that the wearing of a plastic or wooden kirpan would not fulfill his religious requirement. The risk of G wielding his kirpan as a weapon was negligible. Although it could in theory be used as a weapon, it was more than anything a religious symbol; the name being derived from 'kirpa', an indication of mercy, kindness, and honour. While the school's enthusiasm for safety was commendable, the school had to address a reasonable standard of safety, not absolute safety. Prohibition of metallic kirpans was not a measure proportional to the interest of the public in establishing a safe

[129] I.C.T.U. v. Ottawa-Carleton Reg'l Transit Comm'n, [1984] CarswellNat 768.
[130] [2006] 1 SCR 256.

environment in schools considering that there had been no history of any violence involving metallic kirpans, especially when Canada had adopted multicultural values.[131]

Prior to COVID-19, there were efforts to prohibit facial veils (such as niqabs) nationwide in Canada.[132] Courts generally dismissed such prohibitions.[133] They considered facial veils a means of expression. Yet if public safety becomes a sufficiently large issue, limitations could be permissible. Canadian law is proportionate, which states that a piece of legislation is unconstitutional if its adverse impact on individuals is wildly disproportionate to the purpose it attempts to serve.

A further special restriction on expression has been developed in situations involving liquor-serving establishments. The Safer Communities and Neighborhoods Act (SCNA) in Saskatchewan prohibited the wearing of "gang colours", apparel or regalia indicating membership with criminal organizations, in licensed establishments. Aimed at decreasing intimidation of the public and crime, the act was found both overbroad and underbroad by the Saskatchewan Provincial Court. The overbreadth arose from the imprecise language outlawing associations for "other unlawful purposes," which could unfairly ensnare non-criminal conduct. On the other hand, the legislation was underinclusive since it merely governed "wearing," without dealing with other symbolisms of gang association. Therefore, the limitation breached the Charter's proportionality test and was invalidated on grounds of unconstitutionality. This was held in *R. v. Bitz*[134].

Canada's demeanor to expressions through clothing also indicates a judicial unwillingness to shield commercial nudity as a means of expression. In *Rio Hotel v. New Brunswick*[135] (Liquor Licensing Board), a hotel had objected to a bylaw that banned nude entertainment at venues that sold liquor on the grounds that it was a form of protected expressive conduct.

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[131] Anthony Gray, Section 116 of the Australian Constitution and Dress Restrictions, 16 Deakin L. Rev. 293 (2016).
[132] Taran Harmon-Walker, Fundamental Rights or Hand-Me-down Restrictions: The Specter of Sumptuary Law in Clothing Expression Doctrines of the U.K., the U.S., & Canada, 49 GA. J. INT'l & COMP. L. 177 (2021).
[133] See Aykut v. Canada (Minister of Citizenship & Immigration), [2004] F.C.R. 466, where it was held that immigration claims are required to consider the banning of headscarves as a form of persecution.
[134] R. v. Bitz (2009), 349 Sask. R. 50
[135] Rio Hotel v. New Brunswick (Liquor Licensing Board), [1987] 2 S.C.R. 59

The court did not agree, ruling that nudity for commercial purposes, especially to stimulate liquor sales, was not protected expression under the Charter. Here, the court drew a line between public morality and expressive autonomy, permitting state regulation of commercial expression within social contexts.

5.2.3. ECHR DECISIONS

One of the foundational cases here is *S.A.S. v. France*[136] , when the European Court of Human Rights (ECHR) defended the French ban on full-face veil wearing in public. The Court recognized the French government's argument on the grounds of the principle of "living together" (le vivre ensemble), highlighting that full-face covering could hamper social interaction and integration. The court observed,

"Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of "living together". From that perspective, the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism, but also of tolerance and broadmindedness, without which there is no democratic society. It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society."[137]

The ruling held that restrictions on religious dress can be permissible as long as they serve legitimate goals like public order and are proportionate.

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[136] SAS v France [2014] ECHR 695
[137] Id.

In *Dahlab v. Switzerland*[138], the teacher, who has taught at a primary school since 1990, embraced Islam in 1991 and started wearing a headscarf during work hours. Though she wore it for some years without Parent or authority objection, the education department in 1995 prohibited Muslim workers from headscarf-wearing, citing it as a violation of legal standards by inserting an apparent religious symbol into a secular school setting.

Her challenge to the ban was rejected by the Geneva Conseil d'État and confirmed by the Federal Court, which held that teachers, as state representatives, had to maintain denominational neutrality and that the headscarf was a powerful symbol of religious affiliation. The ban was also supported on the basis that it helped maintain gender equality and protected young, vulnerable pupils from religious influence.

The European Court of Human Rights deemed the complaint inadmissible under Article 9 (freedom of religion) and Article 14 (prohibition of discrimination).[139] The Court deemed the restriction legitimate, aimed at legitimate goals like the protection of others' rights and public order, and was indeed necessary in a democratic society. The Court also believed that the prohibition was not discriminatory since it targeted any visible religious emblem, irrespective of gender.

In *Ebrahimian v. France*, Mrs. Ebrahimian, a social worker at a French public hospital, had worn an Islamic headscarf to work. The hospital decided not to renew her contract on the grounds of France's strict principle of secularism that demands public servants be religiously neutral. She objected, stating that this violated her right to manifest her religion under Article 9 of the European Convention on Human Rights.

The European Court of Human Rights acknowledged that the hospital's action interfered with her right to freedom of religion. Nevertheless, the Court ruled that such interference was legitimate, since it was justified by clear French laws favoring secularism, with the purpose of maintaining neutrality in public services, and was considered necessary in a democratic society. The Court granted France much discretion to impose its principles of

[138] Dahlab v. Switzerland (dec.), App. No. 42393/98, Eur. Ct. H.R. (Second Section), Feb. 15, 2001.
[139] Id.

secularism in public institutions and finally upheld the decision of the hospital not to extend her contract.

Leyla Sahin v. Turkey is yet another landmark case when it comes to dress restrictions, particularly institutional restrictions on religious dress codes. Şahin was on her fifth year of medical school when Istanbul University's Vice-Chancellor sent out a circular prohibiting beards and headscarves in University lectures and exams. Prohibiting headscarves in Turkey is not uncommon, as public officials have been prohibited from wearing religious attire and symbols since the early twentieth century. Secularism in Turkey, like that in France, is considered one of the nation's founding principles. On top of that, headscarf use at Turkish universities had increased along with the spread of fundamental Islam across the region. Based on this history, throughout Turkey headscarf use is equated with political thought. The state and the University contended that prohibiting the headscarf in public areas was performed to inhibit proselytizing in areas that symbolized the secular state.

Following the circulation of the circular within the University, Şahin was turned away from lectures and exams on several occasions, and university administrators barred her from taking a course. Her repeated refusal to take off her head scarf brought a warning from the University and, finally, a disciplinary hearing in March 1999. Following her attendance at a protest at the Faculty of Medicine protesting against the prohibition of the headscarf, Şahin and fellow protesters were suspended from the University. But under a recently entered into force amnesty law, all disciplinary sanctions against the Şahin were lifted.

Şahin made an application to the Istanbul Administrative Court for a ruling to have the circular set aside. The Administrative Court rejected her application and found that the Vice-Chancellor was justified in trying to regulate dress as a means of maintaining order. In June 2004, a Chamber Court of the European Court of Human Rights (ECtHR) rendered a judgment which established "no violation of Article 9 and that no separate question arose under Articles 8 and 10, Article 14 taken together with Article 9, and Article 2 of Protocol No. 1 to the Convention." Şahin applied for the case to be referred to the Grand Chamber, and, in November, a panel of the Grand Chamber accepted the application.

The European Convention on Human Rights (ECHR), specifically Article 9 ensuring freedom of religion, would safeguard individuals from prohibitions on religious dress. However, such prohibitions have frequently been maintained by the courts using the doctrine of the "margin of appreciation," which grants a degree of leeway to member states in how they weigh up individual rights against wider societal interests such as public order or secularism. Although religious freedom provisions have been used in some legal challenges, there has been recourse to national anti-discrimination law, including Section 45(3) of the Equality Act 2006 (a UK legislation), which deals with indirect discrimination. It applies to policy that is seemingly neutral but disproportionately affects members of a specific religion, unless such policies are capable of being justified on non-religious grounds. But religious freedom under Article 9 is not absolute and can be legally limited if the restriction is necessary in a democratic society for reasons like public safety, health, or others' rights.

5.2.4. FRANCE

In the landmark *Baby Loup case*, the French Cour de cassation (plenary chamber) upheld the dismissal of a female employee from a private nursery for refusing to remove her Islamic jilbab[140] at work. The nursery employed a policy of religious neutrality for all its staff on account of its mission to propagate secular values, particularly in front of children.

Although a previous 2013 ruling by the Court's Social Chamber had decided that private employers were not free to impose restrictions based on laïcité on religious expression, leaving such tasks to public agents, the plenary chamber changed tack in 2014. It decided that, although laïcité directly applied to neither private institutions, an overall prohibition on religious symbols could be defended on grounds of proportionality and non-discrimination, and particularly where the work environment involved dealing with young children.[141]

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[140] The worker wanted to dress in a jilbab, which is a long coat that covers the entire body and hair while exposing the face. The French 2010 Law (Loi number 2010–1192, JO 12 October 2010, 18344), which forbade full-facial-covering clothing in all public places, including workplaces that are accessible to the general public, would not apply to the jilhab because it would leave the face exposed.

[141] Myriam Hunter-Henin, Religion, Children and Employment: The Baby Loup Case, 64 Int'l & Comp. L.Q. 717 (2015), available at https://ssrn.com/abstract=2626417.

The Court underlined that such limits were lawful when intended to safeguard children's freedom of conscience and ensure a neutral educational environment.[142] It finally held that the employee's freedom of belief wasn't violated since she could hold her religious beliefs outside of work.

France offers a singular legal paradigm in which laïcité or state secularism is not only a constitutional principle but also the chief characteristic of national identity. Although the French Constitution enshrines freedom of religion, such freedom is regularly restricted in the interests of maintaining public neutrality. The French courts have persistently reaffirmed limits on religious dress, especially in the domain of public institutions, when such expression is believed to be in tension with the ideals of secularism and public order.

5.2.5. UNITED KINGDOM

In contrast to most of the other jurisdictions explored in this research, the United Kingdom lacks a codified constitution that directly enshrines fundamental rights like freedom of expression. However, the UK has traditionally recognized a number of rights through common law and most importantly through its embracement of international legal documents. The adoption of the European Convention on Human Rights (ECHR) into national law through the Human Rights Act 1998[143] was a turning point in the protection of civil liberties domestically. Article 10 of the ECHR protects the right to freedom of expression, including the right to receive and impart information and ideas without interference by public authority. But this is not an absolute right; it is one subject to restriction which is considered "necessary in a democratic society." Such restriction includes imposing restrictions in the public interest, protection of health or morals, and other people's rights and reputations.[144]

The Convention itself does not provide a definitive or exhaustive definition of what is considered "expression." This vagueness has resulted in selective judicial practice in

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[142] Id.
[143] The Human Rights Act, EQUAL. & HUM. RTS. COMM'N, https://www.equalityhumanrights.com/en/human-rights/human-rights-act (last updated Nov. 15, 2018).
[144] Taran Harmon-Walker, Fundamental Rights or Hand-Me-down Restrictions: The Specter of Sumptuary Law in Clothing Expression Doctrines of the U.K., the U.S., & Canada, 49 GA. J. INT'l & COMP. L. 177 (2021).

deciding which acts, namely those in relation to personal appearance or dress, deserve protection. Although some jurists suggest a "negative right" of freedom of expression in common law (not to be required to express), this has relatively little practical application when people claim a positive right to express identity through dress.[145] The courts will generally affirm freedom of expression only when the activity is historically or traditionally one known to be expressive.

The issue becomes more complicated in the context of public dress. Whereas states like France have made public veil bans, and these have been maintained by the ECHR as being within Articles 9 and 10 of the Convention, the UK has not followed suit.[146] Notwithstanding repeated political demands for the same, political and public opposition has meant that no such ban has been passed. This shows the UK's relatively more permissive policy towards religious attire in public, even if the lack of legal protection based on a written constitution makes subsequent policy subject to changes in public opinion or parliamentary will.[147]

In contrast, the UK has adopted a much less sympathetic attitude to expressions of identity through nudity. In a high-profile case, one person who habitually went about naked as a way of life of social nudism was arrested several times.[148] He claimed his nudity was a statement of personal identity which should be protected under Article 10. The European Court admitted that nudity could be an aspect of personal belief or identity but finally decided that local authorities had the right to balance this personal expression against the standards of the community. The Court established a bright line distinction between private acts of satisfaction and acts performed with a discernible public purpose, noting that the former are less likely to be protected by human rights law.

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[145] Id. and also See Gillberg v. Sweden, 1676 Eur. Ct. H.R. 471, ¶ 86 (2010).(holding that there was no right to withhold research when it was work-product created while under employment, but also holding that "[t]he Court does not rule out that a negative right to freedom of expression is protected under Article 10 of the Convention").

[146] Taran Harmon-Walker, Fundamental Rights or Hand-Me-down Restrictions: The Specter of Sumptuary Law in Clothing Expression Doctrines of the U.K., the U.S., & Canada, 49 GA. J. INT'l & COMP. L. 177 (2021).

[147] Id.

[148] Gough v. United Kingdom, App. No. 49327/11 (Oct. 28, 2014).

In the workplace, employers' dress codes have also found judicial approval. In *Kara v. United Kingdom*[149], a man who wanted to dress in women's clothes at work complained that his employer's dress code violated his right to privacy and freedom of expression and also amounted to discrimination. Although the court accepted that the dress code intruded into the applicant's private life under Article 8, it held the interference to be justified under Article 8(2) to maintain the employer's public image and allow external business relationships.[150] This indicates that in the context of workplaces, UK law prefers institutional interests to individual expression where there is a clash between the two.

Restrictions are also apparent in educational contexts. In *R (Begum) v. Headteacher and Governors of Denbigh High School*[151], a female Muslim pupil challenged the uniform policy at her school for interfering with her right to education by not allowing her to wear a religion garment of her choice. Though the lower courts ruled in her favor, the House of Lords reversed the ruling, and it held that the student was not being denied her right to education as long as she could attend another school that allowed her dress.[152] This ruling highlights the pragmatic nature of the UK judiciary, giving more importance to institutional discipline and provision of choice than to a broad interpretation of religious wear as a component of constitutionally guarded expression.

Therefore, without the benefit of a written constitutional protection, the UK's freedom of dress as a component of freedom of expression is defined by a patchwork of common law tradition, statute and interpretation, and case law from both domestic and European jurisdictions.[153] Although overall committed to the protection of religious dress in public places, the UK legal system permits significant state and private actor discretion in regulating clothing in settings like employment and education. This strategy displays inconsistency between personal autonomy in self-presentation matters and public and institutional interests in terms of public morality and institutional integrity.

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[149] Kara v. United Kingdom, 27 Eur. Comm'n H.R. Dec. & Rep. 272, 273 (1999).
[150] Id. at 273-74.
[151] R. v. Denbigh High Sch. [2006] UKHL 15, [2007] 1 AC 100 (appeal taken from Eng.).
[152] Id.
[153] Taran Harmon-Walker, Fundamental Rights or Hand-Me-down Restrictions: The Specter of Sumptuary Law in Clothing Expression Doctrines of the U.K., the U.S., & Canada, 49 GA. J. INT'l & COMP. L. 177 (2021).

5.2.6. INDIA

In *Fathema Hussain Sayed v. Bharat Education Society*[154], a Muslim minor girl objected to a school order forbidding her to wear a headscarf and invoked violation of her religious freedom under Article 25 of the Constitution. The Bombay High Court rejected her plea, holding that covering the head in an all-female school is not a fundamental religious practice of Islam and is therefore not protected by Article 25.

In *Amnah Bint Basheer v. CBSE*[155], the Court identified that clothing selected by religious belief can be covered under Article 25(1), as long as it is essential to the religion, affirming the principle that dress can be within religious freedoms in some situations.

In *P. Chinnamma v. Regional Deputy Director of Public Instruction*[156], a former nun protested against a regulation banning her from wearing a nun's habit following expulsion from the order. The Andhra Pradesh High Court affirmed the prohibition, citing the habit denoted institutional status and not personal faith. It also reiterated that private religious institutions are exempt from Article 12 and may administer internal affairs such as dress codes.

In *Zainab Abdul Qayyum Choudhary v.Chembur Trombay Education Society*[157], nine female students had raised a challenge to a dress code prohibiting religious wear such as the hijab and niqab. The Bombay High Court upheld the code, deeming the same as non-discriminatory, secular, and necessary to ensure institutional discipline. The Court held that hijab/niqab did not fall within the category of essential religious practices and that institutional autonomy under Articles 19(1)(g) and 26 must be weighed against individual rights.

In *M. Ajmal Khan v. Election Commission of India,* the Madras High Court dismissed an objection to the presence of photographs of Muslim women who wear the veil on voter

[154] 2002 SCC OnLine Bom 713
[155] 2016 (2) KLT 601
[156] AIR 1964 AP 277
[157] 2024 SCC OnLine Bom 1925

rolls. It was its opinion that the provision furthered a legitimate public interest, preventing electoral corruption, and did not contravene Article 25.

The judiciary, however, is often confident when it comes to gender stereotypical dress codes that serves no significant purpose or legal sanction. In *Dr.V.Kamalam vs The State Of Tamilnadu,* the petitioner, a 5th respondent college BHMS student, had finished her final exams in August 2008 and started the internship on 3rd November 2008. The college, during the internship period, had enforced a dress code such that women internees would only be allowed to wear saree as the "only dignified dress." The petitioner sought permission for wearing Salwar Kameez, which was not granted. On 11.11.2008, when the petitioner attended duty wearing Salwar Kameez, she was not given internship training. She moved a writ petition questioning the dress code on the grounds of it having no legal sanction. The Madras High Court, by an order dated 30.06.2009, held in her favour, observing that the dress code was illegal and had no basis in any legitimate regulation. The problem would have been settled cordially between the administration and the student. The petitioner should be permitted to wear Salwar Kameez and resume internship. Upon resuming internship on 16.07.2009, the petitioner was allegedly ill-treated by college officials. She finished her internship only on 15.07.2010 whereas her contemporaries completed it by November 2009, resulting in a considerable delay in her studies. She was not provided with the second provisional certificate despite repeated requests, which was the prerequisite for registering her degree with the Homeopathy Council. She moved a further writ petition to issue the second provisional certificate and retrospective registration. While in its pendency, she received the certificate in April 2011, nine months after finishing the course. Her only prospective registration was done by the Homeopathy Council (19.04.2011) and not from the date of finishing her internship (15.07.2010). The transfer certificate dated 04.04.2011 contained blank entries, particularly in important fields such as conduct and fee clearance, which would affect future education or employment. Respondents asserted that this was an omission, but the court did not accept this as a reason, citing the history of harassment and previous litigation filed by the petitioner. The High Court ruled that:

The non-vindictiveness of the college is not credible. The petitioner was harassed and compelled to visit the court several times. Although the court did not find any reason for Rs. 30 lakh compensation, it granted Rs. 25,000 as mental agony and harassment costs. The right of the petitioner to retrospective registration is still pending on the result of the pending appeal.

The court categorically ruled that the requirement of saree dress code alone for women internees was unconstitutional, had no legal basis, and was a denigration of personal autonomy and dignity. The behavior of the college, both the denial of internship initially and the treatment thereafter, was construed to be retaliation for the petitioner having asserted her rights.

5.3. LEGAL STANDARDS ACROSS JURISDICTIONS IN INTERPRETING THE RIGHT TO DRESS

5. 3.1. DOCTRINE OF RELIGIOUS ACCOMMODATION

This test, which is seen to be used particularly in US, is analogous to the essential religious practice test in India. Religious accommodation refers to the idea that individuals should be exempted or relieved from general legal obligations when such obligations place a serious burden on their ability to perform religious conduct. One of the most comprehensive definitions of this right characterizes it as a right *"to be free of burdens that either impede one's religious conduct or make it too costly to perform."*[158]

This definition works on a number of underlying assumptions. To begin with, religious accommodation protection is not absolute.[159] While the state is required to provide substantial justification for imposing significant burdens on religious expression, it is not precluded from doing so in the first place. This enables a balanced approach, under which

[158] Paul Bou-Habib, A Theory of Religious Accommodation, 23 J. Applied Phil. 69 (2006).
[159] Id.

legitimate state interests, such as public order, safety, or institutional integrity, can justify constraints, as long as they are proportionate.[160]

Secondly, the burden in question has to be substantial, that is, it need not simply be inconvenient, but must be such that no normal person could reasonably be expected to endure it. This applies not only to direct prohibitions (like prohibiting religious dress) but also to indirect ones (such as making compliance prohibitively expensive or out of reach).[161]

Third, this protection concerns only burdens that the state imposes, and not those that come about as a result of private conduct.[162] A government policy prohibiting religious headscarves in public schools might trigger the right to accommodation, for example, but private discomfort or criticism from fellow students does not call forth the same legal attention.

Lastly, but most importantly, religious accommodation covers a sweeping view of religious behavior. It encompasses not just acts of worship but also other types of conduct inspired by religious faith, everything from diet and dress to child-rearing and education.[163] An expansive definition in this way guarantees that non-mainstream or less highly systematized practice, including personal decisions such as wearing a hijab, turban, or kirpan, is not excluded from protection merely because it does not meet the highest orthodoxy standards.

5.3.2. LEGITIMATE AIM & PROPORTIONALITY

The ECHR balances rights by questioning whether a limit is "prescribed by law" and "necessary in a democratic society" (proportionate). It grants states a broad "margin of appreciation" over religion. In deciding on dress, the Court tends to focus on whether the limit seeks a legitimate goal (e.g. secularism, gender equality) and is proportionate. In

[160] Id., at 110
[161] Id.
[162] Id., at 111
[163] Id.

Lautsi[164] it stated there is no European consensus on decisions regarding religious symbols in schools, and they are left to national margin. The Court only considers sincerity of belief to see whether the act is religious; after that, focus is on justification.

5.3.3. SECULARISM & PUBLIC NEUTRALITY

France does not position analysis in terms of balancing individual rights against state interest in proportionality. Rather, laïcité[165] and public neutrality are prevailing values. The recent decision of the French Government to ban the wearing of "abaya" in state-run educational institutions clearly depicts this.[166] In reality, courts permit sweeping restrictions on religious dress as long as they are applied neutrally. The French test is not one of "strict scrutiny" but one of deference to legislative judgment that particular dress is incompatible with secular responsibilities. When faced with challenge, French judges have endorsed gender equality, safety, or secular cohesion as proper aims.

5.3.4. PRESSING & SUBSTANTIAL PURPOSE OF LAW

The Oakes framework, set out in *R. v. Oakes*[167], is the framework for deciding whether a limitation on a Charter right is "reasonable and demonstrably justified," as is allowed under Section 1 of the Canadian Charter of Rights and Freedoms. This evaluation starts with the precondition that the law at issue must aim towards a pressing and substantial societal purpose, i.e., the objective it intends to attain should be of such magnitude as to justify overriding a fundamental right.[168]

Having crossed this hurdle, the structure proceeds to a proportionality test, which has three elements. First, there has to be a logical relationship between the chosen means and the legislative purpose; the law has to rationally advance the proposed purpose.[169] Second, the law has to least restrict the impaired right, meaning that no less restrictive means are found

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[164] Lautsi v. Italy, App. No. 30814/06, Eur. Ct. H.R. (Grand Chamber), Mar. 18, 2011.
[165] French term for secularism
[166] Radhika Santhanam, Understanding Laïcité, the French Principle of Secularism, The Hindu (Sept. 5, 2023), https://www.thehindu.com/specials/text-and-context/understanding-la%C3%AFcit%C3%A9-the-french-principle-of-secularism/article67270106.ece
[167] R v Oakes [1986] 1 SCR 103.
[168] Micaela Filippi, Oakes Test: The Proportionality Principle and Its Stricto Sensu Application (2021).
[169] Id.

to pursue the purpose. Third, there needs to be a balance between the good the law will do and the harm that it causes to the right; the good needs to outweigh the harm resulting from the infringement.[170]

Last, in order for a limitation on a Charter right to be valid, it must be reasonable and shown to be demonstrably justified in a free and democratic society. This last step reflects the general requirement that any limitation on fundamental freedoms is subject to strict scrutiny to prevent it from being arbitrary or excessive.[171] The Oakes test is therefore an important safeguard to ensure that rights are only restricted in justified and measured ways.

In Multani, the Court applied this, giving deference to school expertise but nonetheless striking down the ban for lack of accommodation.

Analysing different jurisdictions makes it clear that there is no perfect universal test or standard to balance the right to dress with state interference. However, with the aim of achieving a flexible and principled balance, Canadian model makes a better option. The insistence of evidence- based scrutiny is a significant feature of this test. The state cannot simply assert a compelling interest; it must justify its interference with credible evidence and sound reasoning, thereby ensuring accountability and transparency in decision-making. The test is also highly flexible, making it suitable for a wide range of contexts, including schools, workplaces, and public institutions. Crucially, the Oakes framework does not rely on the notion of "essentiality" that is central to the Indian Essential Religious Practices test.

In his dissenting judgment in the Aadhaar case[172], Justice D.Y. Chandrachud concurs that the Aadhaar programme, and Section 7 of the Act specifically, is for the pursuit of a legitimate State interest, enhancing the delivery and targeting of welfare schemes. But he differs from the Majority in applying the proportionality test. The Majority is of the view that the invasion into core rights like privacy and dignity is minimal and hence justified

[170] Id.
[171] Id.
[172] Justice K.S. Puttaswamy Vs. Union Of India, (2017) 10 SCC 1

easily enough by Aadhaar's utility in preventing welfare leakages. They also believe that it is the petitioners' onus to establish the existence of a less intrusive alternative.[173]

Justice Chandrachud takes a stricter and rights-focused approach. He observes,

"The test of proportionality stipulates that the nature and extent of the State's interference with the exercise of a right (in this case, the rights to privacy, dignity, choice, and access to basic entitlements) must be proportionate to the goal it seeks to achieve (in this case, purported plugging of welfare leakage and better targeting)."[174]

He challenges the presumption that Aadhaar is successfully meeting its avowed objectives, citing the aim of improved welfare targeting as only "purported." That careful phrase is his persistence that courts ought not to presume automatically on State assertions, particularly when the scheme in question is one of country-wide biometric scale. For him, Aadhaar subjects each citizen to suspicion, gathering biometric information upon mere suspicionlessness and judicial insulation. This, he contends, constitutes a disproportionate encroachment of the right to privacy, dignity, and access to benefits.

Most importantly, he emphasizes that the onus of proof is on the State to show that no less intrusive alternative would result in like outcome. This is a stark contrast to the Majority opinion which placed the burden of proving the existence of alternatives on the petitioners.

Therefore, for Justice Chandrachud, the Aadhaar scheme also falls short on the test of proportionality. The State has not adequately explained why such a pervasive instrument should be resorted to, nor has it created safeguards against misuse of individual data. In his opinion, the privacy right cannot be traded away without strong and strictly established reasons. His dissent focuses on upholding the rights of individuals against the expansive power of the State.

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[173] Id.
[174] Id., at 198

Recently the Jamaican Supreme Court used this reasoning by Chandrachud, J., while striking down a Jamaican legislation, NIRA, which is similar to the Aadhar Act.[175] Thethe Chief Justice of the Jamaican Supreme Court held,

"... I am of the view that the strict application of Oakes is the best way to preserve fundamental rights and freedoms. The majority [i.e., in Puttaswamy] appeared to have taken a more relaxed view. The strict Oakes test makes a more granular scrutiny possible by saying that the court must take account of any deleterious effect of the measure being relied on to meet the objective. Thus the greater the severity of the effect the more important the objective must be, furthermore the measure chosen needs to be shown to be the least harmful means of achieving the objective."[176]

Therefore, the Oakes test can be considered as a more principled and protective standard compared to other models, making it particularly suitable for contexts involving sensitive intersections of autonomy, dignity, and state regulation.

5.4. CONCLUSION

The judicial treatment of the right to dress across jurisdictions serves as a constitutional barometer, revealing how different states interpret the relationship between autonomy, identity, and authority.

From India's Essential Religious Practices test to Canada's formal proportionality under the Oakes test, every jurisdiction has a distinct constitutional culture. India's framework, although originally designed to safeguard religious freedom, has too frequently slipped into being a gatekeeping tool that inhibits instead of facilitating diverse expressions of religion.

Conversely, Canada's approach demonstrates a deep commitment to rights-based adjudication, under which the justification of the state is stringently examined, and individual dignity is at the center of the analysis. The Oakes test's requirement of minimal impairment and burden of evidence betrays a jurisprudence assuming liberty, not

[175] Robinson v. Attorney General of Jamaica, [2019] Sup. Ct. Jam. https://supremecourt.gov.jm/content/robinson-julian-v-attorney-general-jamaica
[176] Id. at para. 177

regulation, as normal. This orientation permits courts to be open to a multiplicity of lifestyles, beliefs, and identities without succumbing to relativism or judicial activism.

The United States provides a mixed terrain. Though its First Amendment law looks strongly protective on paper, the exempting of exceptions in the spheres of education, employment, and military service tends to weaken it. The balance between constitutional freedom and administrative deference makes implementation of religious dress rights particularly difficult, exposing a court system that at times has difficulty converting high-sounding principles into practical remedies for victims.

The European and UK variants introduce an extra layer of sophistication with a tension between proportionality and a precautionary "margin of appreciation." The leeway allowed for national and cultural contexts allows for both liberal and illiberal results, depending on the approach. While this room to maneuver is helpful, it also invites too much state power, especially when cultural fears are disguised as public order issues.

France and other traditionally secular jurisdictions demonstrate how strict interpretations of state neutrality can exclude vulnerable identities in the name of civic equality. The focus on laïcité is apt to override personal preference in favor of abstract concepts of national identity, excluding those whose belief or background lies outside the hegemonic account. In these cases, the right to dress falls victim to ideological conformity, not democratic pluralism.

Together, these models demonstrate that the judicial protection of dress is not a question of doctrine alone, but of underlying judicial temperament and public priorities. The strongest frameworks are those that approach dress neither as a threat to order nor simply as an articulation of identity that requires dismissal. A rights-based democracy will acknowledge that expression, including dress, is not a luxury, it's the texture of citizenship.

CHAPTER 6

DRAWING A BALANCE BETWEEN THE RIGHT TO DRESS FREELY AS AN ASPECT OF INDIVIDUAL AUTONOMY & THE PUBLIC MORALITY

6.1. INTRODUCTION

The act of dressing is an intensely personal expression, an articulation of the self that asserts autonomy, identity, and dignity. In a constitutional democracy dedicated to protecting individual liberties, the decision regarding clothing takes on more than aesthetic or cultural importance; it is an exercise of personal freedom under the law. The Indian Constitution, by its recognition of the right to life and liberty of the person under Article 21[177], recognizes the individual as a rational and independent entity that is entitled to decide what happens to their body and self.

Nonetheless, individual autonomy is never isolated. "Morality" is an exception to the non-state-interfered right to dress, as per Article 19(2)[178] and Article 25[179]. However, individual autonomy is always negotiated within the limits of social norms, usually called upon in legal terms under the banner of "public morality." Such a notion, malleable and changing, is many times used as a pretext to restrict manifestations of individual liberty that are held to be incompatible with group moral standards. The conflict between these rival claims necessitates an orthodox constitutional analysis; whether limitations on such are based on appropriate state interest, and whether they comply with the test of proportionality that controls curbs on fundamental rights.

The interference of dress, autonomy, and morality therefore creates a complex legal landscape, in which strongly held convictions regarding decency, order, and tradition collide with the constitutional vision of individual liberty. Sustaining this legal landscape

[177] INDIA CONST., art. 21
[178] INDIA CONST., art. 19(2)
[179] INDIA CONST., art. 25

demands an understanding that dignity is not simply the absence of interference, but the room to live a genuine existence, unafraid of moral judgment for doing what one wishes.

6.2. MORALITY AS AN EXCEPTION TO THE RIGHT TO DRESS

Right to dress, as an aspect of individual autonomy, is, however, not absolute. Being a part of the larger fundamental rights of speech & expression and personal autonomy, the right to dress is also subject to the reasonable Constitutional restrictions upon these rights. Article 19(1)(a) of the Constitution is subject to certain restrictions under Article 19(2), which states,

"*Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."*[180]

As per the Article, morality and decency are considered valid and reasonable grounds for restricting the fundamental right to speech and expression. However, no clear definition of what morality or decency is has been provided anywhere in the Constitution.

The judiciary has, on several accounts, upheld the restriction of free speech on these grounds. The first landmark judgment of the Supreme Court on the subject of decency and morality was rendered in the case of *Ranjit D. Udeshi v. State of Maharashtra*[181]. The case was about the sale of a book, which was claimed to be obscene. The appellant was tried under Section 292 of the IPC and argued both his conviction and the constitutional validity of the provision, alleging that it violated his freedom of speech and expression under Article 19(1)(a) of the Constitution. But the Court upheld his conviction under the Hicklin test,[182]and also confirmed the validity of Section 292 in terms of constitutionality, invoking

[180] INDIA CONST., art. 19(2)
[181] AIR 1965 SC 881.
[182] The "Hicklin standard," which is typically recognized as the first conclusive threshold for obscenity, was established by the Queen's Court in the Regina v. Hicklin case in 1868. Material that had the power to

Article 19(2), which allows for reasonable restrictions on the grounds of public decency and morality. The invocation of the archaic Hicklin test and the focus of the Court on "community mores and standards" have since come in for criticism from legal experts and activists.[183]

With time, the Indian judiciary has undergone changes in its handling of such matters, following changes in social attitudes brought about by higher education and modernization[184]. Courts have departed from the strict tests applied in the Udeshi case, especially in their definition of obscenity in films and literature. Issues like sexual material, nudity, use of coarse language, and presentation of social realities like classism have been viewed with a more liberal perspective.[185]

Significantly, in seminal judgments such as *Bobby Art International v. Om Pal Singh Hoon*[186] and *Maqbool Fida Hussain v. Raj Kumar Pandey*[187], the Supreme Court overruled the view that such representations are obscene per se. The Court stressed that the subject matter concerned must be tested from the point of view of the artist or the filmmaker, and not from the assumed susceptibilities of the audience. However, the Court also warned that this freedom must not be abused. It recommended that, where feasible, artists should aim to deliver their message without recourse to foursquare language, nudity, or other provocative methods.

The most significant decision on the decency and morality as a limitation on free speech is the case of *Aveek Sarkar v. State of West Bengal*[188]. The case concerned publication of a nude photo of the renowned sportsperson Boris Becker and his fiance Barbara Fultus in a sports magazine to sponsor the cause of anti-apartheid and racial equality. The Court in

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corrupt and deprave persons whose minds were susceptible to immoral influences, particularly when it came to sexual morality, would be deemed obscene, according to the criterion. See, Adarsh Kumar, Study on the Hicklin Test and Its Impact on the Obscenity Laws in India (July 3, 2023), https://dx.doi.org/10.2139/ssrn.4498153

[183] J. Sai Deepak, Constitutional Morality versus Public Morality, THE DAILY GAURDIAN, Aug. 21, 2020, https://thedailyguardian.com/constitutional-morality-versus-public-morality/.

[184] Rahul Parekh, A Critical Study on Decency and Morality as an Exception to Free Speech, 3 INDIAN J.L. & LEGAL RSCH. 1 (December 2021 - January 2022).

[185] Id.

[186] (1996) 4 SCC 1.

[187] (2008) CrLJ 4107 (Del).

[188] (2014) 4 SCC 257.

this overruled the Hicklin test and used the community standards test. The Court ruled that, *"A picture of a nude/semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The picture should be suggestive of depraved mind and designed to excite sexual passion in persons who are likely to see it. Only such sex-related material which tends to instill lustful thoughts can be subjected to be obscene, but the obscenity must be assessed from the perspective of a median person, based on the use of modern community standards".*[189]

Thus, the right to dress, being a part of freedom of speech and expression, can be legitimately restricted by the State on the grounds of morality or decency. Similarly, when the issue is regarding religious attire, the right to religion as guaranteed under Article 25 of the Constitution is also invoked. Article 25 can also be reasonably restricted on the grounds of morality. Article 25(1) reads,

"*subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise, and propagate religion."*[190]

Thus, the right to dress of a person when it comes to religious attire can be reasonably interfered with by the State on the ground of morality.

6.2.1. PUBLIC MORALITY & CONSTITUTIONAL MORALITY

The UN Fact Finding Mission, in the backdrop of the Mahsa Amini case, reported that the security forces characterized women's demands for equality and non-discrimination as "willingness to get naked" and "spreading immorality".[191] The usage of morality here cannot be interchanged with the morality given under the Constitution of India. Morality is not defined anywhere in the Constitution. As a matter of fact, during the Constituent

[189] Id.
[190] INDIA CONST., art. 25(1)
[191] United Nations Human Rights Council, Report of the independent international fact-finding mission on the Islamic Republic of Iran, U.N. Doc. A/HRC/55/67 (2024), https://undocs.org/en/A/HRC/55/67

Assembly debates, one of the issues raised was that the words "decency" and "morality" had got no real meaning.[192]

A formal perusal of our Constitution makes it clear that the morality in the Constitution is not qualified by the term "public". However, it was the original intent of the Constituent Assembly to incorporate public morality into the Constitution. On 13th December 1946, the Constituent Assembly of India met in the Constitution Hall, New Delhi, where Pandit Jawaharlal Nehru moved the Resolution setting out the objects and purposes of the Assembly. Nehru had said, *"The Resolution defines our aims, describes an outline of the plan and points the way which we are going to tread."*[193] He went on to move the Resolution and stating,

"(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and…."[194]

Notably, when the Constitution was finally ratified, the actual words "public morality" did not appear. Rather, the word "morality" is used four times in the final document of the Constitution, and the word "moral" only once.

Morality, in its general sense, is a sophisticated concept that comes from philosophy, psychology, and culture. It influences the way humans act and what society expects from them.[195] Public morality is the collective moral and ethical norms imposed by society –

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[192] Constituent Assembly Debates, vol. 7 (Dec. 6, 1948), http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C13121946.html.
[193] Constituent Assembly of India Debates (Proceedings), vol. I (Dec. 13, 1946), available at http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C13121946.html.
[194] Id.
[195] David Wong, Morality, Definition of, in The International Encyclopedia of Ethics (Hugh LaFollette ed., Wiley-Blackwell, 2013), https://doi.org/10.1002/9781444367072.wbiee671.

frequently legislatively codified, administratively mandated, or socially enforced – to govern behavior in the public domain. Philosophers differentiate between the "morality of duty", which means moral codes which society imposes through legal mandate and the "morality of aspiration", that includes commonly-held values that society celebrates but fails to legally impose.[196]

John Stuart Mill's harm principle famously warns that the State might only force people to avoid harm to other people, not merely to implement dominant moral opinion. By contrast, Lord Devlin believed that society is entitled to impose common morality even on private behaviour. Legal philosophers such as H.L.A. Hart responded that "private immorality" ought not to be criminalized in the absence of an evident harm.[197] In short, "public morality" is generally defined as the shared sense of virtue and decency, commonly the majority culture or tradition, that governments occasionally cite as a basis on which to curtail personal freedoms.

However, the judiciary has made it clear that in order to justify the restriction of a fundamental right, compelling state interest is the answer[198] and public morality does not qualify as a compelling state interest. It is not what the Constitution means by the incorporation of the term "morality" in it. In *Naz Foundation v. Government of NCT of Delhi and Ors*[199], the court made the observation, *"Thus popular morality or public disapproval of certain acts is not a valid justification for restriction of the fundamental rights under Article 21. Popular morality, as distinct from a constitutional morality derived from constitutional values, is based on shifting and subjecting notions of right and wrong. If there is any type of "morality" that can pass the test of compelling state interest, it must be "constitutional" morality and not public morality."*[200]

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[196] The Morality of Aspiration: A Neglected Dimension of Law and Morality, in Rediscovering Fuller: Essays on Implicit Law and Institutional Design 169 (Willem J. Witteveen & Wibren van der Burg eds., Amsterdam Univ. Press 2009) (Erasmus Working Paper Series on Jurisprudence and Socio-Legal Studies No. 09-03).
[197] Sanidhya Sharma, Law vs. Morality: An Overview from Hart and Devlin's Debate, 5 Int'l J. Legal Sci. & Innovation 113 (2023).
[198] Nidhi Ngaihoih, Law and Morality: Constitutional Morality vs. Public Morality, 10 J. Indian Rsch. 3 & 4, July–Dec. 2022.
[199] (111) DRJ 1 (DB).
[200] Id., p. 64 of 105.

Similarly, in *Navtej Singh v. Union of India*[201], the court stated, *"..subjective notion of public or societal morality which discriminates against LGBT persons, and subjects them to criminal sanction, simply on the basis of an innate characteristic runs counter to the concept of Constitutional morality, and cannot form the basis of a legitimate State interest."*[202]

Therefore, public morality cannot be used as a valid ground to introduce dress restrictions. In *Swati Purkait & Ors vs The State Of West Bengal & Ors*, the oral directions of the secretary of the institute to obey the dress code made by its managing committee specifying a white sari for the teachers at work were challenged before the court. Seven teachers of Singur Golap Mohini Mullick Girls High School in Hooghly district had been issued a notice by the managing committee of the school denying them entry into school unless they conformed to the 75-year old tradition (of wearing the sari) which had prevailed there. The Calcutta High Court in December 2008 held that according to the West Bengal Secondary Education Act of 1950, no provision for restrictions on the dress of teachers was there, and held that compelling a dress code on a teacher constituted contravention of their fundamental rights and could not be made a condition of service.

While constitutional jurisprudence has amply established the principle that public or popular morality cannot constitute a legitimate basis for limiting fundamental rights, particularly in issues of personal autonomy and expression, the actuality is one that presents a sharply contrasting scenario. The institutional dress codes which are routinely imposed not on grounds of constitutional reasoning but by the cultural ethos of decency and propriety, which targeted and disciplines women's bodies predominantly, are a valid example of this. These practices, although couched in terms of necessity for social order or institutional discipline, are actually expressions of the very public morality discredited by the courts, morality based on patriarchal norms, majoritarian comfort, and unchallenged social hierarchies.[203]

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[201] (2018) 10 SCC 1
[202] Id.
[203] Shoma Choudhury Lahiri & Sarbani Bandyopadhyay, Dressing the Feminine Body, 47 Econ. & Pol. Wkly. 20 (Nov. 17, 2012).

6.3. CONSTITUTIONAL MORALITY IN REVIEWING DRESS RESTRICTIONS

Morality has been clearly interpreted as Constitutional morality by the judiciary. Thus only constitutional morality qualifies as a compelling state interest and not public or popular morality. Legally, there is no test for deciding the constitutional morality and therefore a uniform yardstick has to be developed so that the area of legal inconsistency is not within its scope.[204]The four fundamental constitutional values are based on Justice, Liberty, Equality and Fraternity The morality has to be interpreted on the basis of these values enumerated in the constitution.[205]

In *Kantararu Rajeevaru v. Indian Young Lawyers' Association*[206], one of the issues raised was the scope and extent of the word 'morality' under Articles 25 and 26 of the Constitution of India and whether it is meant to include Constitutional morality. The argument aimed at this issue by the petitioners was that Dipak Misra, CJ. And Chandrachud, J., had erred in relying upon constitutional morality in their judgements.[207] The concept was argued to be vague. But, the court ruled against this argument stating that constitutional morality has now reached the level of stare decisis, and has been utilised in many landmark judgements, thus placing reliance on the same does not suffer from any error apparent. The court then goes on to define constitutional morality as the values inculcated by the Constitution, which are contained in the Preamble read with Part III and Part IV, among other parts.[208]

Thus, Constitutional morality is the values within the Constitution itself. Any restriction imposed on the right to dress with a view to uphold the values of the Constitution, rather than the popular values of the public, is a legitimate restriction. Thus, if an institution issues a dress restriction just based on the decency and morality perceptions of the society, it cannot be held valid.

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[204] Helan Benny & Lavina Laju, Doctrine of Constitutional Morality in the Context of Indian Legal System: A Transformative Tool, 3 Int'l J. Legal Sci. & Innovation 463 (2020).
[205] Id.
[206] AIRONLINE 2019 SC 1450.
[207] See, Indian Young Lawyers' Association v. State of Kerala, (2019) 11 SCC 1
[208] Kantararu Rajeevaru v. Indian Young Lawyers' Association, AIRONLINE 2019 SC 1450.

Restrictions on dress are commonly couched in terms of public order or social cohesion, yet, subjected to constitutional review, they are judged against fundamental constitutional values. The hijab bans, such as the recent Karnataka controversy and traditional bans on women entering temples, challenge issues of equality and identity. These cases are uncertain, but they demonstrate the method that courts use to consider whether a dress ban forces conformity to majority norms at the expense of individual rights. The restriction will be invalid if it invades equality or dignity that is implicit in Articles 14–21, even if it is justified by social or religious morality. In Indian Young Lawyers Association v. State of Kerala[209], the Court struck down the prohibition on women of menstruating age entering the temple. The majority clearly held the custom to be one of unconstitutional exclusion. Justice Chandrachud ruled that the exclusion was "a form of untouchability" and "anathema to constitutional values".

In doing so, the Court appealed to constitutional morality, i.e. the ideals of equality, non-discrimination and secularism, as the benchmark.[210] Therefore, a religious practice that denies women access or choice of clothing cannot hold if it threatens the Constitution's egalitarian ideals. More broadly, constitutional morality is invoked wherever individual freedom is violated. Courts have consistently made it clear that decisions regarding dress, sexuality or intimacy are within the general ambit of protection of personal liberty. In Navtej Johar[211], the Court noted that an individual is at liberty "to determine and follow his/her pattern of life" as per constitutional principles.

In the same way, in Puttaswamy[212], individual autonomy was held to be inherent to the right to privacy and dignity. By extension, regulations of how one dresses are assessed through the question of whether they promote any legitimate constitutional purpose. If not, they do not pass the test of constitutional morality. In reality, thus, any state action prohibiting specified attire (secular or religious) has to be examined for its conformity with equality and freedom. If a ban is found to be based on prejudice or to improperly

[209] (2019) 11 SCC 1
[210] Helan Benny & Lavina Laju, Doctrine of Constitutional Morality in the Context of Indian Legal System: A Transformative Tool, 3 Int'l J. Legal Sci. & Innovation 463 (2020).
[211] Navtej Singh v. Union of India, (2018) 10 SCC 1
[212] Justice K.S.Puttaswamy(Retd) And Anr. vs Union Of India And Ors, AIR 2017 SC 4161

subordinate individual preference to majoritarian opinion, courts will not hesitate to invalidate it as offensive to constitutional morality.

Even though the judiciary often invokes "constitutional morality," it has not established a clear formula to apply it. Instead, it operates as a normative check, ie, whether the laws and state action are subjected to testing for consistency with constitutional values. The justices have occasionally described it as a "litmus test" of constitutional justice[213] or the "conscience of the Constitution." Practically, it involves balancing restrictions against equality, liberty and dignity. If a restriction has no compelling constitutional purpose or is motivated by prejudice, it will not pass. For instance, courts will inquire as to whether a dress code (or any prohibition) is narrowly focused on a legitimate secular purpose that does not unnecessarily suppress rights.

In the end, constitutional morality is less an arithmetic test than a culture.[214] The Court has insisted that legislatures and judges must uphold the Constitution's vision of a plural, egalitarian society, even when this is against dominant social or religious norms. With no statutory checklist, the judges have recourse to comparative jurisprudence, reasoning on the basis of fundamental rights, and considerations on basic structure. They need to make outcomes compatible with the text and spirit of the Constitution. This principle-guided but flexible approach ensures consistency by adherence to essential values: legislations have to treat human dignity, gender equality, and secular pluralism with respect. When judges invoke constitutional morality, they simply require that constitutional morality's content exist in law and enforcement. Over time, this has enabled the judiciary to strike down obsolete legislation and traditions by reference to abiding constitutional standards.[215] No single mechanical yardstick emerges, but the guiding standard is clear: every law must be justifiable in light of the Constitution's moral foundations.

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[213] Supra, note 212

[214] Keertana Kannabiran Tella, Challenging the Hijab Ban in India: Plural Embodiment and Secular Constitutionalism, 21 Int'l J. L. in Context 139 (2025).

[215] See, Navtej Singh v. Union of India, (2018) 10 SCC 1, See, Indian Young Lawyers' Association v. State of Kerala, (2019) 11 SCC 1 and

In the future, a consistent doctrinal standard must be applied to channel courts in distinguishing between allowed limitations, those based on constitutional morality, and forbidden expressions of public morality. Such a test must focus on whether the State can demonstrate that

(i) the limitation is related to a compelling interest based on justice, liberty, equality, or fraternity;
(ii) it is narrowly framed to serve that interest without undue curtailment of individual autonomy; and
(iii) it keeps open alternative means of exercising the right to dress.

Through the use of this constitutional structure, Indian law can make certain that the right to dress is a strong aspect of individual liberty and that only narrowly drawn, constitutionally permissible restrictions are permitted.

6.4. CONCLUSION

While the freedom to decide what to wear is safeguarded under freedom of speech and autonomy of the person, it is not absolute and the State can enact reasonable restrictions in the interests of "decency or morality" under Article 19(2), as also in the interest of "public order, morality and health" under Article 25(1). But a close reading of the jurisprudence leaves it in no doubt that "morality," as used in the words of the Constitution, is to be interpreted strictly as "constitutional morality," since not "public morality" nor "popular morality" but only constitutional morality is protected by the Constitution.

The early jurisprudence in *Ranjit D. Udeshi v. State of Maharashtra*[216] enforced restrictions on the basis of the outdated Hicklin test, holding community standards determinative of obscenity. [1] Later judgments, most notably *Bobby Art International v. Om Pal Singh Hoon* and *M.F. Hussain v. Raj Kumar Pandey*, discarded fixed criteria of indecency in art, demanding that a work of art be judged from the artist's point of view and not from

[216] (1965) 1 SCR 65

assumed sensitivities of audiences.[217] More importantly, in *Aveek Sarkar v. State of West Bengal*, the Supreme Court reaffirmed the Hicklin test in part, holding that *"a picture of a nude or semi-nude woman, as such, cannot per se be called obscene unless it is intended to excite sexual passion in persons likely to see it."*[218] These changes highlight that morality-restricted expressive freedom should be anchored to objective, modern community standards of decency, read through the prism of constitutional values, instead of ephemeral majoritarian mores.

In the case of religious attire rules, Article 25 also permits limitations for the sake of "public order, morality, and health," but again, such limitations must comply with constitutional morality. The judgments in *Naz Foundation v. Government of NCT of Delhi and Navtej Singh Johar v. Union of India* affirm that "popular morality" cannot be a basis for the abridgment of fundamental rights: the Court ruled that constitutional morality alone, based on the principles of justice, liberty, equality, and fraternity, can meet the compelling State interest test.[219] In *Swati Purkait & Ors. v. The State of West Bengal*[220], the Calcutta High Court overruled an oral order imposing a historical sari order on women teachers, holding that such institutional dress codes, justified in the name of decency, infringed the fundamental right to privacy unless supported by statute.

Therefore, all attempts at regulating dress must be measured against constitutional morality. Public morality, as understood as "society's collective moral judgments", has been repeatedly rejected by the judiciary as a freestanding basis to cut back individual liberties. In lieu thereof, dress restrictions must establish a genuine, rational connection to a pressing State interest, expressed in terms of the four foundational constitutional values. As this Chapter has revealed, it is only by placing dress codes within schools, workplaces, and public areas under the scrutiny of constitutional morality that a fair balance between individual freedom and the interest of the State in decency can be achieved.

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[217] Bobby Art International v. Om Pal Singh Hoon, (1996) 4 SCC 1; M.F. Hussain v. Raj Kumar Pandey, (2008) 9 SCC 1.
[218] Aveek Sarkar v. State of West Bengal, (2014) 10 SCC 441.
[219] Naz Foundation v. Government of NCT of Delhi, (2009) 160 DLT 277 ; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[220] Swati Purkait & Ors. v. The State of West Bengal & Ors., A.P. No. 612 of 2008 (Cal.).

CHAPTER 7

CONCLUSIONS & RECOMMENDATIONS

7.1. CONCLUSION

The research confirms that India's constitution protects the freedom to dress as an expression of individual autonomy, but this right has often been constrained by public morality norms and institutional rules. On one hand, Supreme Court doctrine has robustly linked dress to core fundamental rights. Article 19(1)(a), the free speech clause, has been interpreted to include "one's right to expression of one's self-identified gender," which can be "expressed through dress, words, action or behavior."

Similarly, protection of "life and personal liberty" under Article 21[221] encompasses dignity, privacy and personal choice. In Navtej Singh Johar[222], the Court held that individual autonomy and identity are among the "overarching ideals" of the Constitution, requiring respect for "identity with dignity" and privacy. Justice Chandrachud's majority in Puttaswamy v. Union of India[223] likewise emphasized that privacy includes *"intimate personal choices…as well as choices expressed in public such as faith and modes of dress"*[224]. In sum, doctrinally India's fundamental rights cover personal dress as a form of expression and privacy.

However, these constitutional guarantees are not absolute. The framework permits reasonable restrictions in the interest of "public order, decency or morality," and similar state interests can be invoked. In practice, the courts have often deferred to institutional uniform policies or majoritarian moral views. For example, some judges have treated a school uniform as a marker of equality that justifies limiting dress freedoms.[225] As one analysis notes, Justice Gupta's opinion on the Karnataka hijab case[226] repeatedly retorted

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[221] INDIA CONST., art. 21
[222] Navtej Singh Johar v. Union of India, AIR 2018 SC 4321
[223] (2017) 10 SCC 1
[224] Id.
[225]Gautam Bhatia, Discipline or Freedom: The Supreme Court's Split Verdict in the Hijab Case, Indian Const. L. & Phil. (Oct. 13, 2022), https://indconlawphil.wordpress.com/2022/10/13/discipline-or-freedom-the-supreme-courts-split-verdict-in-the-hijab-case/.
[226] Aishat Shifa v. State of Karnataka, (2023) 2 SCC 1.

"the uniform" to challenges under Articles 25, 19 and 21, essentially prioritizing uniformity and discipline over personal autonomy. Yet such uniform-centric reasoning has been sharply critiqued, since it bypasses the usual proportionality analysis. The dissent and commentary observe that Gupta J. disposed of freedom of expression and privacy arguments with little analysis and without engaging proportionality. By contrast, Article 14 does not require rigid uniformity, and constitutional fairness must prevail over rote discipline.

The tension between uniforms and personal autonomy is most acute in schools and colleges, where authorities often enforce dress codes. Uniform requirements are generally upheld as valid exercises of educational authority. Yet the line between a legitimate policy and an unjustified ban on identity-based attire is increasingly contested. In the hijab cases, courts have been divided. The Karnataka High Court treated the hijab as non-essential to religion, effectively endorsing strict uniform rules. Comparatively, US and Canadian courts have insisted on broad student expression rights. Tinker v. Des Moines held that students *"do not shed their constitutional rights… at the schoolhouse gate,"*[227] protecting silent protest armbands as pure speech. Justice Fortas even noted that the case *"does not relate to regulation of the length of skirts or the type of clothing"*[228], implying clothing expression is presumptively protected unless it causes disruption. Likewise, the Supreme Court of Canada in *Multani v. Commission scolaire*[229] struck down a ban on a Sikh boy's kirpan (ceremonial dagger), finding the school code's blanket prohibition unreasonable and violative of religious freedom. These precedents suggest that in India, too, student dress codes should be narrowly tailored and justified by genuine safety or pedagogic concerns.

By contrast, some international jurisdictions have enforced stricter secular uniformity. For instance, France's laws emphasise a laïcité principle, ie, since 2004, the wearing of conspicuous religious symbols (Islamic headscarves, Sikh turbans, large crucifixes, etc.) has been banned in public schools. The French Council of State earlier warned against overly sweeping bans, but ultimately the Republic asserted a requirement that schools be

[227] Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).
[228] Id.
[229] Multani v. Commission scolaire Marguerite-Bourgeoys, 1 S.C.R. 256, 2006 SCC 6.

"free of all religion". At the European level, the ECHR upheld France's 2010 full-face veil ban in S.A.S. v. France (2014), accepting the aim of "living together" as a justification. These comparative cases show a wide range. Canada and the US protect individual attire under rights to conscience and speech, whereas France and the ECHR have given greater weight to secular uniformity and social cohesion. Indian courts will need to calibrate between these models, keeping in mind that the Indian Constitution's explicit values favour pluralism and dignity.

A central insight is that societal norms ('public morality') cannot uncritically override constitutional rights. The Supreme Court has repeatedly held that the Constitution's own moral compass (constitutional morality) must govern. In Navtej Johar, the Court rejected majoritarian prejudice and noted that "social morality has to succumb to the concept of constitutional morality", striking down Section 377 despite contrary public views. The petitioners in that case argued, and the Court endorsed, that it should *"disregard social morality and uphold… constitutional morality"*. By analogy, even if many citizens find certain clothing offensive or improper, the state must justify any restriction on fundamental rights by compelling evidence of harm, not mere popular disapproval. Constitutional morality demands vigilance by courts, as one commentator put it, the uniformity "is certainly not the constitutional test of proportionality" that the Court should apply. Weighing dress rules purely on majority comfort risks subordinating rights to majoritarian taste. Instead, any restriction on attire must align with constitutional values (e.g. real safety, gender justice or equal treatment), not on abstract notions of decency.

The hypothesis, that free dress rights under Articles 19(1)(a) and 21 are curtailed by public morality, decency and institutional norms, finds substantial support in the analysis. Many Indian universities and schools do impose strict uniforms and have discipline codes that limit individual expression. Courts have so far shown sympathy to such norms; for example, prior to the hijab controversy, no high court had invalidated a uniform policy as unconstitutional and that too yields a split verdict, showing the absence of a clear standpoint in this area by judiciary. Even though landmark rulings increasingly frame personal autonomy as a core liberty, such as the very broad language in NALSA and Johar

that suggests dress freedom is encompassed in fundamental rights, the right to dress still faces constraints in practice.

The right to dress freely implicates multiple constitutional principles. It intersects with freedom of expression (Art.19(1)(a)), religious freedom (Art.25), personal liberty and dignity (Art.21), and equality (Art.14). For instance, a prohibition on the hijab implicates Art.25 (religious practice) directly, but also Art.19 and 21 as forms of identity expression and privacy. If courts treat such cases merely as matters of institutional discipline, they risk undermining constitutional values. Instead, this study suggests that dress issues should be analyzed holistically, ie, any law or policy restricting attire must satisfy the twin tests of (a) being "prescribed by law" and (b) meeting the "reasonableness" or "proportionality" under Articles 19(2) or 21. The hijab split verdict has been criticised for skipping a structured proportionality review. Future judgments should instead engage with the actual burden on rights versus the state interest. If a regulation is indeed aimed at preserving an essential school function, that objective must be shown, and the means must be minimally intrusive. Given the Court's affirmation that identity and choice are constitutional core (e.g. Johar and NALSA), any presumption should favor individual autonomy.

7.2. RECOMMENDATIONS

Based on these findings, the following practical and legal measures are proposed:

1. Courts should reaffirm that personal appearance and attire are protected expressions under Article 19(1)(a) and facets of liberty under Article 21. In cases of dress restrictions, tribunals must apply a full proportionality test, not defer to uniforms or public sentiment as such. They should explicitly distinguish "public morality" from the higher standard of constitutional morality. For example, any school uniform rule that infringes religious or personal choices should only be upheld if :

(i) it serves a legitimate and demonstrable purpose (e.g. safety or preventing discrimination by neutral criteria) and

(ii) there are no less restrictive alternatives. The recent hijab benches should critically examine whether exclusions (like banning a veil or cap) are essential to the stated aim or amount to indirect discrimination.

In short, courts should insist that laws meet the usual tests of reasonableness and necessity, ensuring that the "reasonableness" is not satisfied merely by invoking uniformity

2. Lawmakers should consider codifying the permissible scope of dress codes in public institutions. This could include clarifying that students may wear religious or cultural attire so long as it does not pose safety hazards (e.g. objects used as weapons) or disrupt academic requirements. Any general law should ensure it does not single out any community; for instance, a "common dress code" law would need careful drafting to comply with Articles 25, 19 and 21. Legislators might also repeal or amend any archaic regulations (if any exist) that criminalise "obscene" or "indecent" dress without precision. Clear guidelines on what constitutes "public decency" are necessary to avoid arbitrary application. Drawing on comparative law, Parliament could require that secularism be maintained without unduly burdening personal belief, perhaps by expressly allowing modest headcoverings or insignia as reasonable expressions of faith.

3. Schools and colleges should frame their uniform and dress policies in a nondiscriminatory and flexible manner. Instead of outright bans, institutions can accommodate diversity (e.g. permitting religious headwear, allowing variations of the uniform colour or style). If a uniform is required, it should apply equally and be justified by a pedagogic rationale (promoting group identity, limiting peer pressure), not by imposing majority norms. Schools should also ensure due process, ie, any dress code should be publicly notified, with appeal mechanisms so that students can seek exemptions on reasonable grounds. Training and awareness programs for administrators and teachers can help prevent moral policing, so that students will not be harassed for modest attire. In practice, schools could allow alternative dress options for girls (such as trousers instead of skirts) or permit parents to opt for cultural dress as long as it meets basic standards. By involving student and parent representatives in setting policies, institutions can balance uniformity with individual autonomy.

4. General Recommendations: Public awareness campaigns can educate citizens that personal attire falls under the ambit of expression and privacy. Educational curricula should include lessons on constitutional rights and tolerance of diversity. Civil society and legal aid organisations should advise students of their rights when uniform policies are imposed. The media and academic community can continue comparative dialogues so that judges and policymakers see how other democracies reconcile dress and rights.

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APPENDICES

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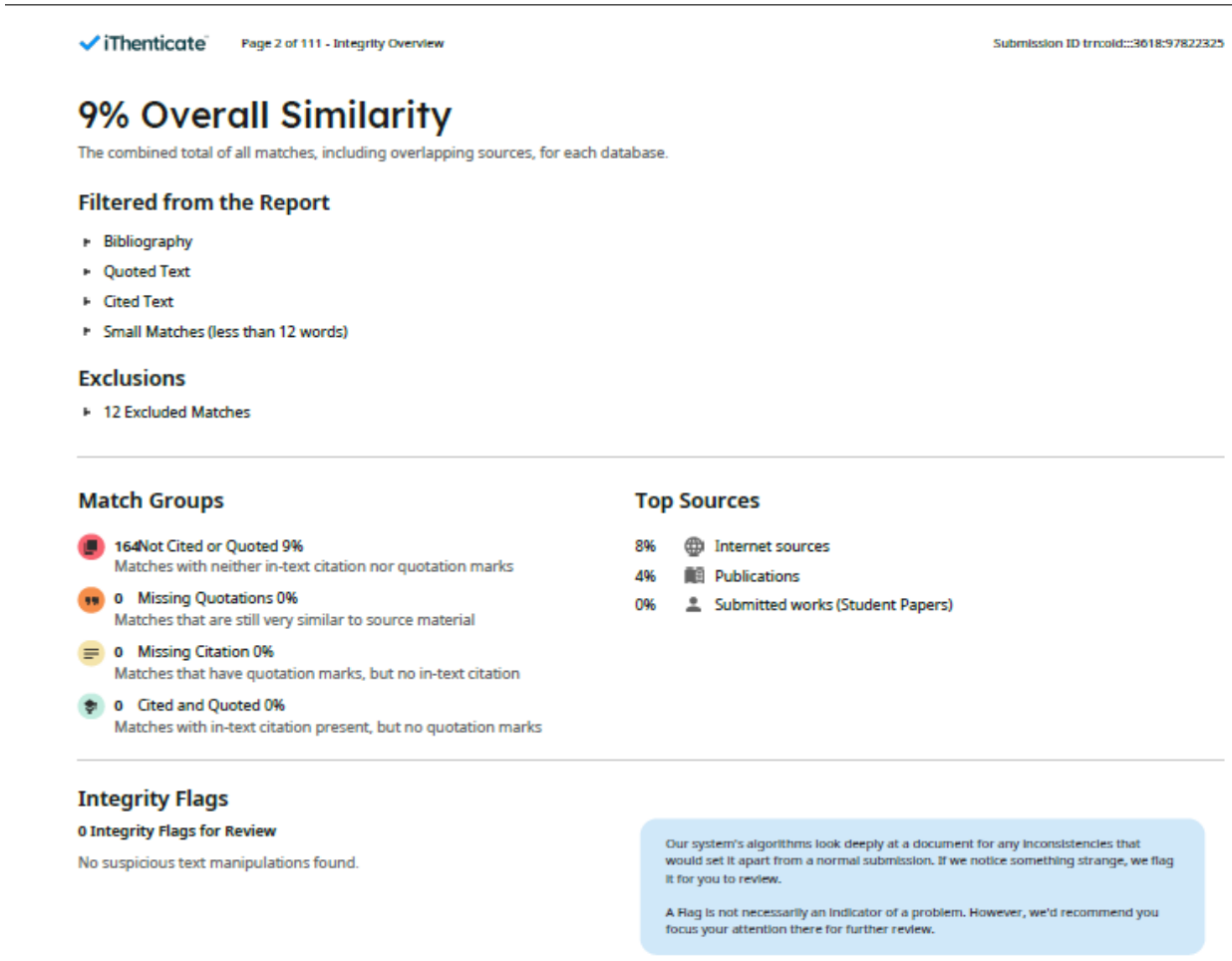

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