

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

21 June 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 46/9, 49/5, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government, the information we have received concerning **an order of the Karnataka State's Government and subsequent ruling of the Supreme Court of Karnataka State allowing Pre-University Colleges (PUCs) to prohibit women and girl students from wearing hijab. We are concerned that both the order and the ruling may fail to meet India's obligations under international human rights law.**

According to the information received:

In January 2022, six female Muslim students staged a week-long protest after they were requested to remove their hijab (attire worn by some Muslim women which covers the hair) to be allowed to attend class at the Government Pre-University College (PUC) for Girls in the Udupi district, in Karnataka State. During the first week of February, other colleges in the State began to enforce similar bans. Reportedly, colleges' principals argued that hijab went against the rules that require a uniform to be worn.

On 5 February, the Karnataka State's Government ordered that "students should compulsorily adhere to the dress code/uniform as prescribed

- a) in public schools, as prescribed by the Government;
- b) in private schools, as prescribed by the school management;
- c) in Pre-University colleges that come within the jurisdiction of the Department of the Pre- University Education, as prescribed by the 19 College Development Committee or College Supervision Committee; and
- d) wherever no dress code is prescribed, such attire that would accord with equality and integrity and would not disrupt the public order".

Allegedly, the order facilitated the enforcement of the prohibition of hijabs, provoking protests by Muslim students and parents, as well as counter-protests by Hindu students in different areas of Karnataka States.

Protesters opposing the ban claimed that the ban was instrumental to marginalize and discriminate against the Muslim religious minority in India, that accounts for about 15% of the country's population.

As a consequence, some students filed seven petitions before the High Court of Karnataka to challenge the Government's order as well as the ban of hijabs in the Government Pre-University College (PUC) for Girls in the Udupi district. Petitioners maintained that wearing the hijab was a Muslim essential religious practice and the ban on hijabs violated their constitutional rights, including freedom of religion, freedom of belief and freedom of expression.

According to the respondents, including the State of Karnataka and the Government Pre-University School for Girls in Udupi, wearing the hijabs could not be considered as an essential religious practice; reportedly, the Government's order of 5 February 2022 complied with the spirit of States' legal provisions of the Karnataka Education Act of 1983 that required to cultivate "a scientific and secular outlook through education" (preamble). Furthermore, respondents maintained that the school had the mission to promote the spirit of harmony and common brotherhood transcending religious, linguistic, regional, or sectional diversities and that practices that are derogatory to the dignity of women had to be renounced. Permitting students to wear hijab would offend the tenets of human dignity inasmuch as the practice robs away the individual choice of Muslim women. In addition, the respondents argued that the Government Order dated 5 February 2022 came to be issued in the backdrop of social unrest and agitations within the educational institutions. They further claimed that the action of the institutions in insisting on adherence to uniforms was in the interest of maintaining peace and tranquility.

On 15 March, the three-judge bench High Court of Karnataka upheld the Government's Order as well as the ban on hijabs in the aforementioned PUC in the Udupi district, rejecting the arguments provided by the petitioners.

Ahead of the verdict, Karnataka Governmental authorities announced closures of schools and colleges and imposed restrictions on public gatherings in some parts of the state to prevent potential protests and unrest.

The Court stated that secularism represents a basic feature of India's Constitution; according to the Court, the "constitutional duty to transcend the sectional diversities of religion finds its utterance in the 1983 Act, which empowers the State to prescribe the curricula that would amongst other inculcate the sense of this duty" (pag. 42 of the ruling). The Court also argued that limitations to religious practices, even though considered essential or vital by those professing the religion, are allowed according to Art. 25 of the Indian Constitution on the ground of public order, morality, and health. The Court denied that wearing hijab could amount to an essential religious practice nor an expression of freedom of conscience covered by the Indian Constitution, as claimed by some of the petitioners. The High Court also reminded that the 1983 Act - section 7(2)(g)(v) - provided for promoting "harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices

derogatory to the dignity of women”. The Court sustained that the Act also provided the Karnataka Government with the power to impose curricula, which included the prescription of uniforms. According to the Court, under the scheme of the Act “coupled with international conventions to which India is a party, there is a duty cast on the State to provide education at least up to a particular level and this duty coupled with power includes the power to prescribe school uniform” and dress code (pag. 92 of the ruling); moreover, “the school regulations prescribing dress code for all the students as one homogenous class serve constitutional secularism” (pag. 96 of the ruling). The High Court concluded by asserting that the Government had power to issue the impugned Order dated 5 February 2022 and that no case was made out for its invalidation.

Allegedly, after the ruling, some students declared that they would either drop out of college or opt for a correspondence course. It is reported that over 400 students – at the PUCs that have prescribed uniform in Karnataka - stand directly affected.

Students and concerned citizens have filed at least seven petitions before the Supreme Court of India to challenge the Karnataka High Court’s decision.

In connection with the above-mentioned alleged facts, and while reiterating that freedom of religion or belief should never be misused to discriminate against women and girls, we would like to express concerns that this ban could set a detrimental precedent for other States in the country and have the potential to exclude large numbers of Muslim women and girls from accessing education and to further marginalize the religious minority in the country.

We would like to reiterate the importance of systematically respecting women’s and girls’ bodily autonomy and agency as well as their free informed choices while firmly rejecting any form of coercion or imposed modesty codes stemming from patriarchal oppression.

We would also like to bring your attention to cultural rights, which are central in this issue and may have not been considered in this matter. The wearing of the hijab is part of the expression of one’s identity and hence, falls squarely within the right to take part in the cultural life, as recognized in articles 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, ratified by India on 10 April 1979. Wearing the hijab is part of these Muslim women’s culture, irrespective of whether other Muslim women around the world exercise this practice or not. Any restriction to their right to practice their culture has to be interpreted in a restrictive manner; and the women in question are the ones who will guide us on whether they feel that their rights are violated. In this case, we note that they may have not done so.

The rights of Muslim women and girls face the additional challenge of intersectionality. Muslim women and girls are in danger of feeling the effects of discrimination and violation of their cultural rights much more and in different ways to women in general or religious minorities in general. For this reason, it is imperative that their rights are the focus of particular attention. The CEDAW Committee has made clear that intersectionality must be a priority on women’s rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any information and/or comment(s) you may have on the above information.
2. Please provide information on laws, regulations and administrative practices regarding the display of religious or cultural symbols at PUCs and other public and private educational centres.
3. Please provide information on the measures your Excellency's government has taken or is planning to take to ensure the participation of Muslim women in this matter, as a matter that affects them directly.
4. Please provide information on measures your Excellency's government has taken or is planning to take, to ensure freedom of religion or belief and cultural rights in educational centres, including PUCs, with a particular focus on religious minorities.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We reiterate our willingness to assist India in its efforts to strengthen the country's legislative and institutional framework, guaranteeing the enjoyment of human rights for all in India, including the rights to freedom of thought, conscience, religion or belief, opinion, expression, freedom from discrimination, minority as well as minority and cultural rights amongst others.

Please accept, Excellency, the assurances of our highest consideration.

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Reem Alsalem
Special Rapporteur on violence against women, its causes and consequences

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 10 April 1979, and in particular articles 2, 18, 19, 26 and 27, which provide for the principle of non-discrimination on any protected ground – including religion or belief – the rights to freedom of thought, conscience, religion or belief, opinion, and expression, equality before the law, as well as the right of persons belonging to minorities.

Article 18 (1) of the ICCPR stresses “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

In its interpretation of Article 18 of ICCPR, the Human Rights Committee further explains that “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts... [T]he observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings...” (see General Comment no. 22; CCPR/C/21/Rev.1/Add.4, paragraph 4).

While the manifestation of religion or belief may be restricted as per Article 18(3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria of legality, proportionality and necessity, including being non-discriminatory in intent or effect and constitute the least restrictive measure.

The Human Rights Committee stressed that “[L]imitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner”. In this sense, States should refrain from authoritative interpretations of what should be considered an essential religious practice of a specific religious group. They should instead proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in art. 2, 23 and 26, to determine whether a religious practice undermines the interests noted in Art. 18 (3) of ICCPR and assess the legitimacy of possible limitations to such practice.

The Human Rights Committee also noted that “the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition [...]”. (see General Comment No. 22, CCPR/C/21/Rev.1/Add.4, para. 8).

The Special Rapporteur on freedom of religion or belief stressed that, in order to realize the right to freedom of religion or belief, States must “[g]uarantee equal protection under the law [...] as specifically mandated by article 26 [...]” of ICCPR. “Any interference with the right to manifest one’s religion or belief must be limited to the exhaustive grounds specified by article 18 (3), but in every case while ensuring the freedom of thought, conscience and religion or belief for everyone on the basis of equality and non-discrimination” (see A/HRC/37/49 para 31).

We would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief”; moreover, according to Art 2 (2): “... [t]he expression intolerance and discrimination based on religion or belief means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”. In Article 4 (1), the General Assembly further states that: “all States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]”. According to article 4(2) “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter”. In art. 4 (3) the General Assembly emphasised that “[T]he child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others...”.

The Special Rapporteur on freedom of religion or belief alerted that some forms of discrimination based on religion or belief, in law and or in practice, could be direct, such as in cases of outright restrictions of certain types of religious observances or prohibitions regarding public displays of certain religious symbols. Other forms of discrimination may be indirect. Examples include laws that appear neutral but have a disproportionate impact on different faith groups (see. A/72/365 paragraph 22).

With concern to the reference made by the High Court of Karnataka to the secularity of the Indian Constitution as one of its basic features, the Human Rights Committee reminded States that “if a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of the ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it”.

Moreover, as noted by the Special Rapporteur on freedom of religion or belief, the “respect for freedom of religion or belief is closely related to the degree of tolerance and respect for diversity within a society” (A/HRC/37/49 para 88); “States that adopt more secular or neutral governance models may also run afoul of article 18 (3) of the Covenant if they intervene overzealously and aggressively in the manifestation of religion or belief alleging the attempt to protect other rights, for

example the right to gender equality [...]. Such protection efforts need to be reconciled with the obligations to uphold freedom of religion or belief, although its manifestation can be limited if this leads to the violation of the rights and freedoms of others. When these rights ultimately clash, every effort must be made, through a careful case-by-case analysis, to ensure that all rights are brought in practical concordance or protected through reasonable accommodation” (A/HRC/37/49 para 47).

In his report on “Gender-based violence and discrimination in the name of religion or belief” (A/HRC/43/48), the Special Rapporteur on freedom of religion or belief conveyed the concerns of participants in consultations, according to whom “some States had opted to limit religious practices such as wearing headscarves or full-face veils in public – attire predominantly worn by Muslim women – in their efforts to combat gender-based discrimination, but without sufficient attention to the self-understanding and agency of women” (paragraph 27). The Special Rapporteur observed that “critics of such policies have noted the danger that such policies posed to the right to freedom of religion or belief, along with myriad other rights, noting that efforts to combat gender-based discrimination often failed to incorporate freedom of religion or belief and forced individuals to choose between their faith and national protections for human rights” (paragraph 27).

In his report on “Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief” (A/HRC/46/30), the Special Rapporteur on freedom of religion or belief noted that, despite the fact that some women regard it as integral to their faith or identity, some States in Europe, Africa and South Asia imposed public restrictions or bans on Muslim covering the hair – predominantly by women – on the grounds that this type of religious dress is incompatible with a secular public space, violates the rights of Muslim women or poses a security risk. Other States reportedly permit certain institutions (e.g., schools, places of work or the courts) to exercise discretion on whether to permit Muslim dress. He further asserted: “As the Human Rights Committee has noted, such prohibitions can violate Muslim women’s rights to freedom of religion or belief and non-discrimination and exacerbate their social marginalization” (paragraph 26).

We would like to draw your Excellency Government’s attention to article 27 of the ICCPR, which establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, “to enjoy their own culture, to profess and practice their own religion, or to use their own language”. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, refers to the obligation of States to protect the existence and the identity of religious or belief minorities within their territories and to adopt measures to that end (article 1), to ensure that they enjoy their own culture and profess and practice their own religion (article 2), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

The Special Rapporteur on freedom of religion or belief urged “States to take steps to empower religious or belief minorities to claim all of their human rights and fundamental freedoms (including those recognized in the Sustainable Development Goals) by recognizing the right of persons belonging to these groups to determine and

freely and peacefully practise their own religion or belief, alongside their culture and language, and other traits of their identity, in public and in private, alone and in community with others” - see A/75/385, para 80 (c). The Special Rapporteur noted with concern that “members of minority communities and other persons and groups in vulnerable situations are often disproportionately affected by restrictions on manifestations of religion or belief” (see A/HRC/34/50, para 42).

We would like to refer to article 2 of the Convention on the Elimination of all Forms of Discrimination against women ratified by India in 1993 requesting States to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. We would also like to refer to article 5 of the CEDAW Convention which requires States to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

In its reports to the Human Rights Council, the Working Group has demonstrated the persistence of a global discriminatory cultural construction of gender, often tied to religion, and the continued reliance of States on cultural justifications for adopting discriminatory laws or for failing to respect international human rights law and standards. It has particularly emphasized that failure to ensure the equality of women and girls within the family undermines any attempt to ensure their equality in all areas of society. While the Working Group is committed to the principle of upholding freedom of religion or belief as human rights to be protected, it regrets the increasing challenges to gender equality in the name of religion. It joins other international human rights expert mechanisms in reiterating that freedom of religion or belief should never be used to justify discrimination against women. The Working Group also demonstrated that secular systems, while being imperfect, are the most conducive to gender equality (see A/HRC/29/40 and A/HRC/38/46).

In her thematic report on the enjoyment of cultural rights by women on an equal basis with men (A/67/287), the Special Rapporteur in the field of cultural rights has stressed that participation in cultural life includes the ability to embrace or reject particular cultural practices and identities as well as to keep or to revise and (re)negotiate existing traditions, values or practices, regardless of their provenance (para. 28). In its General Comment 21, the Committee on Economic, Social and Cultural Rights also stressed the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person’s cultural rights (para. 15.c).

In addition, Article 27 of the ICCPR recognizes the right of persons belonging to minorities to exercise their culture. In addition, international norms ensure that indirect discrimination, discrimination that has the purpose of discriminating against specific sections of the population, is prohibited.

We would also like to draw your Excellency’s attention to article 13 of the International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to education. The Committee on Economic, Social and Cultural

Rights stressed in its general comment 13 that education shall “enable all persons to participate effectively in a free society”, and it shall promote understanding among all “ethnic” groups, as well as nations and racial and religious groups (par. 4). Moreover, secondary education includes the elements of availability and, accessibility, which are common to education in all its forms and at all levels (par. 11).