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MUSLIM LAW

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I INRODUCTION

THE YEAR 2024 witnessed some significant legal issues related to Muslim law which came for consideration before the Supreme Court of India and some high courts reflecting the nature and extent of the on-going social transformation in the era of increasing use of social media, economic relations, business patterns, gender orientations, sustainability challenges, and reconstruction of family relations. Matrimonial landscape and property entitlements show a voluminous shift in traditional approach and the emerging individualistic attitudes with anastonishing swing in jurisprudential fruition.There is notable indulgence of courts is enhancing probing into new social developments coupled with astonishing expectations of the people about finding legal solutions to emerging complex issues.In this survey, some most important pronouncements of the courts on Muslim Law, regarding both classical and legislative aspects, are covered to present an appraisal of developments and trends in this area of study in 2024.

II MAINTENANCE RIGHTS OF DIVORCED MUSLIM WOMEN

The Supreme Court of India, in the case of *Mohd Abdul Samad* v. *The State of Telangana*,[1] considered a much debated, half a century old vexed legal issue related to divorced Muslim women's right to maintenance after divorce with a visible impact on gender relations in contradiction to traditional approach and customary practices. In this case, the High Court of Telangana modified a maintenance order passed by afamily court under the provisions of the Code of Criminal Procedure, 1973 in favour of a divorced woman, decreasing her monthly amount of interim maintenance from Rupees 20,000/- to 10,000/-. The wife had left the matrimonial home on the initiation of criminal proceedings against the husband for offences of cruelty against married women punishable under sections 498A and 406 of the Indian Penal Code, 1860. In response, the husband pronounced her a *triple talaq* and secured a divorce certificate from the office of *Quzath* (a local body).

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1 2024 SCC OnLine SC 1686.

The husband had attempted to send to the divorcee Rs. 15,000/- as maintenance for the *iddat* period, which she refused to accept moving a petition under section 125(1) of Cr. PC before the family court resulting in to the instant impugned order.

The husband contended before the court that: (i) a divorced Muslim woman does not retain the right to maintenance under section 125 (Cr. PC), because the Muslim Women (Protection of Rights on Divorce) Act, 1986, is a special statute; (ii) section 125 does not apply to all married women irrespective of religion; (iii) the Muslim Women (Protection of Rights on Divorce) Act 1986 overrides section 125 Cr. PC; and (iv)a divorced Muslim woman cannot choose to pursue maintenance at her convenience under section 125 Cr. PC or under the 1986 Act, or both?

The court dismissed the husband's plea holding that the 1986 Act does not override or exclude section 125 Cr. PC; instead, it supplements this. A divorced Muslim woman is entitled to maintenance under both laws and can claim maintenance under one or both laws. Section 127(3)(b) Cr. PC should be given due consideration in claims related to maintenance. The court stressed that in case of an illegal divorce under the Protection of Rights of Women on Marriage Act 2019 a woman enjoys maintenance claims both under the 2019 Act and the Cr. PC.[2] The husband, however, contended that the 1986 Act provides a more beneficial and efficacious remedy for divorced Muslim women in contradistinction to section 125 of Cr. PC 1973. The 1986 Act, being a special law, prevails over the provisions of Cr. PC 1973.[3] Further, sections 3 and 4 of the 1986 Act, commence with a non-obstante clause, shall have an overriding effect on any other statute operating in the same field. But, the court followed the view that a divorced Muslim woman is entitled to all the rights of maintenance as are available to other equally situated women in the country and an interpretation otherwise would only infringe upon the fundamental rights conferred through Articles 14, 15, and 21 of the Constitution. Moreover, Section 125 Cr. PC. 1973 provides an efficacious remedy through a

2 The court has followed *Mohd. Ahmed Khan* v. *Shah Bano Begum* (1985) in which a divorced Muslim woman sought maintenance under Section 125 Cr. PC. Her husband claimed he only had to maintain her during the *iddat* period under Muslim personal law. The Supreme Court had held that the Section 125 Cr. PC is secular and applies irrespective of religion. A divorced Muslim woman is entitled to maintenance beyond the *iddat* period if she cannot maintain herself. The Decision had triggered huge political controversy, leading to the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), which many saw as diluting *Shah Banu*. But in *Daniel Latifi* v. *Union of India* (2001), reconciling the 1986 Act and held that a husband's liability is not confined to the *iddat* period; instead, he must make a reasonable and fair provision for the future of the divorced woman within the *iddat* period. The Act of 1986 was interpreted in harmony with *Shah Banu* judgment.

3 Reliance was placed on a decision in *Jain Ink Manufacturing Company* v. *Life Insurance Corporation of India* (1980) 4 SCC 435, that a special law would supersede a general law and if such conflicting statutes are passed by the same legislature, the rule of harmonious construction is to be applied while interpreting the said statutes. A recent judgment of the court in *Chennupati Kranthi Kumar* v. *State of Andhra Pradesh* (2023) 8 SCC 251 was also cited.

summary procedure expressly mentioning that the "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.[4] It is to prevent vagrancy and destitution of women. In *Inderjit Kaur* v. *Union of India*,[5] it was clarified *qua* the wife that such a right is not absolute in nature and is always subject to final determination of the rights of the parties by appropriate courts. Emphasis has also been placed on the expression "unable to maintain herself" and that the burden of proof is on the wife to prove the existence of said circumstances leading to such inability. This is, in addition, to the requirement to establish that the husband has "sufficient means" to maintain her, and is, however, neglecting or refusing to do so.[6]

The Supreme Court has retained its trend developed since 1973 as unequivocally declared in *Fuzlunbi* v. *K. Khader Vali* ,[7] that the Section 125 Cr. PC adopted a deliberate secular design to enforce maintenance, which is derived from the idea of State-responsibility for social welfare; not confined to members of anyone region or religion, but to womanhood. That verdict was followed by the well-known judgment of *Mohd. Ahmed Khan* v. *Shah Bano Begum ,*[8]the Supreme Court unanimously held that the obligation of a Muslim husband would not be affected by the existence of personal law. The independent remedy for seeking maintenance under Section 125 of Cr. PC 1973 is always available. Though after the pronouncement of that verdict, the Parliament passed the 1986 Act, supposedly to maintainthe position Muslim law under traditional personal law, the court in subsequent verdicts continued to maintain the *Shah Banu* opinion.[9]

4 The court held in, *Shri Bhagwan Dutt* v. *Smt. Kamla Devi* (1975) 2 SCC 386 that the nature of power and jurisdiction vested with a Magistrate by virtue of the instate provision is not punitive in nature and neither it is remedial, but it is a preventive measure. It was also observed that while any such right may or may not exist as a consequence of any of the personal laws applicable to the concerned parties they shall continue to exist distinctively, and independently as against the secular provision.

5 CWP-30265-2024.

6 (1990) 1 SCC 344.

7 (1980) 4 SCC 125.

8 (1985) 2 SCC 556.

9 Conclusions emerging from the separate but concurring judgments are:

a) Section 125 of the Cr. PC applies to all married women including Muslim married women.

b) Section 125 of the Cr. PC applies to all non-Muslim divorced women.

c) Insofar as divorced Muslim women are concerned:

i) Section 125 of the Cr. PC applies to all such Muslim women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

ii) If Muslim women are married and divorced under Muslim law then Section 125 of the Cr. PC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125 of the Cr. PC but in addition to the said provision.

iii) If Section 125 of the Cr. PC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of 1986 Act shall be taken into consideration under Section 127(3)(b) of the Cr. PC.

In *Mohd Abdul Samad,*[10] Justice Nagarathna, in her judgment,borrowed a quote from Justice Murtaza Fazal Ali, tracing the changing trends as follows:[11]

> ... the outmoded and antiquated view that the object of s. 488 (under CrPC, 1898) was to provide an effective and summary remedy to provide for appropriate food, clothing and lodging for a wife. This concept has now become completely out dated and absolutely archaic. After the International Year of Women when all the important countries of the world are trying to give the fair sex their rightful place in society and are working for the complete emancipation of women by breaking the old shackles and bondage in which they were involved, it is difficult to accept a contention that the salutary provisions of the Code are merely meant to provide a wife merely with food, clothing and lodging as if she is only a chattel and has to depend on the sweet will and mercy of the husband. …

Thus, the Supreme Court of India continued the judicial trends in favour of generally upholding the maintenance rights of Muslim women even after the dissolution of marriage, irrespective of the mode of dissolution of the marriage.

III CUSTODY OF MINOR CHILDREN

In another judgment, *Shazia Aman Khan* v. *State of Orissa,*[12] the Supreme Court of India considered the issue regarding custody of a minor child in *parens patriae* jurisdiction. The High Court of Orissa had passed orders to give custody of a girl of 14 years to her father recovering her from the custody of her sister, particularly from her aunt and uncle with whom she had lived since she was three to four months old. The apex court turned down the order of the high court. TheSupreme Court elaborated the concept of custody, guardianship and stability of child in *Athar Hussain* v. *Syed Siraj Ahmed and others,*[13]as under:

> We are mindful of the fact that, as far as the matter of guardianship is concerned, the prima facie case lies in favour of the father as

d) The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

e) In case of an illegal divorce as per the provisions of the 2019 Act then,

i) relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125 of the Cr. PC could also be availed.

ii) If during the pendency of a petition filed under Section 125 of the Cr. PC, a Muslim woman is 'divorced' then she can take recourse under Section 125 of the Cr. PC or file a petition under the 2019 Act.

iii) The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125 of the Cr. PC.

10 *Supra* note 1.

11 *SirajMohmed Khan JanMohamad Khan*v. *HafizunnisaYasinKh*, AIR 1981 SC 1972.

12 *Shazia Aman Khan* v. *State of Orissa*, 2024 SCC OnLine SC 225.

13 AIR 2010 Supreme Court 1417.

> under Section 19 of the GWC Act, unless the father is not fit to be a guardian, the Court has no jurisdiction to appoint another guardian. It isalso true that the respondents, despite the voluminous allegations levelled against the appellant have not been able to prove that he is not fit to take care of the minor children, nor has the Family Court or the High Court found him so. However, the question of custody is different from the question of guardianship. Father can continue to be the natural guardian of the children; however, the considerations pertaining to the welfare of the child may indicate lawful custody with another friend or relative as serving his/her interest better.

Looking to the stability and consistency in the child affairs and routinesthe Court observed in another verdict in *Mausami Moitra Ganguli* v. *Jayant Ganguli*:[14]

We are convinced that the dislocation of [child], at this stage, from [present location], where he has grown up…would not only impede his schooling, it may also cause emotional strain and depression to him.

Giving weight to the reluctance of the child to live with his mother, the apex court opined that:

…bearing in mind the paramount consideration of the welfare of the child, we are convinced that child's interest and welfare will be best served if he continues to be in the custody of the father…with visitation rights to the mother deserves to be maintained."[15]

In *Nil Ratan Kundu and another* v. *Abhijit Kundu*,[16] thecourt laid down: "In deciding a difficult and complex question as to custody of minor, a court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. … In selecting a guardian, the court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor."

14 (2008)7 SCC 673.

15 *Ibid*, the court pointed out: "No doubt, unless the father is proven to be unfit, the application for guardianship filed by another person cannot be entertained. However, we have already seen that the question of custody was distinct from that of guardianship. As far as matters of custody are concerned, the Court is not bound by the bar envisaged under Section 19 of the Act."

16 *Nil Ratan Kundu* v. *Abhijit Kundu*, 2008(2)CHN 479 decided by Supreme Court on Aug. 8, 2008.

The Supreme Court also recalled its earlier finding in *RohithThammana Gowda* v. *The State of Karnataka* with the words:[17]

… the question 'what is the wish/desire of the child' can be ascertained through interaction, but then, the question as to 'what would be the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances….

The issue was accordingly settled following the principles of child interest, long comfortable stay already with a parent/relative, avoiding discomfort of dislocation, wish of the child actually ascertained by the court individually in chamber, and final opinion of the court. In no situation the child should be considered as a chattel under existing practices. The law should be interpreted in the best interest of the child and providing cordial social environment to the child.

III-SUCCESSION AND TRANSFER OF PROPERTY INTER-VIVOS

The Supreme Court of India in *Mansoorsaheb (Dead)* v. *Salima (D) By Lrs*.[18]Considered two essential questionsrelating tosuccession, partition and validity of *inter vivos* transfer of property by *hiba*/gift under Muslim law. The questions directly in focus were:

(i) Whether an owner of property can, in his lifetime, transfer said property to his heirs by way of partition?

(ii) Whetherthe requisites of a valid gift can be taken as met because of the terms used in an instrument or the nomenclature employed in Mutation Entry can be said to be indicative of intentions presuming making of a *hiba/*gift?

In the given case, the owner in his life time divided his property into three parts, gifting one part each to his three sons, retaining the third remaining partwhich he subsequently partitioned among his four children including his daughter. The action was confirmed byMutation, which is disputed by the plaintiffs.The trial court found and held that an oral gift was not made to the sons and the essential requisites were not conclusively proven. It rejected the plea of partition as claimed on the ground that under Muslim law, property partitioned during the owner's lifetime requires a written registered document.

The high court agreed with the findings of the trial court reiterating that the 'partition' before the death of owner is unknown to Muslim Law. It was also asserted that the plea for an oral gift could not be substantiated by the witness-testimonies. Meanwhile, it was argued that writing is not essential to effectuate the transfer of immovable property by way of *hiba*/gift under Muslim law. Actually, the owner made a declaration of gift, which was accepted by the donees, and possession was delivered to them, as evidenced by the Mutation. Reliance was placed on Section 129 of Transfer of Property Act, 1882to effectuate transfer of immovable property by way of gift under personal laws. Reliance was placed on

17 *Rohith Thammana Gowda* v.*The State of Karnataka* on July 29, 2022.
18 2024 INSC 1006.

Hafeeza Bibi v. *S.K. Farid*,[19] to describe the three essentials of *hiba*/gift under Muslim Law as: a declaration of gift by the donor, acceptance by the donee and delivery of possession to donee.

To explain the context of its observations, the Supreme Court has referred to some of the basic tenets of Muslim law as:so long Muslim is alive he/she is the unqualified owner of his/her property; it is only on the death of the legal rights of the successors accrue. Any arrangement in violation to the basic principles of inheritance and approved modes of transfer of property in favour of heirs is questionable. Accordingly, the Indian legal concepts of 'joint' or 'undivided' family, 'coparcenary', *karta*, 'survivorship', and 'partition' have no place in the law of Islam. A father and his son/seven if living together do not constitute a coparcenary; the father is the exclusive owner of his property; and the same is the position of parents, brothers or children living together. The court also quoted the relevant Quranic law:[20]

> "Allah commands you regarding your children: the share of the male will be twice that of the female.1 If you leave only two ˆor moreˆ females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring.2 But if you are childless and your parents are the only heirs, then your mother will receive one-third.3 But if you leave siblings, then your mother will receive one-sixth4—after the fulfilment of bequests and debts.5 ˆBe fair toˆ your parents and children, as you do not ˆfullyˆ know who is more beneficial to you.6 ˆThis isˆ an obligation from Allah. Surely Allah is All-Knowing, All- Wise.[21]
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> You will inherit half of what your wives leave if they are childless. But if they have children, then ˆyour share isˆ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister ˆfrom their mother's sideˆ, they will each inherit one- sixth, but if they are more than one, they ˆallˆ will share one-third of the estate1—after the fulfilment of bequests and debts without harm ˆto the heirsˆ.2 ˆThis isˆ a commandment from Allah. And Allah is All-Knowing, Most Forbearing.[22]
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> They ask you ˆfor a ruling, O Prophetˆ. Say, "Allah gives you a ruling regarding those who die without children or parents." If a

19 (2011) 5 SCC 654

20 Quran15, Al-Nisa: 11; 12and 176: https://quran.com/4 11

21 Al-Nisa: 11.

22 Al-Nisa: 12.

> man dies childless and leaves behind a sister, she will inherit one-half of his estate, whereas her brother will inherit all of her estate if she dies childless. If this person leaves behind two sisters, they together will inherit two-thirds of the estate. But if the deceased leaves male and female siblings, a male's share will be equal to that of two females. Allah makes ˆthisˆ clear to you so you do not go astray. And Allah has ˆperfectˆ knowledge of all things.[23]"

A reading of these verses reveals the essence of the Muslim lawthat distribution of the property of a Muslim among his heirs is possible only upon his death. There is no prescribed set of rules for the partition of property when a Muslim is alive. The court has reasonably concluded: having referred to the primary texts and commentaries on Muslimlaw, that partition, while a person is alive, between him and his heirs is 'impermissible'. The rules for partition after the death of the ancestor are set out in clear details.

Examining the position of oral hiba/gift in India is well settled.[24]

The court, *inter alia,* took a note of the precedent set by the Privy Council in *Mohd. Abdul Ghani* v. *Fakhr Jahan Begam* observed:[25]

> For a valid gift inter vivos under the Mahomedan law applicable in this case, three conditions are necessary, which their Lordships consider have been correctly stated thus: "(a) manifestation of the wish to give on the part of the donor; (b) the acceptance of the donee, either impliedly or expressly; and (c) the taking of possession of the subject-matter of the gift by the donee, either actually or constructively.

In *Jamila Begum (D) thr.L.Rs.* v. *Shami Mohd. (D) thr. L.Rs.*,[26]the apex court held that the oral gift under Muslim law is valid though the burden of proof is on the donee. It looks that the application of the rules of Muslim law related to *hiba*/ gift have been applied with some unevenness creating ambiguity which repeatedly needs clarificationsleading to complexity. Even after the above observations, the apex court has restated the law as under:

23 Al-Nisa: 176

24 In 'Outlines of Mohammadan Law'17, A.A. Faizee described 'gift' as:

"A man may lawfully make a gift of his property to another during his lifetime; or he may give it away to someone after his death by will. The first is called a disposition inter vivos; the second, a testamentary disposition. Muhammadan law permits both kinds of transfers; but while a disposition inter vivos is unfettered as to quantum, a testamentary disposition is limited to one-third of the net estate. Muhammadan law allows a man to give away the whole of his property during his lifetime, but only one-third of it can be bequeathed by will." Ameer Ali defines 'hiba' in the following terms:

"A hiba is a voluntary gift without consideration of property or the substance of thing by one person to another so as to constitute the donee the proprietor of the subject matter of the gift."

25 1922 SCC OnLine PC 18:referring to Mohammedan Law, by Syed Ameer Ali, P. 18 (1932); Hedaya, 4th ed., Vol. I., at 41.

26 AIR 2019 SC 72.

i. The donor should be sane and major and must be the owner of the property which he is gifting.

ii. The thing gifted should be in existence at the time of *hiba*.

iii. If the thing gifted is divisible, it should be separated and made distinct.

iv. The thing gifted should be such property to benefit from which is lawful under the Shariat.

v. The thing gifted should not be accompanied by things not gifted i.e. should be free from things which have not been gifted.

vi. The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor.

The gift should, therefore, be made by a Muslim with a clear and unequivocal declaration of intention, orally or in writing, andaccepted expressly or impliedly by the donee or his agent except in the case of a giftby a guardian to his ward or in regard to a debt; to be followed (actually or, constructively) by the delivery of possession of the subject-matter of the gift by the donor or his agent to done. On the delivery of possession, a gift becomes complete, immediately.

Additionally, the court in the present judgment has mentioned that the requirements for the validity of a gift are sequential, as a consequence of which one essential cannot be fulfilled without the other two.The registration of gift is not required under Muslim Law and, the unwritten and unregistered gift executed by the donor in favour of donees is valid. This has been repeatedly reiterated by the court in various verdicts.In *Rasheeda Khatoon* v. *Ashiq Ali*,[27] it was observed:

"…a gift under the Muhammadan law can be an oral gift and need not be registered; that a written instrument does not, under all circumstances require registration; that to be a valid gift under the Muhammadan law three essential features, namely, (i) declaration of the gift by the donor, (ii) acceptance of the gift by the donee expressly or impliedly, and (iii) delivery of possession either (2014) 10 SCC 459 15- actually or constructively to the donee, are to be satisfied; that solely because the writing is contemporaneous of the making of the gift deed, it does not warrant registration under Section 17 of the Registration Act."[28]

In *Mahboob Sahab* v. *Syed Ismail*,[29] the court held: "…that though gift by a Mohammadan is not required to be in writing and consequently need not be registered under the Registration Act; for a gift to be complete, there should be a declaration of the gift by the donor; acceptance of the gift, expressed or implied, by or on behalf of the donee, and delivery of possession of the property, the subject-matter of the gift by the donor to the donee. The donee should take delivery of the possession of that property either actually or constructively. On proof of these essential conditions, the gift becomes complete and valid. In case

27 (2014) 10 SCC 459.

28 *Ibid.*

29 (1995) 3 SCC 693.

of immovable property in the possession of the donor, he should completely divest himself physically of the subject of the gift.

Further, the court has concluded that merely because the gift is reduced to writing, instead of it having been made orally, it does not become a formal document or instrument of gift."The intention to be sought is the intention which is expressed in the instrument, not the intention which the maker of the instrument may have had in his mind. It is unquestionable that the object of all exposition of written instruments must be to ascertain the expressed meaning or intention of the writer; the expressed meaning being equivalent to the intention … it is not allowable … to adduce any evidence, however strong, to prove an unexpressed intention varying from that which the words used import. This may be open no doubt to the remark, that, although we profess to be explaining the intention of the writer, we may be led in many cases to decide contrary to what can scarcely be doubted to have been the intention, rejecting evidence which may be more satisfactory in the particular instance to prove it. The answer is, that interpreters have to deal with the written expression of the writer's intention, and courts of law to carry into effect what he has written, not what it may be surmised, on however probable grounds, that he intended only to have written."

In construing a document, whether in English or in any Indian language, the fundamental rule to be adopted is to ascertain the intention adopted from the words employed in it.[30] "In construing will and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words maybe modified, so as to avoid that absurdity, and inconsistency, but no further."

The settled law now is that the 'partition' before the death of owner is unknown to Muslim Law. The ratio the case is leaning about the hiba/gift under Muslim law be in writing with clear intention of making the hiba/gift by the donor, followed by the acceptance by the donee and delivery of possession by the donor, apparently divesting himself from the possession of the property, actually or constructively depending on the circumstances of each case.

***Hijab* case**

The Supreme Court on 09 Aug 2024 stayed a Mumbai college's decision banning *'hijab, burqa*, cap and naqab' on the campus, and said girl students must have the freedom to choose what they wear.The court raised a question that how the college was empowering girl students by issuing such a circularand asked whether it would ban *bindi* and *tilak* also:

"How are you empowering women by telling them what to wear? I think it's less said the better. Where is the freedom of choice for the women? Where is

30 A. Sreenivasa Pai v. Saraswathi Ammal (1985) 4 SCC 85.

31 A bench of justices Sanjiv Khanna and Sanjay Kumar

freedom of choice of what to wear to the girl students? Educational institutions should not force their decisions on the girl students on what to wear."[31]

The college contended that as a co-educational institution it tried to ensure that the religious faiths of the students were not revealed, and the said circular was not only to apply to*'hijab, burqa* or *naqab*' but also to ripped jeans and such other apparel. A sharp observation came from the court:

"Will the students' names not reveal their religious identity? Religion is in their names also. Do not impose such rules."[32]

Justice Kumar further remarked:

"You have suddenly woken up to the fact that they are wearing it and came out with instructions. It is unfortunate. After so many years of Independence, you have come to know there are so many religions in this country."

The bench issued notice to the involved education society and ordered:

"We …stay…the impugned circular to the extent that it directs that no *hijab*, no cap, no badges will be allowed in the campus."

The top court is yet to conclusively decide the legality of such diktats issued by educational institutions.[33]

The top court is yet to constitute a larger bench to decide the Karnataka hijab row. The Mumbai college decision has again put the spotlight on the hugely divisive issue.

32 CJI SanjivKhanna asked

33. In Karnataka, Government PU College students were prohibited from wearing the hijab. On March 15th 2022, a three-Judge Bench of the Karnataka High Court comprising Chief Justice Ritu Raj Awasthi and Justices Krishna Dixit and J.M. Khazi upheld the ban on the hijab in the State's educational institutions.On 13 October 2022, a two-judge bench of the apex court delivered opposing verdicts in the hijab controversy emanating from Karnataka. The then State government had imposed a ban on wearing the Islamic head covering in schools there.While Justice HemantGuptad, dismissed the appeals challenging the judgement of the Karnataka High Court refusing to lift the ban, justiceSudhanshu Dhulia held there shall be no restriction on wearing hijab anywhere in schools and colleges of the state.