

HIGH COURT OF DELHI**Decision Date: March 1, 2024****Bench : SWARANA KANTA SHARMA, J**

W.P.(CRL.) 3502/2023

RESHMA ...PETITIONER**VERSUS****THE COMMISSIONER OF POLICE ...RESPONDENT****Legislation:**

Article 21 and 25 of the Constitution of India

Sections 41 to 60A, 46(4), 47, 51, 60(A) of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Examination of the need for sensitizing Delhi Police regarding religious, social customs, and practices of 'Pardanashin' women - Pardanashin Women – Legal Connotation – Term historically refers to women living in seclusion with limited societal interaction - Modern relevance diminishing in urban contexts - Not necessarily linked to religious practices.

Headnotes:

Pardanashin Women – Legal Connotation – Term historically refers to women living in seclusion with limited societal interaction - Modern relevance diminishing in urban contexts - Not necessarily linked to religious practices - [Paras 40-44, 48-49, 124-127]

Criminal Law – Arrest and Search Procedures – Rights of Women – The High Court of Delhi examined whether the current legal framework adequately addresses the sensitization of police towards women who observe pardah. The court considered the legal provisions for the arrest and search of women, analyzing their adequacy in ensuring the dignity and rights of women under the Code of Criminal Procedure, 1973 (Cr.P.C.) [Para 84-92].

Interpretation of Pardanashin Women – held – clarified that the concept of pardanashin women is a legal notion, primarily linked to their capacity to enter contracts and not necessarily related to religious practices. It emphasized that this concept has less relevance in modern urban contexts and should be understood in terms of women's autonomy and knowledge, rather than solely as a religious or cultural practice [Para 120-126].

Police Sensitization – Directive Issuance – Declined – The court held that while sensitivity towards cultural diversity is important, it is impractical and

potentially hazardous to impose additional protocols on police investigations, especially in urgent situations. The court stressed the need for police to balance cultural sensitivity with public safety and efficient law enforcement, without being encumbered by extra procedural requirements [Para 96-100, 106-108].

Constitutional Law – Right to Dignity and Religious Freedom – Analysis – The court underscored that the right to dignity under Article 21 of the Indian Constitution extends universally, irrespective of religious practices like pardah. It stated that religious rights under Article 25 are subject to public order and security considerations, emphasizing that judicial directives must be driven by justice and not faith [Para 102-116].

Decision – Petitioner's Request for Specific Directives – Dismissed – The court dismissed the petitioner's request for specific directives regarding police sensitization towards women observing pardah. It highlighted the sufficiency of existing legal safeguards and stressed the impracticality and risk of additional directives hampering police effectiveness [Para 129-142].

Referred Cases:

- Mst. Kharbuja Kuer v. Jangbahadur Rai (1963) 1 SCR 456
- Fayyaz-Ud-Din v. Kutab-Ud-Din 1928 SCC OnLine Lah 554
- Chidambaram Pillai v. Muthammal 1992 SCC OnLine Mad 306
- Mustt. Jubeda Khatun v. Sulaiman Khan 1985 SCC OnLine Gau 15
- Resham v. State of Karnataka 2022 SCC OnLine Kar 315
- Aishat Shifa (Hijab Case-2 J.) v. State of Karnataka (2023) 2 SCC 1

Representing Advocates:

Mr. M. Sufian Siddiqui, Mr. Rakesh Bhugra, Mr. Niyazuddin, Ms. Alya Veronica for petitioner

Ms. Rupali Bandhopadya, ASC for the State. Ms. Manisha Agrawal Narain, Amicus Curiae

J U D G M E N T

INDEX TO THE JUDGMENT

PRELUDE	4
RELIEFS SOUGHT BEFORE THIS COURT	5
FACTUAL BACKDROP	6
ORDERS PASSED BY THIS COURT	8
SUBMISSIONS ON BEHALF OF PETITIONER.....	8
SUBMISSIONS ON BEHALF OF STATE	12
REPORT OF AMICUS CURIAE.....	12
ISSUES AT THE CORE	14

WHO IS A PARDANASHIN WOMAN	15
Meaning in Strict Legal Connotation of the Term	15
Judicial Precedents defining ‘Pardanashin Woman’	16
The Changing Meaning and Notions of the Concept of ‘Pardanashin Woman’	18
PARDANASHIN WOMAN: EXAMINING THE MEANING IN THE CONTEXT OF PETITIONER’S USAGE	19
History Behind the Veil: Understanding Pardah in Various Cultures	20
Hinduism.....	20
Hinduism: Religion vs. Dharma	24
Sikhism	25
Christianity, Judaism, Jainism	25
Islam	26
POLICING IN BHARAT: MULTIFACETED DUTIES & SOCIAL CONTEXT	26
Test of Reasonability and Compelling Public Interest	27
Multi-cultural Land of Bharat & Policing	28
WHETHER THE CURRENT LEGAL FRAMEWORK IS SUFFICIENT TO ADDRESS THE ISSUE IN QUESTION?	28
Present Day Legal Framework for Protection of the Dignity of Women	28
During Investigation of a Criminal Case	28
Procedure of Arrest of a Woman	29
Procedure for Search	29
Whether the Petitioner has made out a case, Necessitating Issuance of any Directions?	31
Argument regarding Right to Dignity under Article 21 vis-a-vis Pardanashin Women	33
The Concept of Judgment Impact	34
DIRECTIVES ISSUED BY COURTS: NEED TO BE JUSTICE DRIVEN AND NOT FAITH DRIVEN.....	35
Article 25 of the Constitution has arisen for the religions and not from the religions	35
A JUDGE’S PURE FIDELITY TO THE APPLICATION OF LAW IN CONSONANCE WITH THE REQUIREMENT OF MODERN BHARAT	36
The Social Face of Law: Judges’ Role in Shaping Legal & Social Discourse.....	37
WHILE CONCLUDING: SOMETIMES EVEN AN ISOLATED WORD SPEAKS A STORY	37
BEFORE PARTING WITH THE CASE: SYNERGY BETWEEN BAR & BENCH	41

SWARANA KANTA SHARMA, J.

PRELUDE

1. The journey of adjudication of this case presented many challenges as the learned counsel for petitioner drew this Court's attention to the most ancient scriptures of various faiths and his point of view regarding the concept of *pardanashin* woman in the said scriptures, at the same time, praying for the application of the old concept of *pardanashin* women to the modern age empowered and educated woman.
2. Thus, the challenge before this Court was to adjudicate and return a finding as to whether the concept of *pardanashin* woman, as argued and enumerated by the learned counsel for petitioner, indeed means and refers to women who by mere virtue of their gender need to be extended special treatment, as according to the learned counsel, even today many women are *pardanashin* out of their own choice or due to them following their respective religious practices.
3. Learned counsel for the petitioner prayed that guidelines be issued in the background of religious scriptures and Article 21 and 25 of the Constitution of India, however, giving a new meaning, a new philosophy and evolving new jurisprudence based on old scriptures to suit the present day requirements of the community.
4. As this Court writes this judgment, it notes that writ jurisdiction and adjudication of the issues therein do not stop springing surprises and challenges which become the harbinger of churning out philosophy and jurisprudence on a subject which involves referring to old scriptures, interpreting it in context of a particular case, yet confining itself within constitutional morality and framework of criminal jurisprudence.
5. The present case also raised an issue which initially confined itself to a particular person. However, in the final hearing, the person oriented prayers were satisfied and withdrawn on behalf of the petitioner but insistence was laid on adjudication of an issue brought forth by the present case for the larger societal interest, thus, bringing to the fore the power of Court to serve the community better by bringing about changes in the administration of criminal justice by issuance of directions wherever called for *qua* the concerned authorities.

RELIEFS SOUGHT BEFORE THIS COURT

6. The present writ petition under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 („Cr.P.C.“) has been preferred on behalf of the petitioner, praying as follows:

—a. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to forthwith conduct an in-depth inquiry/investigation in a fair, impartial and time-bound manner under the direct supervision of DCP Vigilance or a Police Official of a Higher Rank, into the Petitioner’s Complaint dated: 11.11.2023 and the communications sent subsequent thereto, apropos the reprehensible incident that occurred during the intervening night of 05-06th November 2023 at around 03:00 AM involving serious high handed, illegal and contemptuous acts perpetrated by several delinquent police officials of (Central-District) particularly of P.S. Chandni Mahal inter-alia including criminal trespass, illegal house search, forcibly taking the petitioner, who is a Purdahnashin Muslim Women’ from her residence without her Purdah/Veil and parading her to the Police Station, illegally detaining her at P.S. Chandni Mahal, subjecting her to inhuman and degrading treatment including physical assault, violating her dignity, during the night in flagrant violation of Section 46(4) & 60(A) Cr.P.C, thereby causing brazen infraction of her Fundamental Rights as Guaranteed under Article 21 of the Constitution as well as International Human Rights as Guaranteed under Article 3, 5 & 7 of the United Nations Universal Declaration of Human Rights’ (UDHR); And

b. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to take apposite stringent legal action against the concerned delinquent police officials of (Central-District) particularly of P.S. Chandni Mahal for their exfacie concerted, premeditated, illegal, contemptuous and iniquitous acts of transgression thereby infringing, instead of protecting the Fundamental Rights of the Petitioner as Guaranteed under Article 21 of the Constitution, notwithstanding their express knowledge about the consequences likely to follow; And

c. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to adequately compensate the petitioner for the ex-facie egregious acts of his subordinate police officers culpable of violating, instead of safeguarding, the Fundamental Rights of the petitioner, as Guaranteed under Article 21 of the Constitution, in terms of the Hon’ble Supreme Court’s concurring judgment authored by Justice A.S. Anand passed in the case of Nilabati Behera v. State of Orissa & Others’ reported as [(1993) 2 SCC 746]; And

d. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to forthwith secure and place on record the CCTV footage of all the Cameras installed inside and around Police Station Chandni Mahal (Central-District) from 01:00 AM to 05:00 PM dated: 06.11.2023, on an exigent basis, in terms of the Hon'ble Supreme Court's judgment dated: 02.12.2020 passed in the case of —Paramvir Singh Saini vs Baljit Singh & Others|| Special Leave Petition (Criminal) No.3543/2020. And

e. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to forthwith secure and place on record the CCTV footage of all the Cameras installed by the GNCTD and/or private residents near the petitioner's residence leading to the Police Station- Chandni Mahal (Central District) from 01:00 AM to 06:00 AM dated: 06.11.2023, on an exigent basis, which is ephemeral in nature, and if not secured immediately, may lead to the destruction of vital evidence in petitioner's quest for justice; And

f. Issue a Writ of Mandamus or any other analogous Writ, Order or Direction thereby directing the respondent herein to sensitize the Delhi Police apropos the sacrosanct religious, social customs and practices observed by all the women who observe Purdah either as a religious belief or as a part of their personal choice belonging to any religion, which are Guaranteed under Article 21 of the Constitution as their Fundamental Rights.||

FACTUAL BACKDROP

7. Briefly summarised, the facts of the case, as disclosed from Status Report, are that on 05.11.2023, at about 10:00 am, at least six different PCR calls were received at P.S. Chandni Mahal, Delhi regarding a quarrel taking place at Rakab Ganj, behind Delite Cinema, Delhi. When the police had reached the spot, it was revealed that one Mohd. Tahir and his nephew Mohd. Anas had been assaulted by Mohd. Rehan, Mohd. Irfan and Mohd. Gayasuddin alongwith some unknown persons and the victims had been taken to LNJP Hospital for treatment. When the police team had reached the hospital, they were informed that the injured Mohd. Anas was under treatment and was unfit to give a statement. In the meantime, accused Mohd. Rehan and Gayasuddin had also reached the same hospital for treatment. On the same night, at about 1:00 AM, accused Mohd. Rehan had fled from the hospital and thereafter, at about 1:30 AM, an information was received at P.S. Chandni Mahal that accused Mohd. Rehan accompanied by some other persons had attempted to brutally murder the victim Mohd. Anas by inflicting serious injuries with a surgical blade, who was undergoing treatment at the surgery department on the fourth floor of the hospital.

8. Due to the aforesaid acts of the accused persons, there was grave apprehension of threat to the life of Mohd. Tahir i.e. the complainant and his other family members, and accordingly, the police had started patrolling in the area and had stationed themselves outside the house of complainant as well as the accused. The present petitioner is the sister of accused persons namely Mohd. Rehan, Mohd. Irfan and Mohd. Gayasuddin. It is submitted in the Status Report that when the police had reached the house of petitioner, it was found locked, but the lights of the house were switched on and the petitioner was peeping from her balcony, watching the activities in the street, unveiled. Thereafter, the police officials had enquired from her about her brothers, but she had denied having any knowledge of their whereabouts. She had even told that she did not have the keys of the house to let police search the same. It is the case of State that, throughout these conversations, the petitioner stood there without any veil, and it was the petitioner herself who later had requested the police officials to take her to police station as she feared any possible retaliation from the side persons who had been allegedly injured by the brothers of the petitioner.

9. Conversely, the petitioner alleges that the police had entered her house, though she is a *pardanashin* woman, and had taken her to the police station, dragging her from her house to the police station, and not giving her time to wear *pardah*, knowing fully well that she is a *pardanashin* woman and thus, the action of the police exceeded its authority by not allowing the petitioner to wear a veil.

10. In a complaint written to the Commissioner of Police, Delhi, the petitioner alleged that during the intervening night of 0506.11.2023, at around 03:00 AM, she had found herself confronted by a group of police officials from P.S. Chandni Mahal who had allegedly engaged in high-handed, illegal, and contemptuous behaviour. Despite her repeated assertion that her brothers were not present within the premises, the officers had attempted to forcefully gain entry in her house. Thereafter, despite her repeated assurances that the individuals they were looking for i.e. Rehan and Irfan were not present in the house, the police officials, without waiting any further, had forcibly entered her house and had started carrying out a search of her residence. While searching the house, the police officials had not found anyone, and then, they had forcefully dragged the petitioner out of her house.

11. Thus, the main grievance of the petitioner, which has also resulted in filing of the present petition, is that the petitioner is a *pardanashin* woman, and she was not wearing her *pardah* when she was moved out of her house.

It is alleged that the petitioner was then taken to the police station and was wrongfully confined there. It has also been alleged that prior to her release, she was subjected to threats and intimidation, warning her against pursuing any formal complaint regarding the incident, however, no relief or action was forthcoming, resulting in filing of the present petition.

12. The police, on the other hand, termed the complaint and the present writ petition filed before this Court as an afterthought and misconceived, in order to divert attention from the heinous acts committed by her brothers. It is also averred that the CCTV footage placed on record would clarify that the allegations against the police officers are false and fabricated.

ORDERS PASSED BY THIS COURT

13. *Vide* order dated 30.11.2023, the State was directed to preserve the CCTV footage of all the cameras installed in the vicinity of P.S. Chandni Mahal, Delhi of the relevant point of time, as well as of the cameras installed by the government near the petitioner's residence leading towards the direction of P.S. Chandni Mahal. The relevant portion of order reads as under:

—5. The respondent is directed to preserve the CCTV footage of all the cameras installed inside and around PS.: Chandni Mahal, Central-District, Delhi for the time period from 01:00 AM to 05:00 PM on 06.11.2023 as well as the CCTV footage of all the cameras installed by the GNCTD and/ or private residents near the petitioner's residence leading towards the direction of the PS.: Chandni Mahal, Central-District, Delhi for the time period from 01:00 AM to 06:00 AM on 06.11.2023. ||

14. Thereafter, the order dated 30.01.2024 was passed wherein it was directed that present writ be treated as representation by the concerned DCP (Vigilance). The same reads as under:

—4. As far as other prayers are concerned, the present writ petition will be treated as a representation on behalf of the petitioner herein. The concerned DCP (Vigilance) will look into the same and the intimation will be given to the petitioner herein about the outcome of the same, within two months from today. ||

15. However, **learned counsel for the petitioner had prayed for passing of detailed order as far as clause (f) of the prayer is concerned**, and this Court had reserved the judgment *qua* prayer clause (f).

SUBMISSIONS ON BEHALF OF PETITIONER

16. Learned counsel for the petitioner argues that the petitioner herein is a *pardanashin* Muslim woman, and she has a fundamental right to wear *pardah*

which is the Islamic dress code for women, which not only consists of a scarf that covers the head, the neck and bosom, but it also includes the overall dress that should be long and loose. It is argued that the petitioner, being a Muslim woman, is well within her rights to conduct herself in accordance with the tenets of her religion, including her choice of dress, as protected by Article 25 of the Indian Constitution, which guarantees the freedom to profess, practice, and propagate religion. This extends to matters of personal liberty under Article 21, encompassing the right to live with dignity and make choices aligned with individual autonomy. Additionally, the constitutional safeguard provided by Article 29, which protects the interests of minorities, further reinforces the right to preserve distinctive cultural practices, potentially including religious attire. 17. It is further argued that the Article 25 of the Constitution, which is a fundamental right, does not come in the way of police in the discharge of their statutory duties or infringes or encroaches upon the rights of other citizens. It does not fall within reasonable restrictions as imposed on every citizen by the Constitution as it neither affects public order, morality and health nor other provisions of the Constitution.

18. It is prayed that it is not just desired but also the need of the hour to sensitise the Delhi Police *qua* fostering understanding and respect for women who observe *pardah* either as a religious belief or as a part of their personal choice belonging to any religion. It is submitted that in a diverse and multicultural society like India, it is imperative that law enforcement agencies understand and respect the cultural practices of various communities, particularly those pertaining to women observing *pardah*. *Pardah*, representing a practice deeply rooted in modesty and privacy, requires a nuanced and sensitive approach from the police to ensure the protection of women's rights while upholding law and order. Thus, with a view to sensitise the Delhi police, the following quintessential aspects may be considered, which are as follows:

(i) Understanding *pardah* practices signifying commitment to modesty, dignity and privacy by the police and ensure that they respect the choice of women adhering to this tradition. (ii) The Delhi Police be sensitised about the constitutional guarantees and Indian Laws, guaranteeing freedom of religion and observing *pardah* by women being one of such constitutional guarantees to practice religion.

(iii) Delhi Police being sensitised and trained by cultural experts, community leaders and women from different backgrounds for formulating

and preparation of training modules which should cover significance of *pardah* and its various manifestations across communities.

- (iv) Delhi Police be trained with effective communication strategies.
- (v) Delhi Police be trained about community, policing and building trust.
- (vi) Delhi Police be trained to handle situations by ensuring women are treated with dignity during investigations and interactions.
- (vii) Special provisions be made to accommodate *pardah* practices particularly in context of identity verification or witness statements.
- (viii) Monitoring mechanism to evaluate such sensitization programmes.

19. While explaining *pardah* practices, it is argued that *Pardah* is a cultural and religious tradition followed by many women across different communities transcending religious boundaries in India. Often associated with veiling and seclusion, it signifies a commitment to modesty, dignity, and privacy. The police force, as the frontline enforcers of law and order, must familiarise themselves with the cultural nuances surrounding *pardah* to ensure respectful and effective interactions with women adhering to this tradition. It is argued that Indian laws, including constitutional guarantees of freedom of religion and protection of women's rights, form the foundation for a balanced approach. The police need to be aware of these legal safeguards while discharging their duties. Respecting religious freedom, gender equality, and the right to privacy are crucial elements that should guide police interactions with women observing *pardah*.

20. It is argued that sensitising the police forces involves comprehensive training initiatives that instil cultural awareness and understanding. Training modules should cover the significance of *pardah*, its various manifestations across communities, and the legal protections in place for women practising it. Interactive sessions with cultural experts, community leaders, and women from different backgrounds can enhance the police force's sensitivity. It is argued that effective communication lies at the heart of building positive police-community relations. Officers should be trained to communicate respectfully and courteously with women observing *pardah*, taking into account the cultural and religious sensitivities involved. Clear guidelines on communication, avoiding unnecessary intrusion into personal spaces, and providing women with a comfortable environment for interaction should be emphasised.

Argument regarding practice of Pardah existing in all religions and followed by women of all religions

21. It is further argued that the practice of *pardah* among women in India exists in different forms of „*Ghunghat*“, „*Pallu*“, „*Dupatta*“, „*Burqa*“, „*Hijab*“ and so on. Covering the head has religious significance, particularly for women since time immemorial.

22. In Sikhism, for instance, the turban, an article of faith, distinguishes Sikhs from the others. Sikh women who have traditionally worn headscarves (*chuni*) are now wearing turbans, much like Sikh men.

23. It is further submitted that many Hindu women wear the *Ghoonghat* or the *Ghungta*, which emanates from the Sanskrit word, Avagunthana in India. There is a wide vocabulary of words for Avagunthana in the earliest forms of Sanskrit. Avagunthana was a cloak-like covering of the upper part of body, Uttariya was a covering till the shoulders, Adhikantha Pata was a covering till the neck and Sirovastra was a covering simply for the head.

24. It is further mentioned that ***pardah was prevalent even during Valmiki's Ramayana***. The practice, which signifies —seclusion of women,|| —had assumed the form of a recognized social custom.|| **When Sita sets out with her husband to the forest, Valmiki expresses regret that, “a lady, who had so far not been seen even by the spirits of the sky, should now become an object of public gaze.”**

25. Apart from the Ramayana, the head covering or a veil finds a mention in many **Sanskrit plays**. For instance, Sudraka, the author of *Mrichhakatika*, mentions that women wore Avagunthana, a thin veil, to hide their beauty and to enhance their coiffures. Similarly, ancient Indian plays—Kalidasa's *Abhijnana Sakuntalam*, Bhasa's *Pratimanataka*, *Sisupalavadha*, *Dashakumaracharita*, etc., among others indicate that women wore veils to cover their heads.

Argument regarding women wearing pardah/ghoonghat in modern India

26. It is also submitted that even today, in **modern India**, one finds Hindu women covered by the *Ghoonghat*. However, *Hijab*, which is a traditional scarf worn by Muslim women to cover the hair and neck and sometimes the face, is different from *Burqa*, which is a tip to toe gown covering the entire body. Both, however, are types of veils worn by some Muslim women. *Burqa* is a word that loosely falls under the category of *pardah* or veil. It is stated that **“*Pardah*”** is a Persian word translated as curtain, veil, attire worn by women to mark their social and physical segregation from the rest of society by covering their bodies and/or faces. *Pardah* takes different dimensions

depending on the country, place of origin and hence has numerous variations.

27. In the aforesaid background, it is argued that Delhi police officials are highly insensitive and apathetic towards sacrosanct religious and social practices and customs followed by women who observe *pardah* either as a religious belief or as a part. It is further argued that cogitating the disconcerting facts of the present case, it appears that the Police Officials of Delhi Police are completely insensitive and apathetic towards the observance of sacrosanct religious and social practices and customs followed by all the women who observe *pardah* either as a religious belief or as a part of their personal choice belonging to any religion, which are guaranteed under Article 21 of the Constitution.

SUBMISSIONS ON BEHALF OF STATE

28. Learned ASC for the State argues that the facts as presented by the petitioner are false and fabricated, and the law enforcement agencies had followed the due process of law. It is further argued that though the petitioner says that she is a *pardanashin* woman, she was standing in her balcony on the day of incident and looking down the street, without wearing any veil.

29. As regards the grant of prayer (f) i.e. for issuance of directions to police, for their sensitization, it is submitted by learned ASC that there is no such requirement for an extra layer of procedure to be followed by the law enforcement agencies, as it will create a barrier to fair investigation, search procedures, and arrest, when it is required. It is submitted that there exists enough safeguards in law to protect the dignity of every individual, including an accused.

30. It is also argued that there is no concept of *pardah* or *pardanashin* in most religions as suggested by the learned counsel for the petitioner and therefore, the relief sought by the petitioner, in the form of issuance of directions *qua* sensitization of police officers, must be not granted.

REPORT OF AMICUS CURIAE

31. This Court, while reserving this judgment on 30.01.2024, had also passed an order appointing Smt. Manisha Agrawal Narain, Advocate as *Amicus Curiae* in this case to assist the Court on the issues raised on behalf of the petitioner, as far as prayer clause (f) is concerned.

32. Report dated 22.02.2024 has been filed by Smt. Manisha Agrawal Narain, learned *Amicus Curiae*. The report begins by summarising that the

petitioner has stated that she is a *pardanashin* Muslim woman who wears *burqa*; and is seeking sensitization of police regarding the sacrosanct practices of *pardah* observed by women either as per religion or as per choice. The petition seeks to sensitise police about the sacrosanct religious, social customs and practices observed by all women who observe *pardah* either as a religious belief or as a part of their personal choice.

33. In the above context, it is submitted by learned *Amicus* that there has been an ongoing global debate about the privacy of a *pardanashin* woman on one hand, and the necessity of recognizability and identification of people for the ends of public order and security concerns on the other hand. While *Burqa/Veil/Pardah* may be worn by well-meaning women, but the same can be misused by the offenders of law to disguise themselves. It is submitted that anything which empowers a person to hide her/his identity may come in the way of efficient investigation, thus affecting public order.

34. It is further submitted that veiling the face or covering the whole body practically veils the identity and recognizability of a person. However, identification of persons is critical to investigation done by the police. Assertion of remaining inside *Burqa/Veil/Pardah* may lead to promotion of anonymity in public; and can be counterproductive to the investigation.

35. Another issue, as flagged by learned *Amicus*, is whether the veil is sacrosanct essential religious practice of the various communities in India. It is submitted that in ***Commissioner of Police v. Acharya Jagadishwarananda Avadhuta* (2004) 12 SCC 770**, Hon'ble Apex Court held that essential part of a religion means the core beliefs upon which a religion is founded. The test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion would be changed without that part or practise, and if it be so, then such part could be treated as an essential or integral part of the religion. Some other decisions such as ***Tilkayat Shri Govindlalji Maharaj Etc. v. State of Rajasthan & Ors* AIR 1963 SC 1638**, ***A.S. Narayana Deekshitulu v. State of A.P.* (1996) 9 SCC 548**, etc. are also relied upon by the learned *Amicus* in this regard, and it is submitted that on the basis of these tests, Courts have held various practices like triple talaq, cow-sacrifice, Tandav dance, etc. to be not constituting the essential parts of religion.

36. It is then submitted that in Ancient Hindu texts, it is seen that *pardah* was not an essential religious practice. In this regard, reference is made to excerpts from the *Sundarkand*, *Brihadaranyaka Upanishad*, etc.

37. It is also submitted that taking into consideration the five duties laid down for the Muslims by the Prophet and the five ‘Hukum’ of Allah in Shariat, as per Mulla’s Mohammedan Law, 5th edition, 2019, it will be difficult to hold that wearing of *Burqa/Veil/Pardah* is such a mandatory practise which must be followed in order to remain in Islam. It is stated that many countries, including Islamic countries across the globe, have already banned the *burqah/pardah/veil*.

38. Learned Amicus submits that Article 21 of the Constitution encompasses right to privacy, but whether there is a fundamental right to remain unrecognised or anonymous, is a relevant question here. In this regard, it is submitted that enforcement of law and investigation of offences require effective identification and recognisability of persons. However, this would not mean that *pardanashin* women should not be treated with decency, and rather, like every other human being, *pardanashin* women also have a fundamental right to be treated with dignity and decency. However, right to wear *Pardah/Burqa/Veil* cannot take away the rights of investigating agencies and if required, the police is well within its rights to identify the face of the *pardanashin* person. In doing so, the police needs to follow the same dignified behaviour with *pardanashin* women as is required for all other women (which includes presence of lady member in police team, if a woman is to be searched).

ISSUES AT THE CORE

39. The petitioner had approached this Court seeking various reliefs, yet one common thread among her pleas is the call for greater sensitivity towards the needs of ‘*Pardanashin* women’ by law enforcement agencies and that in case the relief sought for is not granted, the existing approach and protocol of criminal investigation qua women in Delhi will be in violation of Article 21 and 25 of the Constitution of India. Thus, the issues for consideration before this Court are:

I. Whether the religions mentioned by the petitioner, i.e. Hinduism, Islam, Sikhism, Jainism, Christianity, mandate wearing of pardah, veil, ghoonghat, and any alleged restriction or grant of non-opportunity to wear pardah during any stage of investigation will amount to violation of Article 25 of the Constitution of India?

II. Whether women, who choose to wear veil, ought to be afforded specific safeguards, entailing that law enforcement

agencies guarantee sufficient time and privacy for them to properly wear their veils?

III. Whether this Court should issue directions for sensitization of officers of Delhi Police apropos religious, social and customary practices observed by pardanashin women?

WHO IS A PARDANASHIN WOMAN

Meaning in Strict Legal Connotation of the Term

40. Pardanashin women, steeped in tradition and seclusion, embody a cultural practice deeply rooted in history. This term refers to women who adhere to strict rules of seclusion, often shielding themselves from the outside world behind veils or screens. Throughout history, various legal systems and traditions have established special provisions to safeguard the interests and preserve the dignity of *pardanashin* women in various facets of life, including contractual matters.

41. The history of *pardanashin* women traces back to the adoption of *pardah*, a practice originating from Persian customs. Initially embraced by Muslim communities influenced by Persian culture, *pardah* gradually permeated Northern India during the reign of the Mughal Empire. Under Mughal rule, Hindu upper-class women also embraced the practice, while women from lower socio-economic strata, tasked with managing households and engaging in agricultural work, did not adhere to it as rigorously. During the colonial era under British rule, the practice of *pardah* gained widespread acceptance and was enforced with greater stringency. However, in modern times, its prevalence has declined, coinciding with a shift towards greater openness and independence among women, as well as matter of choice. Despite these changes, the legal protections afforded to *pardanashin* women remain significant, rooted in principles of equity and conscience.

42. The vulnerability of *pardanashin* women to exploitation and undue influence is a salient concern addressed by legal safeguards. Given their limited exposure to external influences and the potential for manipulation, it is critical to afford these women enhanced protections under the law. The presumption of undue influence underlines the importance of ensuring that decisions made by *pardanashin* women are free from coercion or external pressures, thereby safeguarding their rights and preserving their autonomy.

43. While societal norms may evolve over time, the duty to safeguard the rights and dignity of all individuals remains steadfast. Through legal

protections rooted in principles of equity and conscience, *pardanashin* women are afforded the necessary safeguards to navigate a changing world while preserving their cultural identity and autonomy. Judicial Precedents defining 'Pardanashin Woman'

44. The Hon'ble Apex Court in case of ***Mst. Kharbuja Kuer v. Jangbahadur Rai (1963) 1 SCR 456***, while discussing the concept of „*pardanashin*“ women, referred to the decision authored by five Judge-bench of Privy Council in case of ***Farid-Un-Nisa v. Mukhtar Ahmad 1925 SCC OnLine PC 44***, and observed as under:

—5. ...In India **pardahnashin ladies have been given a special protection in view of the social conditions of the times; they are presumed to have an Imperfect knowledge of the world, as, by the pardah system they are practically excluded from social intercourse and communion with the outside world.** In *Farid-Un-Nisa v. Mukhtar Ahmad* Lord Sumner traces the origin of the custom and states the principle on which the presumption is based. The learned Lord observed:

"In this it has only given the special development, which Indian social usages make necessary, to the general rules of English law, which protect persons, whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred. This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind."

The learned Lord also points out:

"Of course fraud, duress and actual undue influence are separate matters."

It is, therefore, manifest that the rule evolved for the protection of pardahnashin ladies shall not be confused with other doctrines, such as, fraud, duress and actual undue influence, which apply to all persons whether they be pardahnashin ladies or not.¶

(Emphasis supplied)

45. In case of ***Smt. Andhi Kuer v. Rajeshwar Singh 1972 SCC OnLine Pat 78***, the High Court of Patna expressed as under:

—..The expression "**Pardanashin**" has not to be confused with a lady observing **parda**. A lady observing **parda** may not be a **pardanashin lady in the legal sense of the term**. The term —*pardanashin lady*¶ is not a term of art. It has special legal significance as one who is unable to understand the transaction by virtue of the manner in which she has been brought up...¶

(Emphasis supplied)

46. In the case of ***Fayyaz-Ud-Din v. Kutab-Ud-Din 1928 SCC OnLine Lah 554***, the Lahore Bench had held that a woman belonging to a family of

barbers, keeping a *hamam* in the town of Delhi, whose females did not live in a state of seclusion, is not *pardanashin*.

47. The High Court of Madras, in case of ***Chidambaram Pillai v. Muthammal*** 1992 SCC OnLine Mad 306, had discussed the judicial precedents on the issue of *pardanashin* women and had expressed as under:

15. A section of womenfolk in view of the social conditions of the times are presumed to have imperfect knowledge of the world, as the Supreme Court has said in the case of *Mst. Kharbuja Kher AIR 1963 S.C. 1203*. They are presumed to have imperfect knowledge of the world, as, by the *pardah* system, they are practically excluded from social intercourse and communion with the outside world. The origin is traced to the Indian social usages and the general rules of English Law which protect persons whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred, applicable to such section of women...

16. The *pardah* system as understood by the courts in India is not the system of keeping a woman under veil indoors in *zenana*, but in seclusion, away from the knowledge of the world, in the sense that they are not ordinarily allowed to interact with the male folk and are kept away from social intercourse and communion with the outside world. The view of the Lahore Court in the case of *Favvar-ud-din v. Kutab-udDin* had almost worked as an alarm for the courts to develop a sense that any strict meaning to *parda* was going to exclude a greatly deprived section of the society from the protection cloak of the law, namely, the illiterate women and other women having such infirmities that they practically live without any social intercourse and communion with the outside world. The judicial consensus, as we have already noticed, has been expressed thus:-

"The rules regarding transaction by the *Pardanashin* apply equally to illiterate women though they may not be in a strict sense *Pardanashin*,"

A *Pardanashin* may not be illiterate, but she still may be ignorant in the sense that she has an imperfect knowledge of the world, and she is practically excluded from social Intercourse and communion with the outside world. Her ignorance is the curse of a social usage that womenfolk depend upon malefolk for transaction of their business with the outside world. **Thus, not all women, but only those those who are practically excluded from social intercourse and communion with the outside world fall in this category.** If it is for this reason that they are taken as persons suffering from disabilities which make them dependent upon or subject to the influence of others, the illiterate women who, for the reason of social compulsion are required to move out to work in the fields and elsewhere for livelihood, cannot be said to be less disabled and deprived. Even if they are intelligent to know where to go and how to earn their livelihood, yet they cannot read anything nor write anything, and unless told about the contents by others, will not know what the document contains. To the extent the character, content and the effect of the document are concerned, she has to be presumed to be ignorant by sheer illiteracy, the curse which is still pervading the ancient society particularly the women living in this part of the country, a fact about which, we think, we are competent to take judicial notice.

We find ourselves in complete agreement with the view that the special cloak of protection applied to Pardanashin women has to be applied to illiterate women as well. ||
(Emphasis supplied)

The Changing Meaning and Notions of the Concept of ‘Pardanashin Woman’

48. The changing meaning and notions of the concept of „*pardanashin*“ and its relevance in the present times was discussed by the Division Bench of High Court of Gauhati in ***Mustt. Jubeda Khatun v. Sulaiman Khan 1985 SCC OnLine Gau 15***. The relevant observations are as under:

—5. **A pardanashin lady, in its legal meaning is a woman of the rank who lives in seclusion**, shut in the zenana, having no communication except from behind the pardah or screen with any person save a few near relations. A pardanashin woman need not necessarily be a woman of rank. If on account of the rules and customs of society she has to keep herself within the zenana and to lead a life of seclusion without any contact with the outside world, she is a Pardahnashin woman.

However, **this old notion has now been taken a notable change** along with the age and the circumstances surrounding the society at large. **The present society has been advanced to a new dimension in its educational; cultural and social atmosphere.** A large number of women folk either Hindu, Muslim or Christian are now holding a responsible job in all spheres of avocation. In the present trend of the society only those who are residing in interior places and governed by strict custom prevailing in the society are confined under Pardah.

7. WHAT IS THE POSITION OF THE PRESENT DAY URBAN PARDANASHIN LADIES? DO THEY STAND IN THE SAME POSITION WITH THOSE OF PARDANASHINS?

All town-bred ladies, in parda or not, know that physician should be called when there is illness in the house. Almost all know that when a legal document is to be executed lawyer should be consulted. There may be quasi pardanashin ladies in urban areas but all of them know the necessity of taking lawyer’s aid in transacting documents. The position is changing fast and as such the application of the principle should be confined to **real pardanashin ladies who are really ignorant, infirm and illiterate living in seclusion behind the parda.** I am, therefore, of the opinion that principles enunciated should be applied to all pardanashin who men who are really pardanashin... ||
(Emphasis supplied)

49. Thus, in the **legal connotation of the term**, a woman qualifies as ***pardanashin* when she leads a life of complete seclusion, detached from the broader societal interactions and experiences.** The premise underlying the legal protection afforded to *pardanashin* women is the recognition that their seclusion renders them vulnerable to exploitation and

injustice. By extending special safeguards, the law seeks to mitigate the risks associated with their seclusion and ensure that their rights and interests are upheld.

PARDANASHIN WOMAN: EXAMINING THE MEANING IN THE CONTEXT OF PETITIONER'S USAGE

50. In the contents of petition, it has been mentioned that petitioner is a *pardanashin* woman and during the arguments before this Court, learned counsel for the petitioner had contended that even in modern India, a large number of women still practice *pardah* in different religions and are therefore *pardanashin* women. Therefore, they should be considered as a special category, who should be treated with dignity and sensitivity by the police force while investigating any criminal case.

51. The use of word „*pardanashin*“ by the learned counsel for the petitioner was in context of women who observe *pardah* or veil, and thus, being specifically entitled to protection by this Court by issuance of directions to Delhi Police to sensitise them as to how they should deal with such women who observe *pardah*. This necessitated this Court to go into the meaning of *pardanashin* women.

52. The petitioner has employed the term *pardanashin* interchangeably with *burqa*, *ghoonghat*, *pallu*, etc. and as indicative of someone under a veil. While the petitioner may equate *pardanashin* with individuals under a veil, such as women wearing *burqas*, it is essential to recognize the difference between the two.

53. In legal parlance, *pardanashin* woman would refer to those who are entirely secluded from the wider societal sphere or lack a comprehensive understanding of societal norms and reasoning. This strict interpretation is crucial for determining the applicability of special legal protections afforded to those classified as *pardanashin*. Such protections are designed to safeguard individuals who, due to their seclusion or lack of understanding, may be vulnerable to exploitation or undue influence.

54. While the petitioner may use the term *pardanashin* to denote a woman under a veil, this does not align with the legal meaning, which requires complete seclusion or a lack of societal understanding. The petitioner's usage of the term *pardanashin* would include a woman wearing a veil, despite not being living in seclusion or despite possessing sufficient knowledge and understanding of societal norms.

History Behind the Veil: Understanding Pardah in Various Cultures

55. The petitioner has broadened the interpretation of „*parda*“ to embrace a multicultural perspective, encompassing women from various cultural backgrounds and customs.

Hinduism

56. An example of such a traditional custom given by the petitioner is ghoonghat (also called *ghunghat, ghunghta, ghomta, orhni, odani, laaj, chunari, jhund, kundh*), a form of head covering predominantly worn by Hindu women, even in modern India. Reference is further made to Valmiki's *Ramayana* to submit that *Mata Sita* also used to practise *pardah*. It is further pleaded that many Sanskrit plays would reveal that Hindu women in ancient India used to cover their heads/face and hide their beauty.

57. In this regard, this Court notes that presently, the practice of facial veiling among Hindu women may be prevalent to some extent in some parts of India. However, the system of *ghoonghat* or *dupatta* or *chunni*, which the learned counsel for the petitioner has argued as a form of barrier signifying seclusion, is not correct, as in the modern times, the system of *ghoonghat* or *dupatta* or *chunni* is viewed as a symbol of propriety and respect towards others, rather than being a symbol of barrier or seclusion. Thus, it cannot be equated or used as a synonym to the word pardanashin“.

58. The learned *Amicus* through her report has also drawn this Court's attention towards *Brihadaranyaka Upanishad*, according to which King Janaka of Videha Kingdom had organised *Rajasuya Yagna* and had invited all learned sages of India to participate. Hindu woman, such as Gargi, a sage, who had participated in the debate, had won the same by defeating one of the most learned sages Yajnavalkya in front of many others. A woman saint, Maitreyi had also successfully debated with Yajnavalkya in open court. Thus, the women in Hindus, since time immemorial, were empowered.

59. As regards the reference by the learned counsel for petitioner to Sanskrit plays authored by Sudraka or Kalisada, in order to bring home his point regarding the women practising *pardah*/veil in Hinduism in context with religion, the same is not meritorious since plays are stories which may refer to an attire but not mandate of the faith for a woman to follow. Moreover, it is mentioned in the petition itself that these plays would indicate that “*women wore veils to cover their heads*”. There is no gainsaying that covering of head by women cannot be equated with covering the face by putting a veil or *pardah* and such women cannot be termed as *pardanashin*.

60. As far as the **reference of the learned counsel for the petitioner to Mata Sita (माता सीता)**, in context of *Ramayana* (रामायण), is concerned, this Court observes that **neither in the *Ramayana* nor in any of the ancient or modern temples of Hindus, *Mata Sita* has been projected or shown to be wearing a veil or a *ghoonghat* or *pardah*.**
61. This Court also holds that even the reference to the extract of *Ramayana* by the learned counsel is in isolation without context, and the following extracts from the *Ramcharitmanas* (रामचररतमानस) would prove to the contrary:

I.

२२६ * रामचररतमानस *

सयानी सखियाँ सीताजीको साथ लेकर मनोहर वाणीसे गीत गाती हुई चलीं। सीताजीके नकर शरीरपर सुन्दर साड़ी सुशोभित है। जगज्जननीकी महान् छबि अतुलनीय है ॥ १ ॥

भूषण सकल सुदेस सुहाए। अंग अंग रचि सखिन्ह बनाए॥
रंगभूमि जब सिय पगु धारी। देखि रूप मोहे नर नारी॥

सब आभूषण अपनी-अपनी जगहपर शोभित हैं, जिन्हें सखियोंने अङ्ग-अङ्गमें भलीभाँति सजाकर पहनाया है। जब सीताजीने रंगभूमिमें पैर रक्खा, तब उनका [दिव्य] रूप देखकर स्त्री, पुरुष—सब मोहित हो गये ॥ २ ॥

हरषि सुरन्ह दुंदुभी बजाई। बरषि प्रसून अपछरा गाई॥
पानि सरोज सोह जयमाला। अवचट चितए सकल भुआला॥

देवताओंने हर्षित होकर नगाड़े बजाये और पुष्प बरसाकर अप्सराएँ गाने लगीं। सीताजीके करकमलोंमें जयमाला सुशोभित है। सब राजा चकित होकर अचानक उनकी ओर देखने लगे ॥ ३ ॥

सीय चकित चित रामहि चाहा। भए मोहबस सब नरनाहा॥
मुनि समीप देखे दोउ भाई। लगे ललकि लोचन निधि पाई॥

सीताजी चकित चितसे श्रीरामजीको देखने लगीं, तब सब राजा लोग मोहके वश हो गये। सीताजीने मुनिके पास [बैठे हुए] दोनों भाइयोंको देखा तो उनके नेत्र अपना खजाना फकर ललचाकर वहीं (श्रीरामजीमें) जा लगे (स्थिर हो गये) ॥ ४ ॥

दो०— गुरजन लाज समाजु बड़ देखि सीय सकुचानि।
लागि बिलोकन सखिन्ह तन रघुबीरहि उर आनि ॥ २४८ ॥

परंतु गुरुजनोंकी लाजसे तथा बहुत बड़े समाजको देखकर सीताजी सकुचा गयीं। वे श्रीरामचन्द्रजीको हृदयमें लाकर सखियोंकी ओर देखने लगीं ॥ २४८ ॥

राम रूपु अरु सिय छबि देखें। नर नारिन्ह परिहरीं निमेषें॥
सोचहिं सकल कहत सकुचाहीं। बिधिसन बिनय करहिं मन माहीं॥

श्रीरामचन्द्रजीका रूप और सीताजीकी छबि देखकर स्त्री-पुरुषोंने पलक मारना छोड़ दिया (सब एकटक उन्हींको देखने लगे)। सभी अपने मनमें सोचते हैं, पर कहते सकुचाते हैं। मन-ही-मन वे विधातासे विनय करते हैं— ॥ १ ॥

हरु बिधि बेगि जनक जड़ताई। मति हमारि असि देहि सुहाई॥
बिनु बिचार पनु तजि नरनाहू। सीय राम कर करै बिबाहू॥

हे विधाता ! जनककी मूढ़ताको शीघ्र हर लीजिये और हमारी ही ऐसी सुन्दर बुद्धि उन्हें दीजिये

II.

**अस कहि भले भूप अनुरागे । रूप अनूप बिलोकन लागे ॥
देखहिं सुर नभ चढ़े बिमाना । बरषहिं सुमन करहिं कल गाना ॥**

ऐसा कहकर अच्छे राजा प्रेममग्न होकर श्रीरामजीका अनुपम रूप देखने लगे । [मनुष्योंकी तो बात ही क्या] देवतालोग भी आकाशसे विमानोंपर चढ़े हुए दर्शन कर रहे हैं और सुन्दर गान करते हुए फूल बरसा रहे हैं ॥ ४ ॥

दो०— जानि सुअवसरु सीय तब पठई जनक बोलाइ ।

चतुर सर्खीं सुंदर सकल सादर चलीं लवाइ ॥ २४६ ॥

तब सुअवसर जानकर जनकजीने सीताजीको बुला भेजा । सब चतुर और सुन्दर स्त्रियों आदरपूर्वक उन्हें लिवा चलीं ॥ २४६ ॥

**सिय सोभा नहिं जाइ बखानी । जगदंबिका रूप गुन खानी ॥
उपमा सकल मोहि लघु लागीं । प्राकृत नारि अंग अनुरागीं ॥**

रूप और गुणोंकी खान जगज्जननी जानकीजीकी शोभाका वर्णन नहीं हो सकता । उनके लिये मुझे [काव्यकी] सब उपमाएँ तुच्छ लगती हैं; क्योंकि वे लौकिक स्त्रियोंके अङ्गोंसे अनुपम रखनेवाली हैं (अर्थात् वे जगत्की स्त्रियोंके अङ्गोंको दी जाती हैं) । [काव्यकी उपमाएँ सब त्रिगुणात्मक, मायिक जगत्से ली गयी हैं, उन्हें भगवान्की स्वरूपाशक्ति श्रीजानकीजीके अप्राकृत, चिन्मय अङ्गोंके लिये प्रयुक्त करना उनका अपमान करना और अपनेको उपहासास्पद बनाना है] ॥ १ ॥

**सिय बरनिअ तेइ उपमा देई । कुकबि कहाइ अजसु को लेई ॥
जौं पटतरिअ तीय सम सीया । जग असि जुबति कहाँ कमनीया ॥**

सीताजीके वर्णनमें उन्हीं उपमाओंको देकर कौन कुकवि कहलाये और अपयशका भागी बने (अर्थात् सीताजीके लिये उन उपमाओंका प्रयोग करना सुकविके पदसे च्युत होना और अपकीर्ति मोल लेना है, कोई भी सुकवि ऐसी नादानी एवं अनुचित कार्य नहीं करेगा ।) यदि किसी स्त्रीके साथ सीताजीकी तुलना की जाय तो जगत्में ऐसी सुन्दर युवती है ही कहाँ [जिसकी उपमा उन्हें दी जाय] ॥ २ ॥

**गिरा मुखर तन अरध भवानी । रतिअतिदुखितअतनुपतिजानी ॥
बिष बारुनी बंधु प्रिय जेही । कहिअ रमासम किमि बैदेही ॥**

[पृथ्वीकी स्त्रियोंकी तो बात ही क्या, देवताओंकी स्त्रियोंको भी यदि देखा जाय तो हमारी अपेक्षा कहीं अधिक दिव्य और सुन्दर हैं, तो उनमें] सरस्वती तो बहुत बोलनेवाली हैं; पार्वती अर्द्धाङ्गिनी हैं (अर्थात् अर्ध-नारीनटेश्वरके रूपमें उनका आधा ही अङ्ग स्त्रीका है, शेष आधा अङ्ग पुरुष—शिवजीका है), कामदेवकी स्त्री रति पतिको बिना शरीरका (अनङ्ग) जानकर बहुत दुखी

III.

तब परमप्रेमकी कोमल स्याही बनाकर उनके स्वरूपको अपने सुन्दर चित्तरूपी भित्तिपर चित्रित कर लिया। सीताजी पुनः भवानीजीके मन्दिरमें गयीं और उनके चरणोंकी वन्दना करके हाथ जोड़कर बोलीं— ॥ २ ॥

जय जय गिरिबरराज किसोरी । जय महेस मुख चंद्र चकोरी॥

जय गजबदन घडानन माता । जगत जननि दामिनि दुति गाता॥

हे श्रेष्ठ पर्वतोंके राजा हिमाचलकी पुत्री पार्वती ! आपकी जय हो, जय हो; हे महादेवके मुखरूपी चन्द्रमाकी [ओर टकटकी लगाकर देखनेवाली] चकोरी ! आपकी जय हो; हे हाथोंके मुखवाले गणेशजी और छः मुखवाले स्वामिकार्तिकजीकी माता ! हे जगज्जननी ! हे बिजलीकी-के कान्तियुक्त शरीरवाली ! आपकी जय हो ! ॥ ३ ॥

नहिं तव आदि मध्य अवसाना । अमित प्रभाउ बेदु नहिं जाना॥

भव भव बिभव पराभव कारिनि । बिस्व बिमोहनि स्वबस बिहारिनि॥

आपका न आदि है, न मध्य है और न अन्त है। आपके असीम प्रभावको वेद भी नहीं जानते। आप संसारको उत्पन्न, पालन और नाश करनेवाली हैं। विश्वको मोहित करनेवाली और स्वतन्त्ररूपसे विहार करनेवाली हैं ॥ ४ ॥

दो०— पतिदेवता सुतीय महँ मातु प्रथम तव रेख ।

महिमा अमित न सकहिं कहि सहस सारदा सेष ॥ २३५ ॥

पतिको इष्टदेव माननेवाली श्रेष्ठ नारियोंमें हे माता ! आपकी प्रथम गणना है। आपकी अपर महिमाको हजारों सरस्वती और शेषजी भी नहीं कह सकते ॥ २३५ ॥

सेवत तोहि सुलभ फल चारी । बरदायनी पुरारि पिआरी॥

देबि पूजि पद कमल तुम्हारे । सुर नर मुनि सब होहि सुखारे॥

हे [भक्तोंको मुँहमाँगा] वर देनेवाली ! हे त्रिपुरके शत्रु शिवजीकी प्रिय पत्नी ! आपकी सेव करनेसे चारों फल सुलभ हो जाते हैं। हे देवि ! आपके चरणकमलोंकी पूजा करके देवता, मनुष्य और मुनि सभी सुखी हो जाते हैं ॥ १ ॥

मोर मनोरथु जानहु नीकें । बसहु सदा उर पुर सबही कें॥

कीन्हेउँ प्रगट न कारन तेहीं । अस कहि चरन गहे बैदेहीं॥

मेरे मनोरथको आप भलीभाँति जानती हैं; क्योंकि आप सदा सबके हृदयरूपी नगरीमें निवास करती हैं। इसी कारण मैंने उसको प्रकट नहीं किया। ऐसा कहकर जानकीजीने उनके चरण पकड़ लिये ॥ २ ॥

IV.

गीधराज सुनि आरत बानी । रघुकुलतिलक नारि पहिचानी॥

अधम निसाचर लीन्हें जाई । जिमि मलेछ बस कपिला गाई॥

गृध्रराज जटायुने सीताजीकी दुःखभरी वाणी सुनकर पहचान लिया कि ये रघुकुलकी

* अरण्यकाण्ड *

६४३

गौरीमचन्द्रजीकी पत्नी हैं। [उसने देखा कि] नीच राक्षस इनको [बुरी तरह] लिये जा रहा है, ऐसे कपिला गाय म्लेच्छके पाले पड़ गयी हो ॥ ४ ॥

सीते पुत्रि करसि जनि त्रासा । करिहउँ जातुधान कर नासा॥

धावा क्रोधवंत खग कैसें । छूटइ पबि परबत कहूँ जैसें॥

[वह बोला—] हे सीते पुत्री ! भय मत कर। मैं इस राक्षसका नाश करूँगा। [यह कहकर] वह पक्षी क्रोधमें भरकर कैसे दौड़ा, जैसे पर्वतकी ओर कब्र छूटता हो ॥ ५ ॥

V.

**देखि मनहि महुँ कीन्ह प्रनामा । बैठाह बाात जात नास जाया ॥
कृस तनु सीस जटा एक बेनी । जपति हृदयँ रघुपति गुन श्रेनी ॥**
सीताजीको देखकर हनुमान्जीने उन्हें मनहीमें प्रणाम किया । उन्हें बैठे-ही-बैठे रात्रिके चारों ऋ
बीत जाते हैं । शरीर दुबला हो गया है, सिरपर जटाओंकी एक वेणी (लट) है । हृदयमें श्रीरघुनाथके
गुणसमूहोंका जाप (स्मरण) करती रहती हैं ॥ ४ ॥

62. The above extracts from *Ramcharitmanas* adequately prove that *Mata Sita* did not wear a veil and therefore, even to refer to her as a *pardanashin* woman will amount to nothing but distortion of description of *Mata Sita* in the religious texts. Further, the *Ramayana* does not project *Mata Sita* as a weak woman and rather by shallow reading and without understanding the true meaning and concept of *Ramayana*, a person at times may feel so, as they would not have gone into the deeper depth and meaning of the concept of *Mata Sita* as to who she was and under which *maya* (माया), she took birth as a human for a larger purpose of destroying evil forces and thus becoming instrumental in destroying evil forces through Lord Rama (भगवान राम).
63. The religious texts of Hindus are not mere books, but as Hinduism itself, are a way of life which prescribe a way of life to those who believe in it to follow it, in its spirit. Further, by following their *dharma* (धम्म) i.e. duty in different roles and relationships in the society, continue their journey to attain the goal of *Moksha* (मोक्ष) i.e. being one with the supreme power that the Hindus believe in. Even this goal is an individual choice, however, practising the *dharma* prescribed for every role in one's life is desirable. Hinduism: Religion vs. Dharma
64. Since the learned counsel for the petitioner vehemently argued and referred to the word „*dharma*“ and the mandate of *dharma* to follow the practice of veil, *ghunghat*, *pardah* in the context of Hinduism to bring home his point that even for a Hindu woman, to wear the same was, and to some extent even today is, a matter of dignity, mandate of religion and is intertwined with issue of right to practice religion and religious practices, has forced this Court to dwell into the question of difference between the word, ‘religion’ and ‘dharma’ in Hinduism. Hinduism is Sanatan.
65. There is a difference between religion and *dharma* as understood in Hinduism. While practising a lifestyle, a profession and different individual relationships etc., each person is practising his *dharma* qua that relationship or profession or act. Thus, a different *dharma* is followed by each individual in his different roles whether professional or personal as understood in

Hinduism. The word religion is different, thus, from dharma as understood in Hinduism.

66. To give an example, in Hinduism, the same person will be practising his *dharma* as a son towards his parents, a different *dharma* as a husband to his wife, and a different *dharma* towards his children, siblings, society and nation.

67. To give another example, **a Court of law/judge may have its faith as „X“ being born in a family having full faith in „X“ and following its tenets, however, the Court“s *dharma* as a Judge is to do justice to all individuals before it, irrespective of their faith, commonly known as religion or other considerations such as social or economic status in life which at no cost should waver. The Court“s *dharma* as a Judge is not faith „X“ but doing equal justice to all.**

68. This Court, therefore, is of the considered opinion that Hinduism does not mandate *pardah* for women, as suggested by the learned counsel for the petitioner, as in ancient India, there are examples of empowered women in every profession and individual lives with rights, and the ancient scriptures, the deities and the Gods have never been projected as wearing *pardah* or prescribing *pardah* to women as a mandatory practice religious or otherwise.

Sikhism

69. As regards Sikhism, it has been mentioned in the petition that “*in Sikhism, for instance, the turban, an article of faith, distinguishes Sikhs from the others. Sikh women who have traditionally worn headscarves (chuni) are now wearing turbans, much like Sikh men.*” 70. In respect of the aforesaid, this Court notes that in Sikhism, it is customary for women to don a *dupatta* or *chunni* for the purpose of covering their head, while visiting Gurdwaras, which symbolises reverence for sacred spaces. In fact, when inside a Gurdwara, every person is required to cover his or her head. Such practice of wearing a *dupatta* or *chunni* is common in Sikhism, but without any formal imposition by their Gurus, signifying the absence of a concept of veiling within the religion. The headgears are worn by Sikh men, and not by Sikh women, barring a few circumstances, however, the petition mentions that Sikh women are “*now wearing turbans much like Sikh men* ” which is not true. Further, there is no concept of any ‘veil’ or covering the face in Sikh customs and traditions, which could substantiate petitioner’s argument of prevalence of *pardah* system among Sikh women.

Christianity, Judaism, Jainism

71. In the petition, only a few passing references have been made that many women belonging to Christianity, Judaism or Jainism are also *pardanashin* as they wear some form of *pardah* or veil, mandated by their religion. However, the same is unsubstantiated by any religious text, authentic proof or writing.

Islam

72. The petition mentions that there is a difference between *hijab* and *burqa*, and *burqa* is a word that loosely falls under the category of *pardah* or veil. It is stated that there are two verses in the Qur'an in which Almighty Allah talks about the issue of decency and *hijab*, which deal with 'hijab of eyes'. Thereafter, it is mentioned that another verse talks about a woman concealing the head and then using the loose ends of the scarf to conceal the neck and the bosom. It is further stated that as per Quran, the Islamic dress code for women does not only consist of a scarf that covers the head, the neck and the bosom; it also includes the overall dress that should be long and loose.

73. Thus, as per petitioner, she is well-within her rights to conduct herself in accordance with the tenets of her religion, including her choice of dress, as protected by Article 25 of the Indian Constitution.

74. In this regard, this Court notes that the issue regarding *hijab* or *burqa* being essential religious practices is an issue which is pending adjudication before the Hon'ble Apex Court. Background of the same is that the Three-Judge Bench of Karnataka High Court in case of ***Resham v. State of Karnataka*** 2022 SCC OnLine Kar 315 had held that *hijab* is not an essential religious practice of Islam, and the same would not be covered under Article 25 of the Constitution of India. Thereafter, the Division Bench of Hon'ble Apex Court in an appeal against the said judgment of Karnataka High Court, had delivered a split verdict in case of ***Aishat Shifa (Hijab Case-2 J.) v. State of Karnataka*** (2023) 2 SCC 1, which is now pending to be placed before a Three-Judge Bench of the Hon'ble Apex Court for adjudication. However, even though the issue has yet not been decided by the Hon'ble Apex Court, the petitioner has repeatedly mentioned in the petition that the right to wear a *pardah*, which is like a *burqa/hijab*, would be covered under Article 25 of Constitution of India. **Be that as it may, since the issue is already sub-judice before the Hon'ble Apex Court, this Court would not delve deeper into it.**

POLICING IN BHARAT: MULTIFACETED DUTIES &

SOCIAL CONTEXT

75. Policing encompasses the multifaceted duties carried out by law enforcement agencies to maintain public order, enforce laws, prevent and investigate crimes, and ensure the safety and security of individuals and

communities. It involves a range of activities, including patrolling, responding to emergencies, conducting investigations, apprehending suspects, and working collaboratively with the public to address concerns and build trust.

76. In the context of the preamble of the Delhi Police Act, policing is viewed as a fundamental mechanism for upholding justice, safeguarding rights, and promoting harmony within the diverse population of Delhi. It emphasises the need for law enforcement to operate within the framework of **democratic principles**, respecting the rule of law and protecting the rights and freedoms of all citizens. 77. **It is crucial to recognize that policing is not tailored to serve the interests of any specific religious or any cultural community alone. Rather, this Court holds that it has to be essentially guided by the principles of impartiality, fairness, and reasonability.** While respecting cultural sensitivities and religious practices, law enforcement agencies must prioritise the common good and uphold the law without discrimination.

Test of Reasonability and Compelling Public Interest

78. The test of reasonability serves as a guiding principle in determining the appropriate response of law enforcement in various situations. For instance, when dealing with individuals from diverse backgrounds, such as during arrests or interactions with suspects, the police must assess the circumstances and make decisions that are proportionate and justifiable. While accommodating reasonable requests, such as allowing suspects to wear basic clothing and ensuring their right to dignity as such is not violated, the police must balance individual rights with the need to maintain public safety and uphold the law.

79. In the discharge of their duties, the investigating agency is required to navigate the delicate balance between upholding individual rights and safeguarding compelling public interests. While individual rights are supreme, they may need to yield to the imperatives of public safety and security when necessary. However, it is essential to underscore that such infringements cannot be arbitrary or disproportionate; they must be grounded in objective criteria and serve a legitimate public interest. Thus, while exercising their powers, the police must adhere to the principle of reasonableness, ensuring that their actions are both necessary and justified within the confines of the law and respect for individual rights.

Multi-cultural Land of Bharat & Policing

80. The increasingly multi-cultural nature of Indian society definitely has an impact on policing in Delhi or India. The complaint in the present case is about police officers, about their insensitivity in protecting the *pardanashin* women and not giving them enough time to wear the *pardah* as per their religion.

81. The police as law enforcement authority has a vital duty of protecting the community from those who have no respect for law, who are in conflict with law, those who have no respect for rule of law and indulge in criminal behaviour so as to endanger establishment of rule of law in the community. The Police acts as watchmen for the community by preventing crime and bringing criminals to the fold of the criminal justice system. The police have the role of crime control, maintenance of law and order, and also are available 24 hours for a wide range of services to the community.

82. Needless to say, **crime prevention and control is the most vital role they play and the general public holds the image of police as those who prevent crime, who detect and apprehend offenders and protect them**. Since the police personnel are crime fighters, the policing involves certain rights to them under Delhi Police Act and the Code of Criminal Procedure. While the success of policing depends largely on how the police personnel respond to their duties and to the community members, their treatment of the vulnerable while dealing with crime prevention measures, many a times comes under scrutiny.

WHETHER THE CURRENT LEGAL FRAMEWORK IS SUFFICIENT TO ADDRESS THE ISSUE IN QUESTION?

83. Since all the other prayers were disposed of in this petition, the Court is only dealing with issue of issuance of general directions to the police to sensitise the police force *apropos* the sacrosanct religious, social customs and practices observed by all the women who observe *pardah* either as a religious belief or as a part of their personal choice belonging to any religion, while keeping in mind the submissions made before in this Court that many women in different parts of the country and the world are *Pardanashin*.

Present Day Legal Framework for Protection of the Dignity of Women During Investigation of a Criminal Case

84. Various substantive and procedural laws in India have been designed to grant women certain privileges and considerations. The provisions pertaining

to search and arrest of women, under the Code of Criminal Procedure aims to ensure that dignity of every woman is protected, regardless of them even being an accused.

Procedure of Arrest of a Woman

85. Chapter V of Cr.P.C., spanning Sections 41 to 60A, delineates the procedures governing the arrest of individuals. These sections provide comprehensive guidance on the procedure to be followed at the time of arrest. While these provisions bestow considerable authority upon the police for arresting individuals, they also impose reasonable limitations, particularly concerning the arrest of women. Law enforcement agencies are bound to adhere strictly to the stipulations outlined in this Chapter when affecting arrests, regardless of the circumstances.

86. Section 46(4) of Cr.P.C., introduced by the Criminal Amendment Act of 2005 through Section 6, lays down the fundamental procedures governing the arrest of women. It reads as under:

—Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. "

87. According to this provision, the arrest of a woman must be carried out by a female police officer. Moreover, it specifies that, ordinarily, no woman shall be arrested between sunset and sunrise. However, if the offence is serious or necessitates immediate action during this period, the female police officer must obtain permission from the Judicial Magistrate within whose jurisdiction the offence is committed or where the report is to be lodged.

Procedure for Search

88. The search of an arrested individual and his residence or dwelling is a crucial aspect of the arrest procedure. Sections 47 and 51 of Cr.P.C. outlines the process for conducting such searches, with specific provisions tailored for women. The search conducted by the authorities executing the arrest can be categorised into two main categories.

(i) Search of Person

89. According to Section 51 of Cr.P.C., when a police officer searches an arrested person, any seized items must be securely stored, and the individual

must be provided with a receipt detailing the confiscated items. Section 51 provides as under:

—51. Search of arrested person.—(1) Whenever a person is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person.

(2) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency. ll

90. However, the procedure for searching an arrested woman involves considerations of morality. As per Section 51(2) of Cr.P.C., if it becomes necessary to conduct a search on a female, it must be conducted by another female, ensuring utmost decency and respect for the woman's dignity.

(ii) Search of Place

91. When a police officer or any other individual executes an arrest or a warrant of arrest, they are empowered to search any premises for the subject of the arrest. The owner of such premises is obligated to grant unrestricted entry to the officer and assist them in conducting the search to the fullest extent possible. Section 47 provides as under:

—47. Search of place entered by person sought to be arrested.—
(1) If any person acting under warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein,

and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a female (not being the persons to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

(3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.¶

92. However, the proviso to Section 47(2) of the Cr.P.C. stipulates that if the police officer or any other individual executing the arrest warrant becomes aware that the premises to be searched is the primary residence of a woman who, as per custom, does not appear in public, they must provide a notice to the woman informing her of her right to withdraw before commencing the search.

Whether the Petitioner has made out a case, Necessitating Issuance of any Directions?

93. The **central point** in the present case essentially is **whether this Court can identify any reason to take upon it, the role of an adjudicator to lay down directions to follow a certain protocol by sensitisation of the police force, which in the modern context and in the realm of practicality may not be legitimate.**

94. Of course the Courts have to be responsive to any contingencies and how those contingencies and situations affect the community at large, but at the same time, they also have an equal responsibility to consider whether the existing law, procedural, substantive or otherwise, is sufficient to ensure equal and just treatment to all equally placed.

95. The **Code of Criminal Procedure provides for necessary safeguards** as to how the police personnel are required to exhibit sensitivity towards the women, *vide* Section 46(4) and Section 60(A) of Cr.P.C. However, while investigating heinous crimes, to put fetters or roadblocks in their way of ensuring swift response to apprehending an accused during

search of a place or a person would rather result in the accused absconding or the evidence being destroyed.

96. In such situations, **to burden the police, while carrying out investigation of a criminal case or apprehending accused wherein each minute is crucial, lest accused absconds or evidence is destroyed, will not only be impractical but also a dangerous proposition. Issuance of an additional direction to first inquire from a woman as to whether she is a *pardanashin* woman or she wears any form of veil according to her religious belief or customary practices, and then to grant additional time and notice to wear *pardah* or veil, in addition to following the safeguards already provided in law, on the ground of exhibiting awareness and sensitivity of the police will be inviting an accused to misuse the directions and utilise the time so gained, at times also on falsehood, to abscond or destroy evidence.**

97. To give a few examples, this Court frames the following illustrations:

Illustrations

(a) Ms. 'X', a suspected terrorist is apprehended by law enforcement officers, and during the arrest, Ms. 'X' requests additional time to wear traditional clothing, citing religious or cultural reasons. It may not be considered reasonable by the authorities to afford time to Ms. 'X' due to the potential security risks involved, as traditional clothing could be potentially used for concealing weapons or explosives, posing a threat to public safety, or the time so provided could also be used by Ms. 'X' to plan and execute an attack on the police officials.

(b) Ms. 'X', who possesses digital evidence and is apprehended by law enforcement agencies, requests time to wear her religious attire. Granting Ms. 'X' additional time in a premises not fully controlled by police officers can result in the destruction or distortion of digital evidence by Ms. 'X', which can be destroyed in a matter of seconds or minutes.

(c) Mr. 'Y' is a suspect in a serious crime and law enforcement agencies arrive to conduct an investigation, Ms. 'X', a close relative of Mr. 'Y' present in the same house, requests time to wear religious attire. However, the authorities, mindful of the possibility that granting Ms. 'X' additional time could provide an opportunity for any communication or interference with the investigation, hesitate to fulfil the request. This cautious approach by the authorities may be deemed reasonable given the circumstances of the investigation and the need to preserve its integrity.

98. The **fundamental requirement of some cases lies in the secrecy** of conducting a raid to apprehend an accused or recover an object, currency, etc., and in case such a mandatory direction is issued, it can be misused to **distort or destroy evidence** and the very purpose of the raid will be

defeated, compromising with the investigation of a case, causing serious prejudice to the investigating agency. In case, a case is based on cyber crime or retrieving or recovering of digital evidence, which can be lost at the click of a button, such mandatory protocol to be followed can be misused by a woman accused or a male accused having a female member at home by **projecting that she is a *pardanashin* woman, though in fact she may not be.**

99. While this Court maintains that sensitivity towards cultural diversity and equipping police personnel with knowledge, skill and attitudes to deal with females will be of utmost importance, at the same time, directing the police to act in interest of a particular gender in a particular way, which may be opposed to the interest of society at large, will be unjust.

100. Any legal restriction in their way of investigation will affect their effectiveness. The police have to ensure execution of law while respecting human dignity and right of a person, and balancing the same with the need for social order and safety of the community. The Courts and the society have to recognize the legitimate authority of the police to implement and execute law while policing, though any excess committed by them in contravention of law will always be open to judicial scrutiny.

101. In case any such additional direction is issued, the police may find themselves not only entrusted with pressure of policing for enforcing law and crime prevention, but they may also be under constant pressure to be more cautious and lose precious time while apprehending an accused, in order to appear to have a sensitive gender and community based approach.

Argument regarding Right to Dignity under Article 21 vis-a-vis

Pardanashin Women

102. It is the case of petitioner that a woman's right to wear *pardah* is covered under the ambit of right to dignity, which is enshrined under Article 21 of the Constitution, besides Article 25 of the Constitution, which protects one's right to practise or profess his or her religion. Accordingly, the directions for sensitization of police officers *qua pardanashin* women should also be issued since the officers by their conduct violate the right to dignity of women who are *pardanashin*.

103. As far as this argument is concerned, this Court is of the opinion that **the concept of dignity also, as enshrined in Article 21 of the Constitution, extends universally to every citizen, irrespective of gender or any other characteristic.** It is a fundamental principle that is

based on the inherent worth and value of each individual within society. Article 21 guarantees the protection of life and personal liberty, recognizing that dignity is a fundamental aspect of human existence. The **protection under Article 21 is also not contingent upon adherence to any particular cultural or religious practice**, including the concept of *pardah*. Instead, it applies universally to all citizens, regardless of their beliefs or practices.

104. Thus, **every human, whether a man or a woman, is entitled to the right to dignity, which is also available even to an accused or a prisoner.** Also to ensure that dignity of any woman is not compromised, special safeguards have been provided under law, which have already been discussed in the preceding paragraphs. **To this extent, the law is clear and the police officers are bound by it and they must remain aware of the provisions of the Code of Criminal Procedure as well as judicial precedents, which put certain measures in place for upholding the dignity of women, while either arresting or searching any woman or while carrying out the investigation. When the law talks about dignity of**
„women“, it means all women, regardless of their religion, faith or custom.

The Concept of Judgment Impact

105. The **concept of judgment impact** has also to remain one of the crucial ingredients and factors while writing a judgment since a mandatory direction to another authority may result into practical difficulties, and instead of helping in administration of justice and ensuring rule of law, may bring results to the contrary.

106. The judgment and the direction which is being sought from this Court in the name of ensuring freedom to practise any religion under Article 25 of Indian Constitution or dignity of women under Article 21 of Indian Constitution has the **potential of being misused by a female accused, or a male accused and their female family members.** It will also amount to presuming that a woman does not commit crime and cannot be an accused who needs to be searched, arrested or a raid be conducted to apprehend her. This Court cannot pass any such direction.

107. While observing so, this Court holds a view that **a judgment adjudicating a crucial question of issuance of directions and sensitization cannot be purely an Academic exercise.** Even an academic judgment has to keep in mind as to whether it will invite difficulties in

administration of justice, rule of law, and at all times, keep in mind a **pragmatic approach so that the judgment does not become a road-block for law enforcement agencies**, who may face contempt for non-obedience of the judgments and for fear of that, continue to face difficulties in performing their actual duties. The wide discretion that judges have, should be utilised for improving the interest of the country and the community while balancing the law and the rights of other law enforcement agencies to achieve a balanced merger of both.

DIRECTIVES ISSUED BY COURTS: NEED TO BE JUSTICE

DRIVEN AND NOT FAITH DRIVEN

108. Learned counsel for the petitioner had argued that the insensitivity of the police force in general towards the religious sentiments of *pardanashin* women, who may belong to different religions or faiths, is in the teeth of Article 25 of the Constitution of India which ensures freedom of practising any religion to an individual.

109. Therefore, one of the issues before this Court was as to whether the directions sought from this Court to sensitise the Delhi Police and directing them to follow a protocol in view of the religious scriptures and religious mandate of women of different religions, is called for or not and as to whether in case a protocol is not framed for sensitization of police officers, will it be in violation of Article 25 of the Constitution of India.

110. In paragraph nos. 56 to 70, this Court has rejected the argument of learned counsel for the petitioner that practise of *pardah* is commonly followed by Hindu or Sikh women, and that there is no such mandate to wear a veil or *pardah* in these religions.

111. As far as the practice of wearing *hijab* or *burqa* in Islam is concerned, this Court has already observed in paragraph no. 74 that whether such practises fall under the essential religious practice, so as to be covered within the ambit of Article 25 of Constitution of India, is an issue which is pending before the Hon'ble Apex Court for adjudication, and there is nothing at this stage to prove that wearing a *pardah*, or burqa as called in Islam, would be an essential religious practice.

Article 25 of the Constitution has arisen for the religions and not from the religions

112. Article 25 of the Constitution has arisen for the religions and not from the religions. While it enshrines the fundamental right to freedom of religion,

it also delineates that this freedom is not absolute; rather, it is subject to considerations of public order, health, and morality.

113. It is noted that the preservation of public order encompasses the broader need of upholding law and order across society, a duty in which investigating agencies play a pivotal role. Therefore, while individuals have the constitutional right to practise their religion, this right is circumscribed by the need to maintain public order and ensure the efficacy of law enforcement efforts.

114. Thus, **while even criminals have certain fundamental rights, these cannot serve as barriers to their arrest or prosecution, except those rights which have been provided under law in this regard; rather, their rights have to yield to the interests of the state and public safety.** It is the primary duty of both the Courts and the police to protect the nation and its communities, making it inappropriate to issue directives based on faith. Such actions exceed the powers granted to the courts by the Constitution and undermine the rule of law.

115. **In police investigations, there cannot be any room for anonymity, as identification is essential for ensuring justice and maintaining security.** Allowing anonymity under the guise of religious practice or personal choice could open the door to abuse and hinder the investigation process. Therefore, it is important that law enforcement agencies have the authority to identify individuals when necessary, in order to maintain public order, regardless of veiling practices and also regardless of the fact that whether these practices would be covered under Article 25 the Constitution or not. This would ensure transparency, accountability, and fair treatment of all individuals involved in the investigative process.

116. **In this Court's view, the directions issued by any Court must be rooted in legal principles, rather than influenced by religious considerations.** Judgments should remain impartial and devoid of any religious bias, recognizing that criminality transcends any specific religious affiliation; it concerns the welfare of society as a whole.

A JUDGE'S PURE FIDELITY TO THE APPLICATION OF LAW IN CONSONANCE WITH THE REQUIREMENT OF

MODERN BHARAT

117. **A judge has to meet the critical requirement of its pure fidelity to the application of law for the larger community good and upholding the fundamental rights of every citizen.** The judicial responsibility and the

judicial obligation of living up to its fidelity to law also has to pass the test of practical standpoint of view as to what the Court's directions would result in.

118. While at times, **a judge may be tempted to find legalistic solution to a problem placed before it, however, the temptation has to be resisted since the directions sought may not only be impractical but also instead of successfully mitigating the alleged perceived injustice to some in a situation, may in fact give rise to unjustified fetters on the power to investigate by the investigating agency.** The adjudicated law has to pass the test of being justified on the touchstone of procedural and substantive grounds.

The Social Face of Law: Judges' Role in Shaping Legal & Social

Discourse

119. Undoubtedly, **the judges are trained in law and schooled in precedents, however, now, law has a social face too.** In the changing role of judges through adjudication of cases in writ jurisdiction, one finds greater involvement with social policy of the Court and judges. The judges' rulings on social questions inarguably affect a large number of members of the community. However, such judgments on social policy cannot be segregated or be opposed to the legislations and the State policies which involve the safety and security of the country or the community at large.

120. **What distinguishes judges and their judgments is their impartiality.** The nature of the issues posed before a judge for adjudication, and the expectation of a petitioner or the public at large, that those issues will be adjudicated fairly, represent one concept, and the need for judges to be sensitive towards a broader range of social concerns is another expectation.

121. **Though certain legislations can be gender-specific, the judges, the judgments and the orders are always Genderless.** The judgments are not only the thoughts or perceptions of a judge and are not limited to legal acumen of a judge alone, but also the work carried out through the legal acumen of the lawyers/advocates assisting the Court.

WHILE CONCLUDING: SOMETIMES EVEN AN ISOLATED

WORD SPEAKS A STORY

122. The word *pardanashin* conjures an image. When this Court uses the word *pardanashin*, it conjures the picture of a woman who is wearing a *pardah* and perceived as powerless and one who does not understand the

worldly affairs, who needs someone to look after her legal, personal and other affairs as understood and defined in judicial precedents in context of capacity to enter into a contract. Whatever a Court of law writes, it has to remain cautious that it leaves an indelible mark and the philosophy flowing from a judgment is read by many to follow. This Court's responsibility would be many-fold when it is forced to enter the arena of ancient scriptures and interpret it and give a meaning as deemed fit by the petitioner or perceived by the petitioner in the modern times.

123. Therefore, in this Court's view, the word *Pardanashin* by its mere mention conjures an image which is not confined to a word or a single picture itself but the **entire journey of women in India which they have covered from being empowered, being free of burden of a veil, to the indescribable burden of a weightless piece of cloth called veil which was full of challenges, troubles and social struggles.**

124. This Court has observed in the preceding paragraphs that the concept of *Pardanashin* women was not in the context of any religious observance, but purely in the legal context of contracts entered into by women, who were not well conversant with the worldly issues and remained secluded from the world at large. As observed already, the judicial precedents, including the one wherein the word *Pardanashin* was used as early as in the year 1925 in the judgment of ***Farid-Un-Nisa v. Mukhtar Ahmad*** (*supra*), refers to the meaning of *Pardanashin* woman in the context of entering into a contract and not in terms of her religious beliefs.

125. While considering a question as to **whether the concept of *pardanashin* woman, as explained by the petitioner, is relevant in modern times**, this Court would only like to express that much water has flown down the empowerment path of woman in India wherein by way of their fundamental rights as well as rights available to them under other legislations, special provisions have been made with regard to empowerment of women, not on papers alone, but in reality ensuring that every girl and every woman is educated; those who are young, by being provided with schooling, and those who have not had the opportunity to be educated, there being adult education centres / *Praudh Siksha Kendras*.

126. As far the context of present case is concerned, instead of using the word *pardanashin*, **this Court would rather want to term it as women who observe a particular dress code in accordance with their beliefs and faith**, since the word *pardanashin* in the past has been used in context of women who were not empowered nor were considered well conversant with

worldly affairs and were thought to be incapable of looking after themselves on their own due to them living in state of seclusion.

127. **Sometimes an isolated word speaks a story and sometimes even a story in itself is not more than a simple word as the words used by a Judge in a judgment are forever.** The moment this Court terms women as *Pardanashin* due to their gender in general, it will do more harm to them than empower or add value to their already existing right to dignity.

128. Therefore, in the background of the above discussion, and this Court having taken note of the well-researched report submitted by the learned Amicus Curiae as well, holds and **sums up** the findings of this Court, as under:

1. The concept of *‘pardanashin woman’* is essentially a legal concept, not in context of any religious practice, but in respect of capacity to enter into a contract.
2. As the concept of *pardanashin* women in Indian law essentially revolves around seclusion of a woman from the outer world and society at large resulting in their lack of understanding of societal affairs, there is less relevancy of this concept of *pardanashin* women in the modern era especially in the big cities considering the background and the lifestyle of modern women.
3. Since the learned counsel for petitioner had taken this Court through various religious scriptures to show prevalence of practise of *pardah* among Hindus, Sikhs, etc., the discussion made by this Court in paragraph nos. 56 to 70, *inter alia* on *Ramayana & Mata Sita*, and Brihadaranyaka Upanishad, will point out the fact that **neither the Hindu women practised any *pardah* nor was it mandatory for them. They always were empowered till a particular era, and the history will speak for itself regarding its causes when Hindu women were burdened with the weight of a *pardah*, which though weight-less, carried unbearable weight for a woman who wears it, which cannot be explained in words.** Thus, to sum up, in Hindus there is no mandatory provision to wear veil or *ghoonghat*, or Hindu women being *pardanashin* by virtue of their religion. Same is the scenario in case of Sikh women. In India, however, everyone can make their individual choices.
4. Further, the law enforcement agencies and their **investigations cannot be driven by religious practices** but have to be community and safety driven.
5. The **fundamental rights**, including those enshrined under Article 25 of the Constitution **have to surrender in favour of the** safety of the country and the community irrespective of the gender of the accused, and in case of

Article 25, the rights are subject to reasonable restrictions such as maintaining public order.

6. **Faith based directions cannot be issued by this Court**, for the police officers who carry out investigation in criminal cases, lest it affects their power to investigate as provided to them by law.

129. This Court has also taken note of the fact that while seeking directions from this Court regarding sensitization of the police officials *apropos* the special procedure which should be followed in cases of women who wear *pardah*, the petitioner has also highlighted certain aspects which may be considered while sensitising the police officials. Some of these aspects, highlighted in the petition, are sensitisation *qua* already available legal safeguards in relation to the procedure which the police authorities need to follow in case of arrest of a person and search of a place, and training initiatives to the police officers in regards to the same. This Court, while considering the same, has already reiterated the procedure for arrest and search of place in the preceding paragraphs, which finds its mention in the statutory laws and has also been laid down by the Courts in a plethora of judgments. **There is no gainsaying that all the police officers, while carrying out investigation in a criminal case, are bound by the laws governing the procedure for search, arrest, etc. which already encompass the safeguards for ensuring dignity of women.** In other words, the powers of police are already subject to several reasonable restrictions imposed *vide* statutory laws as well as judicial precedents, which also include safeguards for ensuring dignity of all women. No other directions, including faith based directives, are called for in this regard.

130. The **Courts are neither historians nor they can take the role of historians**, however, if by way of a petition and its contents, the history or the religious texts are projected in incorrect perspective, the Courts have to answer the same by referring to the same scriptures or commentaries thereon on case to case basis without interpolating their own personal faith, morality, being judgmental about choices made by other woman, solely resting their findings on the true fidelity of the judge to law and the constitution. **Therefore, there also arose a need to discuss the concept of *pardah* in the religions mentioned by the petitioner in the petition, at the same time, clarifying that religion and *dharma* are different concepts, and thereby dispelling and rejecting the contention that wearing a veil by a woman makes her *pardanashin* and that different**

religions (as per petitioner) prescribed wearing of veil as a mandatory practise.

131. **Why this Court felt the need to delve deep into the concept of religion, *dharma* and religious practices**, in context of laying down any directions and examining as to whether non-issuance of directions will amount to continuing with violation of Article 25 of the Constitution of India *qua* certain segment of women, was due to the fact that such judgments and directions as well as discussions therein are often prone to misinterpretation and misrepresentation, which at times, may do more harm when passed in context of religions scriptures than good, and therefore, a detailed judgment in this case was passed.

132. Needless to say, the judges communicate with the public and the community at large through their judgments, conveying a social message and direction wherever required. Thus, given the critical impact of judgments on large segments of the community, they must be clear and unambiguous, leaving no room for misinterpretation to the detriment or disadvantage of any gender or community member.

Thus, the judgment has to speak and be complete in itself.

BEFORE PARTING WITH THE CASE: SYNERGY

BETWEEN BAR & BENCH

133. In many cases, **the lawyers become the voice of the society at large** which is presented before the Courts through a petition by an advocate and thereafter, given a meaning for the community by the judge, as **judges themselves are products of the society**. In cases where lawyers bring forward social causes and provide the judiciary with an opportunity to intervene, the resulting judgments often transcend individual interests. Instead, they serve as **catalysts** for societal transformation, addressing systemic injustices and fostering greater inclusivity and equality.

134. **These judgments, which are not solely focused on individual grievances but rather on broader societal issues, exemplify the power of the judiciary to effect meaningful change, however at the same time, not forgetting the contribution made by the lawyers working and sitting in the office or appearing in the Court** through leveraging the legal system to advocate for social causes. It has to be mentioned and stressed that lawyers help create opportunities for judicial intervention that can lead to landmark rulings with far-reaching implications.

135. Whenever a petitioner seeks any direction, or relief based on faith/religion, it becomes critical and imperative that the hallmark of justice, which is being unbiased, treating everyone before it fairly, equally, irrespective of their caste, creed, gender, financial or other status or their faith or religion and protecting their fundamental rights, should be reflected in the judgment.
136. In this Court's opinion, **the personal perceptions of a judge or her faith or her opinions in life should never become the ideological backdrop of the judgments, she writes.**
137. **This Court is also of the opinion that it is part of duty and sociological service by a Court of law to the community and country that it does not shy away from the pressing need of adjudicating any issue raised before it, howsoever contentious or sensitive, concerning the justice system without fear of being trolled, criticised, mocked and taken upon it as her obligation in the role of a judge.**
138. The **present case is one example of the above.**
139. Thus, this Court expresses **deep appreciation** for the **learned counsel who appeared on behalf of petitioner** Sh. M. Sufian Siddiqui, for bringing this case before this Court, as well as the **learned Amicus Curiae** Smt. Manisha Agrawal Narain, who through her well-researched and elaborate report, shed light on various issues relevant in the present case.
140. In above terms, the present petition stands disposed of.
141. Copy of this judgment be forwarded to Director (Academics), Delhi Police Academy, for the purpose of training and sensitisation of all concerned.
142. The judgment be uploaded on the website forthwith.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.