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Contravening the College's Dress Code

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The nation India is known for its culture, unity, and diversity. When a group of girls were denied admission to college because they were wearing hijabs, the debate over the hijab ban surfaced. All pupils must wear uniforms, according to a law that the state government has previously enacted. The state government's ruling banning all forms of religious attire was maintained by the Karnataka High Court. Articles 14, 19, and 25 of the Indian Constitution were cited in the petition to the high court. The petitioners maintained that the government lacked the moral power to establish consistent requirements. The respondent argued that no clothing associated with religion should be permitted inside the enclosure. The hijab prohibition did not infringe on any of the rights of Muslim women, and the right to practice one's religion is not unqualified. The hijab controversy has caused educational institutions to close and problems with maintaining public order.

Keywords: *unity and diversity, hijab, uniform, religious attire, infringe.*

WHAT IS A HIJAB?

Some Muslim women cover their hair with a cloth called a *Hijab* (Arabic word for “cover” or “barrier”). By the 21st century, this interpretation of the term has gained more traction in Muslim – majority cultures than the *Hijab's*, a more general commutation of the practice of modest dress followed by Muslim men and women. Many people believe that wearing a *Hijab* and other clothing such as a *niqab* or *burka* is a necessary part of an Islamic tradition. However, the so-

called veiling custom is not one of “Islami’s five tenets”, and the “prophet Muhammad’s traditions” and sayings or *hadith*, as well as *Quran*, the religion’s sacred book, are not quite clear on what is appropriate dress. Muslim scholars generally agree that both men and women should dress modestly, although they disagree on the extent of women’s covering, namely whether it should cover the full body or just the head. Some support the so-called veiling custom, while others assert that *Shariah-Islamic law* - only calls for modest attire. A woman’s decision to wear a Hijab is influenced by how Islamic law is interpreted, her location, and civil.

The wearing of veils predated the birth of Islam in the 7th century by a very long time, and some Christians and Jews are still practising it now. As a result, Islam did not create the traditions of veiling rather, it presumably adopted it as it moved across the Arabian Peninsula, Southeastern Asia, Northern Africa, and Southern Europe over time. As a result, tradition dictates that many women cover up with the Hijab and other types of veils. Hijabs are sometimes mandated by legislation for women, as they are in Iran since the Islamic Revolution (1978-79). In addition, a lady may veil in certain situations. If she is at home, at work running errands, or going to a gathering, she may or may not wear a Hijab.

KARNATAKA HIJAB ROW

A dispute over school uniforms was documented at the start of February 2022 in the Indian State of Karnataka, when some Muslim students of a junior college who wanted to wear the Hijab to classes were denied entry because it violated the college's uniform policy, which was observed by the students of other religions as well¹. In the weeks that followed, as the fight spread to further schools and establishments in the state, groups of Hindu students organized opposition demonstrations by demanding that saffron scarves be worn. On February 5, the Karnataka government issued an order stating that when regulations are in place, the uniform must be

¹ ‘How Karnataka hijab row unfolded, spread’ (*The Times of India*, 9 February 2022)
<<https://timesofindia.indiatimes.com/city/bengaluru/how-karnataka-hijab-row-unfolded-spread/articleshow/89443877.cms?from=mdr>> accessed 15 November 2022

required and that wearing a Hijab is not an exemption. Numerous educational institutions used this directive as justification to bar Muslim girls wearing the Hijab from entering².

BACKGROUND

The educational system in Karnataka consists of ten years of school and two years of pre-university college ("*PU College*"). The Karnataka state government granted accredited educational institutions the right to choose uniform policies for their students by Section 145(1) of the "Karnataka Education Act, 1983³."

According to a PU department official, even though the government did not mandate uniforms for PU institutions, most college development committees finally accepted them. The BBC reports that there have previously been demonstrations against the Hijab in Karnataka's coastal region, but those conflicts were frequently quickly handled. But not all cases were straightforward. Due to her insistence on donning a Hijab, a second-year PU student at Moodbidri was prohibited from attending classes for the entire 2011-2012 academic year.

Additionally, there have been cases where Hindu students have demonstrated against Muslim students wearing Hijab or Burqas in a class by wearing saffron scarves. Muslim women are against that their parents wouldn't let them attend college without wearing their religious attire. Karnataka has been governed by the Hindu nationalist Bhartiya Janata Party since 2019. It has passed "anti-conversion laws" that prohibit conversion from one faith to another by deceit, compulsion, fraud, allurements, or marriage, among other well-known Hindu nationalist policies. Because the law outlaws conversion for the sake of marriage, critics are concerned. It will be challenging for people to become Christians or Muslims, or for interfaith couples to be married.

² 'Karnataka Govt Issues Fresh Order amid Hijab Row, Says Uniform That Affects Harmony Must Be Banned' (*ABP Live*, 5 February 2022) <<https://news.abplive.com/karnataka/karnataka-govt-issues-fresh-order-amid-hijab-row-says-uniform-that-affects-harmony-must-be-banned-1511101>> accessed on 15 November 2022

³ Karnataka Education Act 1983, s 145(1)

UDIPI PROTESTS

An incident revolving around the Hijab was reported at a government-run pre-university college for girls in Udipi at the beginning of January 2022. The institution had previously banned the Hijab as a violation of uniform policy. Six female Muslim students insisted on wearing Hijabs to courses in addition to their college uniform, claiming that doing so was both their constitutionality-protected right and a requirement of their religion⁴. The college said that the Hijab was prohibited by its uniform policy. The girls suggested that the institution allow them to use the dupatta from their current uniform to cover their heads, stating that they did not need to wear a separate Hijab of a different colour or material. However, the college denied it.

K. Raghupati Bhat, a member of the governing BJP and the chairman of the college development committee, set the uniform policy. None of its 21 members was Muslim. Following the conflict, Bhat called a meeting with all parents of enrolled students on January 1 and announce that the college would uphold its uniform rule, which forbids the Hijab. Since the uniforms were not required by the government, the CFI and SDPI claimed that they could not infringe upon the student's right to freedom of religion. Bhat clarified the situation in the letter to the State government's Pre-University Education Department. As a result, the issue was elevated to the state level of government.

SAFFRON PROTESTS

Shortly after the Udipi events gained headlines, Hindu students started wearing saffron scarves to college as a form of protest against Muslim students being permitted to wear hijabs. "If a girl is permitted to wear Hijab then the other students would come with saffron shawls to institutes throughout Dakshina Kannada and Udipi districts," a leader of the Hindu Jagarana Vedika, a wing of the Sangh Parivar, said. A few locations where the Saffron demonstrations gained root in February were the Government PU College in Kundapura, Bhandarkar's Arts and Science College in the same city, and Dr. BB Hedge College adjacent to Udupi. The saffron protesters

⁴ K M Rakesh, 'Hijab-clad students denied entry to classroom in Udupi PU college' (*Telegraph India*, 02 January 2022) <<https://www.telegraphindia.com/india/hijab-clad-students-denied-entry-to-classroom-in-udupi-pu-college/cid/1845798>> accessed 16 November 2022

were successful in blocking Muslim students wearing Hijabs from entering the university at the last site⁵.

APPEALS TO THE HIGH COURT

On January 31, several students from Udupi PU College submitted a writ case to the Karnataka High Court. A fundamental Islamic tradition, the wearing of a headscarf was required to be recognized as a fundamental right under Article 14⁶ and Article 25⁷ of the Indian Constitution. According to the campus front of India, it gave them legal counsel. Additionally, the petition said that it is against “Constitutional Morality” to single out the petitioner only because she wears a headscarf.

Muslim students argued that the Hijab should be protected since it is a religious practice, citing *Bijoe Emmanuel vs the State of Kerala*.⁸ To determine whether a person's right to freedom of conscience is in danger, one need not consider whether the activity is necessary. In its ruling, the court made a distinction between “Freedom of Conscience” and “Religious Expression,” saying that whereas conscience is an internal conviction, religious expression is an outward manifestation of that belief. Given that wearing the Hijab is a means of expressing one's religion, the requirements for Essential Religious Practices must be applied.

IMPACT

Many female students were either turned away or did not show up for the class 10th and 12th board examinations after the High Court decision upholding the Hijab ban in government institutions. 145 of 900 (16%) female Muslim students from government and aided colleges in the Dakshina Kannada and Udupi districts, which were at the centre of the Hijab controversy, took transfer certificates in August 2022, six months after the order banning the Hijab from

⁵ ‘Violent clashes over hijab ban in southern India force schools to close’ (*The Guardian*, 09 February 2022) <<https://www.theguardian.com/world/2022/feb/09/violent-clashes-over-hijab-ban-in-southern-india-force-schools-to-close>> accessed 16 November 2022

⁶ Constitution of India 1950, art. 14

⁷ Constitution of India 1950, art. 25

⁸ *Bijoe Emmanuel v State of Kerala* (1986) SCR (3) 518

government colleges, according to an RTI response. Some of these students enrolled at an institution that permitted the Hijab, while others did not enroll anywhere because they could not afford the tuition. Compared to aided colleges (8%), the percentage of transfer certificates was greater in government colleges (34%). According to research by the civil liberties organisation People's Union for Civil Liberties (PUCL), the decision to outlaw the hijab has made Muslims in Karnataka more fearful and expanded the social gap.

IS THE HIJAB A MANDATORY RELIGIOUS OBSERVANCE IN ISLAM?

The court ruled that wearing a headscarf is not a required religious practice. According to Article 25 of the 1950 Indian Constitution, it was not deserving of protection. The Hijab ban, according to Muslim pupils, violated their Article 25 right to freedom of religion⁹. Muslim students stated that wearing the Hijab is an important aspect of their faith and provided references from the Quran to support their claim. This fundamental religious practice cannot be limited by the government. The court ruled that wearing a Hijab is not a religious ritual. Instead, it is a tradition. The development of the Hijab as a safeguard for women's protection has a relation to the socio-cultural setting in which the Quran was written. It cannot be considered the core tenet of any religion. But in this case, the tradition of donning the Hijab stops there.

DOES THE PROHIBITION OF THE HIJAB IN SCHOOLS VIOLATE PEOPLE'S FREEDOM OF SPEECH AND PRIVACY?

The Hijab Prohibition in Public Schools, according to the court, does not infringe on the constitution's Article 19(1)(a)¹⁰ right to freedom of speech and expression. To support their argument that the Hijab is an "expression" under Article 19(1)(a)¹¹, the Muslim students referenced the *National Legal Services Authority vs the Union of India*¹². The students argued that people who wear the Hijab are protected by the right to privacy. For students to use their privilege, "reasonable accommodations" must be made.

⁹ *Ibid*

¹⁰ Constitution of India 1950, art. 19(1)(a)

¹¹ *Ibid*

¹² *National Legal Services Authority v Union of India* (2014) SC 1863

The Holy Quran: Text, Translation, and commentary by Abdullah Yusuf Ali, which was previously used by the Supreme Court of India in “The Shayara Bano case, was consulted by the High Court as a part of its investigation¹³. According to Ali’s commentary, the Hijab was not a religious practice and was not even fundamental to the Islamic faith; it was recommended by the Quran to address instances of “molestation of innocent women” during the Jahiliya, as a social security measure. Two people were detained for making threatening statements, and judges from Karnataka High Court were given Y-category security.

SUPREME COURT

The petitioners requesting an urgent hearing of the case were denied by the Supreme Court of India. For the girls to participate in the school tests and maintain the progress gained the previous year’s attorneys asked the court to consider their case as soon as possible. N.V.Ramana, the Chief justice of India, denied these requests, saying that the exam had nothing to do with the situation and that it shouldn’t be sensationalized on April 26, Chief Justice Ramana gave the assurance that the Supreme Court would schedule a hearing on the appeals of the High Court’s decision¹⁴. In October, a two-judge panel issued a split judgement: Hemanth Gupta affirmed the Karnataka High Court decision, but Sudhanshu Dhulia believed it had been made in error. The Chief Justice was asked by the judges to refer the case to a large bench.

VIOLENCE

There have been several violent incidents that have occurred alongside the protests. These illegally occurred as a result of the victim’s social media posts opposing the Hijab’s acceptance at campuses. The National Investigation Agency (NIA) is currently looking into the after the police invoked Sections of the Unlawful Activities (Prevention) Act.

¹³ Aditya AK, ‘[Hijab Ban verdict] Why the Karnataka High Court held that wearing hijab is not an essential religious practice of Islam’ (*Bar and Bench*, 15 March 2022)

<<https://www.barandbench.com/news/litigation/hijab-ban-verdict-why-karnataka-high-court-held-that-wearing-hijab-not-essential-religious-practice-islam>> accessed 16 November 2022

¹⁴ “Don’t sensationalise’: Supreme Court nixes urgent hearing of plea against Karnataka HC hijab ban verdict’ (*Indian Express*, 25 March 2022) <<https://indianexpress.com/article/india/supreme-court-karnataka-hc-hijab-ban-urgent-plea-7834033/>> accessed 16 November 2022

Divergent Views:

The Karnataka High Court verdict, which had declared in March that Muslim women are not compelled to wear the Hijab and that the Karnataka Government has the right to impose the uniform requirement, was dismissed by Supreme Court Justice Hemanth Gupta in this order. Justice Sudhanshu Dhulia granted all of the appeals, in contrast to the Senior Judge sitting on the bench. Justice Dhulia said in the main body of his ruling that a Muslim girl's decision to wear a headscarf is her own and cannot be subject to any limitations.

CONCLUSION

The Chief Justice of India has been asked to form the appropriate bench in light of the dissenting opinions. During the lengthy hearing in the case held last month, over two dozen attorneys argued on behalf of girl students, Islamic organizations, rights organizations, lawyers, and activists.¹⁵

¹⁵ Utkarsh Anand, 'Karnataka hijab ban case: Supreme Court delivers split verdict' (*Hindustan Times*, 14 October 2022) <<https://www.hindustantimes.com/india-news/karnataka-hijab-ban-case-supreme-court-delivers-split-verdict-101665640868155.html>> accessed 16 November 2022