

**HIJAB: A CONTROVERSIAL ISSUE**

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This article seeks to investigate the boundaries of the criterion of fundamental religious practice entrenched in the Indian Constitution in context of the ongoing “Hijab Ban” dispute raging across the country. Every issue has a backstory and similarly “Hijab Ban” is no exception. The debate in India began whenever a local community college management in the Karnataka region of Udupi refused admittance to Muslim girls who wears hijab. The girls, who were dissatisfied with the university management’s decision to refuse them admission on the simple reason of wearing a hijab, petitioned the Hon’ble Karnataka High Court for relief from the purported violation of Articles 14, 19, and 25 of the Indian Constitution. The girls’ appeal to the tribunal stated that wearing a hijab is a fundamental religious practice and also that the “Hijab Ban” violates their rights to liberty of conscience as well as their right to practice and promote religion. The Honorable Karnataka High Court has initially denied the equitable remedy by issuing a decision in the issue<sup>1</sup> on 10th February, 2022. This article defines hijab in Islamic faith as well as the fundamental standard for necessary religious practice.

### INTRODUCTION

The Hijab issue began in Karnataka on December 31, 2021, when six female children studying at a state pre-university institution in Udupi were prohibited from visiting their lectures in Hijab.<sup>2</sup> Following this, the pupils submitted a writ petition with the Honorable High court of Karnataka, in addition to a complaint with the National Commission on Human Rights.<sup>3</sup> They argued to the Honorable Tribunal that refusing to wear the hijab violated articles 14 and 25 of the Indian Constitution, which protect a person’s fundamental human rights.<sup>4</sup>

In this sense, Karnataka’s Ministry of Home Affairs, issued a press release stating that religious doctrine must be kept far away from educational establishments since students who study must not dress up with saffron shawls or hijab, and also that pupils must not attend school to comply their religious customs since an academic establishment is a monastery of understanding and students

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<sup>1</sup> Smt. Resham & Anr. v. State of Karnataka & Ors., WP NO. 2347/2022 (Karnataka HC), order dated 10-02-2022.

<sup>2</sup> The Hindu, available at: <https://www.thehindu.com/news/national/karnataka/watch-karnatakas-hijab-controversy-explained/article38397744.ece>

<sup>3</sup> Ibid

<sup>4</sup> Ibid

must come here to obtain a learning.<sup>5</sup> Karnataka's Ministry of home affairs also stated that now the academic establishment is a location in which all pupils should remain together again and pursue their studies.

## CONCEPT

Muslim women wear the hijab, which is a sign of humility and solitude in Religion. The modern English dictionaries limited the definition of "Hijab" to the protection of the neck and head by Muslim women, while the Islamic texts provide such a broader definition. Almost each major Islamic institution regarded "hijab" even as full protection of just about everything save the hands and face.<sup>6</sup> The Quran addresses each aspect of one's existence and provides guidance to all Muslims. The idea of head covering is also extensively mentioned in the Quran.

1. As per Quran: "And inform the believing women to decrease their glances and also be moderate, and also to showcase only what is visible of their accessory, and also to attract their hijabs placed above their bosoms, and to refrain from expose their accessory except to their personal fathers or husbands or hubby& fathers, or one's sons or hubby& sons, or their cousins or sons& brothers or sisters' sons, or their women, or their slaves, or male helpers who have little or no vitality, or young kids who understand nothing of they should also not stamp their legs in order to show what they conceal in their adorning. And trust to Allah jointly, O believers, for success."<sup>7</sup>
2. Following that, the Holy Quran instructed: "Tell your wife, daughter, as well as the ladies of the faithful to drop a part of their jilbabs upon themselves, Prophet. That way, they would be recognized and won't be injured. And Allah is Tolerant and understanding and Compassionate."<sup>8</sup>

The Quran correctly provided a dress standard for Muslim women in order to maintain decency as well as confidentiality. As a result, it is apparent that the notion of hijab is acknowledged in the Holy Quran as that of the uniform policy for Muslim women, however the term "hijab" is never utilized in the Quran. This leads to a schism in attitudes about hijab amongst Islamic religious

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<sup>5</sup> India Today, available at: <https://www.indiatoday.in/india/story/karnataka-home-minister-speaks-out-on-hijab-row-says-common-uniform-helps-unite--students-as-indians-1908639-2022-02-11>

<sup>6</sup> Glasse, Cyril, The New Encyclopedia of Islam, Altamira Press, 2001, p.179-180.

<sup>7</sup> Khattab, Dr. Mustafa, The Clear Quran, Book of Signs Foundation, USA (2016)

<sup>8</sup> Ibid

experts. In his work entitled “Protections under the law of Women as well as Muslim Societies,”<sup>6</sup> Dr. Asghar Ali Engineer, a well-known Indian scholar and cultural activist, stated that “the Quran doesn’t really dictate the headscarf for women.” In truth, the term hijab doesn’t really appear in the Quran for wearing a veil a Muslim lady’s face. The Prophet did not enjoy it, thus it was disclosed that men must depart after supper and that when they spoke with the Prophet’s wife, they ought to do so by hiding behind the veil, hijab. When taken in perspective, it is evident that now the allusion was solely to a drape and not a face covering. The words hijab or burqa do not appear in the Quran in any way for Muslim women.” The practice of wearing hijab is advised instead of required, and practices can be changed as time passes.

The constitutional protection under Article 25(1) not just to preserves the liberty of religious expression, but also allows a person to practice his or her beliefs according to his or her religious values as well as allows specific acts in the name of their faith. Article 25(1) refers to religious practices as practices that are an intrinsic component of the faith.<sup>9</sup> The criterion for determining whether a religious practice is an important element of faith or not varies depending on the religion<sup>10</sup>. The Court had to determine on an important quality of faith or a religious practice using the theology of a certain faith<sup>11</sup>.

The judge ruled that the ‘fundamental practices’ criterion was developed “What comprises the important element of a faith is best determined by looking at the tenets of that faith.<sup>12</sup> The fundamental practice test explicitly indicates that acts important to the religion are immune from governmental intrusion; but, in order to discover if a given conduct represents an essential religious duty or not, emphasis must be placed on that faith’s teachings and sacred scriptures “. <sup>13</sup>

Theology is more than just a set of moral norms that its adherents must obey; it also contains rites as well as precepts, rituals, and styles of devotion that are considered vital to the faith. The method for determining if a practice is vital is to see if the essence of the faith or religion varies without such a practice; if a basic aspect of that faith alters without such a practise, the practise is an

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<sup>9</sup> John Vallamattom v. Union of India, MANU/SC/0480/2003.

<sup>10</sup> Tilkayat Shri Govindlal Ji v. State of Rajasthan, MANU/SC/0028/1963.

<sup>11</sup> Seshammal v. State of Tamilnadu, MANU/SC/0631/1972.

<sup>12</sup> MANU/SC/0136/1954.

<sup>13</sup> Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, MANU/SC/0072/1962.

essential and integral component of the faith<sup>14</sup>. For example, amongst Hindus, the fundamental religious practices include presenting meals to the idol, performing monthly rituals, reading sacred books, and giving divisions to the holy fire.

Religious activities represent religious things, and then if faith should be revered, therefore the practises that accompany it must also be respected and followed<sup>16</sup>. The security afforded by Arts 25 and 26 applies to religious rites and observances, rituals, and forms of devotion, as well as what comprises an important practise must be established in accordance with the philosophy of the religious doctrine. Thus, religious acts that are an intrinsic component of religion are guaranteed by Article 25 of the Indian Constitution.

### **THE DILEMMA OF “HIJAB” AS AN IMPORTANT RELIGIOUS BELIEF IN ISLAM**

As mentioned in the initial part of this post about the idea of hijab, the name hijab doesn't really appear anywhere within the Holy Quran. With the evolution of Islamic jurisprudence as well as the emergence of hadiths, the customs of wearing hijab have developed and also been accepted. These views on the hijab offer ascent to the contradiction of “the hijab” becoming regarded as one of Islam's basic religious practices. In the particular instance of *A.S Narayana Deeshitulu v. State of A.P.*<sup>18</sup>, the Supreme Court stated succinctly, “Vital or comprehensive portion of faith to be conclusively proven first from ideology of that faith itself based on its precepts, cultural context, and start changing in developed procedure, but only essential or important component of faith is shielded.” According to multiple Apex Court rulings dating back to 1954, it is now apparent that behaviors that constitute an essential element of faith are protected under the constitutional framework.

The Quranic rules on women's fashion regulation merely recommend averting the look rather than obscuring the facial beneath the headscarf. Even though the Quran contains no limitations on women, hadiths were utilized to impose strict regulations on women<sup>19</sup>. The hijab was worn by women in olden history to separate oneself from slave girls; but, in modern times, these rituals have lost their sacredness. The hadiths expressed beliefs that contradicted the main precepts of the Holy Quran. This clash of ideas reduces the relevance of current practises. As a result, it may be

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<sup>14</sup> Commissioner of Police & Ors v. Acharya Jagdishwarananda, MANU/SC/0218/2004.

inferred that the practise of wearing a hijab is now obsolete with the time that has passed and no longer form an intrinsic component of Islamic culture.

As stated in this paragraph and supported by the aforementioned reasons, the practise of wearing a hijab isn't an essential part of the Islamic faith, and other such practises are not regarded essential religious practises, and therefore cannot be assured safeguards under Article 25(1) of the Indian Constitution.

This Hijab dispute has been raging in Karnataka for further than a week, with rebellions and counter-demonstrations by Hindu and Muslim pupils. It is now a significant source of contention from across country. This sort of event, that runs against by the essence of the Indian Constitution, is regarded to be related to the discord among different religious practises in this day and age. In this regard, I want to suggest that we should be guided by legislation rather than by feelings or emotion. Have confidence in the Supreme Court and follow its decision on the matter. Then real justice would've been served, brotherhood would've been restored to our community, and the country would move toward harmony and growth.

## CONCLUSION

India is a nation with diverse traditions, and so all traditions must be honored. Individuals have the individual freedom to choose their own dress standards based on their preferred way of expressing themselves. Nevertheless, the hijab ban dispute in India culminated in the closure of academic schools in the state of Karnataka, resulting in further protest among student groups. The hijab ban dispute also disrupted civil order in the region. In *Masud Alam v. Commissioner of Police*<sup>15</sup>, the Apex Court correctly stated that "India is a secular country, and under Article 25 of the Indian Constitution, all citizens are allowed to practice their beliefs." Only religious faith as well as faith are protected by the government. If religious practices are incompatible with civil safety, morals, or welfare, they must make room to the good of the individuals of the Government as a whole. In India, each individual has the freedom to choose his or her own dress standards, however academic institutions in which the dress code is regulated by the state may become a source of contention if pupils are permitted to wear religious clothing. Outside of academic institutions, though, students are allowed to wear anything they like. The concerns of the constitutionally

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<sup>15</sup> MANU/WB/0002/1956.

protected right to openly practise and spread faith granted by Article 25 of the Indian Constitution should be assessed on a case-by-case basis, taking into account the necessity of such religious practises in accordance with the precepts of that specific religion. In the current hijab ban dispute, the wear of a hijab isn't an important element of Islamic religion, and thus such practise is not protected under Article 25(1).

