



# The Indian Journal for Research in Law and Management

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## HIJAB BAN V FREEDOM TO PRACTICE AND PROFESS RELIGION:-

### INTRODUCTION :-

The contentious issue of Muslim girls wearing “hijab” in educational institutions in Karnataka sparked a nationwide debate.<sup>1</sup> Many muslim women wear the hijab. It is a scarf or shawl. It covers a woman’s hair, neck, and shoulders. For many Muslim women, the hijab is very special. It embodies modesty, privacy, and morality. All Muslim women do not wear hijab. However, in some places, such as Iran and Indonesia's Aceh Province, the hijab is required by law. Nevertheless, in most places, it is a matter of custom, and women can choose whether or not to wear a hijab. Most Muslim women decide whether or not to wear a hijab during their teenage years.<sup>2</sup> Women in Kolkata took part in a candlelight march during a protest rally on February 11, 2022.

In response to the ongoing Hijab row in Karnataka, the US Office of International Religious Freedom (IRF) said on Friday that the hijab ban “violates religious freedom and stigmatises and marginalises women and girls.”<sup>3</sup>

### LEGAL LANDSCAPE:- THE HIJAB BAN:-

The recent uproar on wearing the hijab in Karnataka’s educational institutions has reignited the debate around gender equality and freedom of religion. These are not just constitutionally guaranteed fundamental rights, but are also recognised human rights. Hence, the hijab ban also

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<sup>1</sup> Explained: What was Hijab ban row? Is it a major issue in Karnataka elections? (2023, April 30). Times of India. <https://m.timesofindia.com/elections/assembly-elections/karnataka/news/explained-what-was-hijab-ban-row-is-it-a-major-issue-in-karnataka-elections/articleshow/99886128.cms>

<sup>2</sup> *Why Do Some Women Wear a Hijab?* Where the Wonders of Learning Never Cease | Wonderopolis. <https://wonderopolis.org/wonder/why-do-some-women-wear-a-hijab>

<sup>3</sup> Hijab ban violates religious freedom: U.S. on Karnataka hijab issue. (2022, February 12). The Hindu. <https://www.thehindu.com/news/national/karnataka/hijab-ban-violates-religious-freedom-us-on-karnataka-hijab-issue/article38416850.ece>

needs to be seen from an international human rights law perspective.<sup>4</sup> Their right to express their faith, identity and access to other human rights are hindered by legal restrictions and social hostility towards the headscarf. These prohibitions, which limit women's freedom to make their own decisions, must be regarded as oppressive policies. The right to wear the headscarf falls under the category of 19(1)(A) and not Article 25, as said by Karnataka Advocate General Prabhuling Navadgi.<sup>5</sup> Secularism consolidates the complete separation of the state from the Church in the Western model. It is a result of the French Revolution, which sought to establish secular government that was not influenced by church or religion.<sup>6</sup> It was accepted with grace by some women, while others objected to it and felt powerless about it.

Six International Human Rights Organisations today called on the Government of India to take immediate action in response to recommendations from UN member states at a Universal Periodic Review held by the United Nations High Level Committee on Human Rights on November 10, 2022. A range of key concerns have been covered including the protection of minority communities and vulnerable groups, tackling gender-based violence, upholding civil society freedoms and protecting human rights defenders.<sup>7</sup>

The Karnataka government's intolerance towards minorities may have been brought to light by the ban on the hijab in schools, but there appears to be a long-standing prejudice against head scarves. Muslim women who cover their heads with headscarves say they are accustomed to looks of disapproval and comments about how ignorant and backward they are.<sup>8</sup>

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<sup>4</sup> What Does International Human Rights Law Say About the Hijab Ban? (2022, February 22). The Wire. <https://www.google.com/amp/s/m.thewire.in/article/rights/hijab-ban-karnataka-international-human-rights-law/amp>

<sup>5</sup> Right to Wear Hijab Doesn't Fall Under Article 25 of Constitution: Karnataka Govt to HC. The Wire. <https://www.google.com/amp/s/m.thewire.in/article/law/right-to-wear-hijab-doesnt-fall-under-article-25-of-constitution-karnataka-govt-to-hc/amp>

<sup>6</sup> Right to Freedom of Religion [Articles 25 – 28]: Indian Polity Notes for UPSC. (2019, November 28). BYJUS. <https://byjus.com/free-ias-prep/right-to-freedom-of-religion-articles-25-28/>

<sup>7</sup> *India: Serious Concerns Raised at UN Rights Review.* Human Rights Watch. <https://www.hrw.org/news/2022/11/18/india-serious-concerns-raised-un-rights-review>

<sup>8</sup> 'People Think No Woman Could Wear a Hijab Out of Choice': Stories of Everyday Discrimination. The Wire. <https://www.google.com/amp/s/m.thewire.in/article/communalism/people-think-no-woman-could-wear-a-hijab-out-of-choice-stories-of-everyday-discrimination/amp>

## **HUMAN RIGHTS IMPLICATIONS:-**

The court case in India is being keenly watched globally as it comes at a time when protests over the hijab have also been sweeping Iran - although women there are fighting for their right to not wear headscarves.<sup>9</sup>In India, the row over hijabs polarises teaching. The hijab has long been a contentious topic of discussion. The wearing of a hijab in public has also generated controversy in other nations. Particularly in France, due to strict secularism that aims to keep religion out of public life. In 2004, it made wearing large religious symbols—like the hijab—in faculties illegal. Other nations, such as Egypt and Belgium, have outlawed the wearing of the niqab and hijab.<sup>10</sup>Many Muslim female students have chosen to forego taking the exams or are looking for other ways to further their education after the Karnataka High Court upheld the educational institutions' ban on headscarves on campus on March 15.<sup>11</sup>

India is a religiously diverse democracy where freedom of religion is guaranteed by the constitution, but there are various ways in which religion is regulated: religious personal laws are enforced, religious minorities' educational institutions are regulated, conversions are tracked, political campaigns are not allowed to make excessive religious appeals, and acts that offend religious beliefs are prohibited.<sup>12</sup>

## **CONCLUSION:-**

Article 25 of the Constitution guarantees the right to freedom of religion, and wearing a hijab is one of their fundamental rights. Article 19 of the Constitution protects the right to freedom of speech and expression. Dr. Ambedkar, vehemently denounced the exploitation of religion as a cover for exploitation, did not downplay its impact on Indian society. Conversely, he emphasised the significance of religious liberty., who vehemently denounced the exploitation of religion as a

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<sup>9</sup> BBC News. (2022, October 13). Hijab verdict: India Supreme Court split on headscarf ban in classrooms. <https://www.google.com/amp/s/www.bbc.com/news/world-asia-india-63225351.amp>

<sup>10</sup> Prakash, B. *Right To Expression v/s Right To Hijab*. Legal Service India - Law, Lawyers and Legal Resources. [https://www.legalserviceindia.com/legal/article-7987-right-to-expression-v-s-right-to-hijab.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-7987-right-to-expression-v-s-right-to-hijab.html#google_vignette)

<sup>11</sup> Agency, A. (2022, June 24). Hijab ban ends many Muslim girls' education dreams in India. Daily Sabah. <https://www.google.com/amp/s/www.dailysabah.com/world/islamophobia/hijab-ban-ends-many-muslim-girls-education-dreams-in-india/amp>

<sup>12</sup> Teater, K. M., & Jenkins, L. D. (26, April 23). Religious Regulation in India. Oxford Research Encyclopedia of Politics. <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-845>

cover for exploitation, did not downplay its impact on Indian society. He emphasised the significance of religious liberty.