

The veil as a symbol of Revolution: Hijab, Feminism, and Authoritarianism in India

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Abstract

Although India is a secular country, on February 5, 2022, the Karnataka state government issued a circular barring the wearing of a Hijab in a college. Several females contested the ruling at the Karnataka High Court. On March 15, 2022, a three-judge panel declared that wearing a headscarf is not an essential Islamic practice. The court stressed 'uniformity in uniforms' over the girls' access to education, while punishing females for their clothing choices. The petitioners appealed the verdict to the Supreme Court. The case is still open. During the same period, women in Afghanistan maintained their protest against the Taliban government, which is coercively compelling them to cover up. This study analyses the socio-legal discourse around the veil to suggest that, first and foremost, the problem is the forced imposition of legislation while intertwining it with religion to deny females their basic rights. To summarise, the legislation forces a citizen to choose between her faith and her rights. Second, when authoritarianism rises, a new sort of feminism emerges, with Muslim girls in India and women in Afghanistan defying authorities and resisting attempts to establish their identity and choices. The veil arose as a symbol of revolution throughout this phase. Through the lens of intersectionality, this work positions girls and women at the centre of resistance to indicate that females in the Global South do not require paternalist interventions to be saved,' but rather that their voice and agency be recognized.

Keywords: *Hijab ban, law, coercive veiling, India, Afghanistan, feminism, Karnataka High Court, uniforms, right to education, Modesty, discrimination, resistance.*

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Introduction

The current Islamic debate is so controversial that smaller issues easily become encumbered with vast ideological and symbolic significance. Non-Muslim political actors can easily misunderstand the importance of an issue and end up patronizing a position that they think “does not matter,” without sufficiently realizing its actual ramifications.

Muslim women wear Hijab as a symbol of decency and privacy. Wearing a hijab can also be considered a means of visibly expressing the Muslim identity. It is an Arabic word meaning

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“covering”. Muslim women, who are covering their heads and neck with a piece of cloth which is called hijab. Hijab is referred to by various names, the most common of which is a veil or a headscarf.

India is a very diverse country, making it frequently difficult to determine whether a problem is the result of diversity or the result of a conflict between two or more groups of people who are sincerely trying to upset the peace in the country. Changing our attention to women, it is frequently observed that when it comes to women's rights, things frequently become chaotic, and this is even more true for Muslim women. Things have been challenging, even from the Shayara Bano case to ending the cruel triple talaq. This controversy involves the hijab. In India, the "Purdah system" has been around for a very long time, but is it appropriate to cover women's rights in addition to their faces? Is it acceptable that head and face covering must take precedence over knowledge and awareness? And is it acceptable for men to have to inform women of their behaviour rather than letting them make their own decisions? Everything was called into question in the hijab controversy, from the Right to Education to humanity and justice.

Literature Review

The validity of a Karnataka High Court decision upholding the ban on students in Karnataka wearing the hijab is currently being debated by a two-judge bench of the Supreme Court of India. Counsel for the petitioners has discussed a wide range of topics over the last few days, from the disparate effects of the ban on Muslim women's right to education to the rights of students to freedom of expression, conscience, and religion.

The problems raised by these submissions should, in theory, be easily resolvable by applying standard constitutional law doctrines. However, as the transcripts of the hearings have demonstrated, any discussion of religious freedom in India inevitably becomes mired in the doctrine of essential practice, which was developed by the court. This calls for judges to engage in not only legal analysis but also theological study, which is something that a legal education hardly prepares one to do.

All about Hijab:

The word "hijab" comes from an Arabic word that means "partition," and the woman who dons one is known as a "muhaajaba". Muslim women and men are instructed by the Quran to dress modestly, and for some, the hijab is worn by Muslim girls and women to maintain decency and seclusion from unrelated males³.

Al-Quran says about hijab:

In Islam, Allah, also known as God, is the source of authority and all of the creation abides by his laws. The Islamic arrangement of life is called Shariah⁴. There are two primary sources of

³ Zwick, Detlev, and Cristian Chelariu Mobilizing the Hijab: Islamic identity, Journal of Consumer Behaviour 380-395 (2006).

⁴ Rehman, Ateeq-ur and Muhammad Shahbaz Shabbir, The relationship between religiosity and new product adoption. Journal of Islamic Marketing 63-69 (2010).

normative ethics in Shariah the Quran is the first and most significant source. Muslims accept the Quran as the direct word of Allah, revealed to the Prophet Muhammad (P). The second primary source is called Sunnah or Hadith, which denotes the actions, words, and approvals of the Prophet Muhammad. Both primary sources provide general guidelines and principles for living an Islamic life.⁵ The Qur'anic verses that are traditionally cited to describe the dress code of women are as follows:

“And advise the believing women to keep their modesty in check and to keep their gaze down; a that they should not flaunt their ornaments and beauty beyond what is apparent; that they should draw their veils over their bosoms and not display their beauty... And that they should not strike their feet to draw attention to their hidden ornaments⁶. b. O Prophet! Tell thy wives and daughters, and the believing women, that they should cast their outer garments over their persons (when abroad): this is most convenient, that they should be known (as such) and not molested. And God is oft forgiving, most merciful⁷”.

According to the Encyclopaedia of Islam and the Muslim World, However, there is nothing mentioned in Quran as such that not wearing a hijab is an offense and against Islamic practices.

Different people have varying opinions on wearing the hijab when we discuss its significance, which is necessary because it is the main topic of the discussion. Some claim it's to demonstrate the woman's chastity and purity, while others assert that wearing a hijab is Allah's command. It's even claimed that the hijab promotes spiritual and physical modesty. A woman demonstrates her belief in Allah and acceptance of all of his commands by covering her head in accordance with Allah's directive. It makes the bond stronger between that woman and the All-Powerful.

The Tyrannical Regime and The Stereotyping of Muslim Girls

In the aforementioned case, the Karnataka high court maintained the concept of uniformity in uniforms. In the process, the court ignored the difficulties of millions of girls who must battle for their right to school daily inside patriarchal homes and communities. Women are currently facing hooliganism by the right-wing mob and fundamentalists who are morally policing them by imposing the decision and also thought policing the society by insisting on a specific manner a woman must dress. Their fight is against intolerance and hatred, and it is breaking the hegemonic dominance. These battles necessitate dignity and well-being.

Gayatri Chakraborty Spivak (1988) observed that Third World women were silenced between the binaries of the colonizer's version of "white men saving brown women from brown men" as opposed to the nativist argument that women 'wanted to die in the context of Sati law-making by Britishers during the colonial era. She had no other choice than to inquire, 'Can the Subaltern Speak?' In contrast to local practices, the post-colonial Hindutva-ruled nation is confronted

⁵ Beekun, Rafik I and Jamal A. Badawi, Balancing ethical responsibility among multiple organizational stakeholders: The Islamic perspective, Journal of business ethics, 2 131-145(2005).

⁶ Al-Quran 24: 30-31.

⁷ Al-Quran 33: 58-59.

with a similar quandary in which the majoritarian state is coercively imposing the Hijab ban using the tools of patriarchy and communalism while animating the fantasy of saving Muslim women from Muslim men and their oppressive culture.' The veil is used to demonstrate that Muslim behaviours are primitive, backward, regressive, and authoritarian while asserting the superiority of Hindu upper-caste norms. The state chooses to infantilize and control women by employing this story. But this time, the girls refuse to choose between faith and rights and instead demand both⁸.

This post-colonial state's pretense to be a champion of Muslim women is not new. To overrule the Supreme Court's verdict in Shah Bano's case, the then-Congress government established the Muslim Women Protection of Rights on Divorce Act in 1986. Following a divorce, Muslim women are entitled to maintenance from their husbands, according to the law. This decision was endorsed by then-BJP leaders who positioned themselves as defenders of women's rights, despite Muslim women's fury. On the day the Act was passed, activist Shahjahan Aapa asked, *"If by making separate laws for Muslim women, you are trying to say that we are not citizens of this country, why don't you tell us clearly and unequivocally that we should establish another country—not Hindustan or Pakistan, but Auristatin (women's land)?"* The BJP administration, using the saviour narrative, made "triple talaq" a crime in 2019.

In various decisions, the courts have used the idea of layered heterogeneity to interpret a woman as a holder of rights rather than a neutral citizen. Aside from judgments in Shahbano's case and Danial Latifi v Union of India, the court recently showed in Shyara Bano v Union of India (2017) how religious filters function in courtrooms to deny justice to women. The vague claims of individuals burdened in various ways are not examined about their separate causes of discrimination. Rather, legislation is used to establish hierarchies while delegitimizing individuals on the edges⁹.

Furthermore, the governing dictatorship has imprisoned numerous Muslim women for opposing the Citizenship Amendment Law. Furthermore, since the BJP came to power, educated Muslim women have been targeted, vilified, and objectified through platforms such as GitHub (creating apps such as Sulli Deals and Bulli Bai), the homes of those who raise their voices have been bulldozed, Muslim men have been lynched, and their businesses have been crushed. As a result, the objective is not to protect, but to condemn a society to better represent Hindutva norms while ignoring the reality that upper-caste Hindu males also oppress Hindu women. Data on crime against women reveal that, despite laws banning it, the occurrences of sexual assault, domestic violence, incest, female feticide, infanticide, and dowry fatalities have been growing throughout the years.

Article 21A of the Constitution also guaranteed the right to free and compulsory education. The BJP administration implemented programs such as 'Beti Bachao, Beti Padhao' (save and educate girls). When the girls claimed the freedom to study while wearing a headscarf, the authoritarian state apparatus dashed their hopes by forcing them to choose between their right to practice their faith and their right to an education. The state forced females to adhere to

⁸ GLASSE, The new Encyclopedia of Islam, 179-180 (Altamira Press 2001).

⁹ Ibid.

patriarchal standards, ignoring its constitutional obligation to offer adequate education. The ASER Report demonstrates that in the post-Covid period, the proportion of children aged 6 to 14 who are not enrolled in school increased from 2.5 to 4.6 percent between 2018 and 2020. When schools and colleges are closed for months as a result of the lockdown and education is disrupted, the aim is to improve access to inexpensive education. However, the discussion has been skewed to exclude Muslims. What is often forgotten is the blatant disregard for females' education in the broader context of the contentious demand to prohibit Hijab, Halal, and Amazon, which has opened a bag of worms. It is harmful to mix religion with politics, legislation, and women's attire. Against the grain of the constitution, the state is forcing its ideology on what people should eat, how they should dress, whom they should marry, and so on. This calls into doubt a state's function as an impartial arbitrator.

Case and the issue pertaining: Decoding arguments in Hijab Case:

The court ruled that the hijab cannot receive constitutional protection because it is not a fundamental Islamic practice. In the case of *'AISHAT SHIFA versus THE STATE OF KARNATAKA & ORS'*¹⁰, IN THE SUPREME COURT OF INDIA HEMANT GUPTA; J., SUDHANSHU DHULIA; J. had a decision with 1:1

According to Article 25 of the Constitution, every person has the "right to freely profess, practice, and propagate their religion". But over time, the courts have ruled that only those aspects of religion that are fundamental to it are protected by the Constitution.

The Karnataka High Court posed the following four questions in light of the evidence and arguments:

1. Is wearing a hijab an essential religious practice under Islam and hence protected under Article 25 of the Constitution?
2. Is prescribing a school uniform legally permissible given the freedom of expression and the right to privacy guaranteed by the Constitution?
3. Is the government order from February 5 illegal?
4. Should disciplinary action be taken against the principal and teachers who asked students to take off their hijabs?

According to the Karnataka High Court, essential practices are those that are "fundamental to the religion" and exist "from time immemorial." These are practices that either precede the religion or are founded at the origin of the religion. These practices are mandatory and "form the cornerstone of the religion." If these practices are not followed, it would lead to "the change of the religion itself." Further, it stated that these procedures also needed to respect both constitutional morality and individual dignity.

¹⁰ CIVIL APPEAL NO. 7095 OF 2022

According to the court, a religion's core beliefs are primarily derived from its own doctrines. The state government refuted the petitioners' claim that donning a hijab is necessary to practice their faith within this framework. Both presented their interpretations of the central religious text of Islam, the Quran, as well as the Hadiths, or sayings of the Prophet Mohammad, in court to support their arguments. Additionally, the state government claimed that donning the hijab oppressed women and thus violated both constitutional morality and the notion of personal dignity. The hijab should be permitted, the petitioners argued, because these concepts also entail respecting personal preferences. And the High Court first affirms that secularism is part of the basic structure of the Constitution and that India follows a model of positive secularism. It observes that the wording of Article 25 suggests that the freedom it guarantees is treated with less reverence than other Fundamental Rights granted in Part III of the Constitution.

It then refers to the Supreme Court's test for a religion's essential practices, which was established in its 2018 Sabarimala judgment:

The following indicators must be present for a religious act to qualify as an "essential religious act": (i) Not all religious practices are necessary to practice the religion. Religion should have always placed a strong emphasis on practice. (ii) The practice's foundation must come before the religion or should co-exist with it at its inception. (iii) Such behaviour ought to be the basis of religion itself. If that custom is not observed or followed, the religion itself would change, so (iv) such custom must be compelling and binding in the context of the religion.

To gauge whether the putting on of hijab qualifies as an essential religious practice in Islam, the high court relies upon the 'The Holy Quran: Text, Translation and Commentary' by Indian-British barrister and legal scholar Abdullah Yusuf Ali, due to "there being a broad unanimity at the Bar as to its authenticity and reliability," and the Supreme Court's reliance on it in a series of cases as an authoritative work.

The court starts by pointing out that the Quran expressly forbids any form of religious coercion in its warnings. By perusing various extracts from Ali's commentary, it concludes that wearing a hijab has been only recommendatory within Islam. This is because the Quran does not mandate the wearing of hijab or headgear for Muslim women, and their penalty or penance is prescribed for not wearing hijab. The court acknowledges that wearing a hijab has nothing to do with religion and may, at most, be cultural. It notes that the practice of wearing a hijab was connected to the socio-cultural conditions then prevalent in the region where a particular source of Islamic law was written, about the petitioners' reliance on another Islamic law commentary that refers to a hadith in support of their argument, the court rules that "what is made recommendatory by the A hadith that is regarded as an addition to the scripture cannot transform the Holy Quran into mandatory dicta."

The Way Forward: Fundamental Right and Religious Extremism

The "essential religious practice" test has been employed by courts over the years to identify which religious practices are protected by the Constitution and which can be regulated by the state. The headscarf is not an "essential religious practice" in Islam, the Karnataka High Court

ruled in its ruling upholding restrictions on Muslim women wearing hijabs in educational institutions.

This was the first question addressed by the court, and its response served as the foundation for the rest of the decision. The court dismissed the petitions challenging an order on school uniforms issued by the Government Pre-University (PU) College for Girls in Udupi that prohibited the hijab, as well as the restriction, was supported by an order issued by the Karnataka government on February 5. The bench of Chief Justice Ritz Raj Awasthi, Justices Krishna S. Dixit, and J.M. Khazi declared that the hijab restriction was "reasonable" and constitutionally permissible and that students could not object after concluding that wearing the hijab is not an essential religious practice.

But what does "essential religious practice" actually entail, and how did Indian courts come to adopt this standard? The legal system, however, put an end to sentiments and works according to the law of equity, justice, and a good conscience, and of course, the laid down provisions and statutes to meet the ends of justice¹¹. In this nation having a huge population along with wide diversity in religion and culture, it is inevitable that some decisions might be liked by a certain sect and disliked by the other at the same time. The entire hijab controversy was a tug-of-war between opposing emotions.

For some people, hijab is just a piece of cloth that put an end to uniformity and brings inequality; for others, it is their identity and what distinguishes them from others that they feel to be important. In light of this, the court came to the conclusion that "Muslim women's wearing of the hijab does not constitute an essential religious practice in the Islamic faith." The future of the test is unknown. But the test has received harsh criticism on numerous occasions. Critics have repeatedly pointed out that it forces judges to become "ecclesiastical authorities (often for religions other than their own)."

Conclusion

While the majority sees the Hijab debate as a war for religious freedom, a closer examination reveals it to be a fight for education. In reality, in India, wearing religious symbols such as Hijab or saffron shawls in public places is not unusual. When variety creates divisions, then divisions become faultlines, and the country's integrity is jeopardized. As a result, the Indian judiciary must tackle these major constitutional quandaries before their polarising consequences spread to the poll-bound states. Different interpretations of the law and its execution are at the root of the division within the bench. However, a closer examination reveals that the distinction is much more fundamental: it is a worldview distinction.

One of these worlds is ruled by rigid rules that demand compliance and punishment for defying them, by authorities that tolerate neither rebellion nor defiance, by uniformity, the rejection of difference, and by the "unanimity of the graveyard," as well as by one tune and one song, and it is a world where students are treated similarly to undifferentiable objects.

¹¹ 29 Ruby, Tabassum F, Listening to the voices of hijab, In Women's Studies International Forum, Pergamon 54-66 (2006).

The alternative world values diversity and the expression of diversity over homogeneity; believes that rules should allow for space to breathe rather than suffocate; and appreciates the beauty of an orchestra with many voices rather than just one. It also sees the classroom as a place of liberation rather than control and views students as autonomous, thinking beings who are capable of making choices, even difficult ones that must be negotiated.

Which world would we rather live in? Each of us must determine the answer to that question for ourselves. Which universe do we inhabit? All eyes will now be on the Chief Justice for the next - and possibly final - round in the history of this case as the answer to that question hangs in the balance.

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