

---

**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

---

**SECULARISM UNDER STRAIN: EXAMINING THE HIJAB BAN  
ISSUE THROUGH THE LENS OF RELIGIOUS FREEDOM AND STATE  
AUTHORITY**- Archana Prakash<sup>1</sup>**ABSTRACT**

As clearly envisioned in the Preamble to the Constitution of India, the character of India as a secular state manifests an ideology and commitment to upholding the principle of secularism while ensuring religious freedom for all its citizens. The Indian concept of secularism has evolved over time which promotes the idea of “Unity in Diversity in the spirit of the rich and varied religious and cultural environment of the country. Nevertheless, confusions surrounding India's secular structure is arising and intensifying amid new challenges in the 21st century. The contentious Hijab Ban issue and the decisions delivered by the Karnataka High Court and the Supreme Court of India in *Resham and Anr. v. State of Karnataka*<sup>2</sup> and *Aishat Shifa v. State of Karnataka and Ors.*<sup>3</sup> respectively, highlight the tension between individual religious freedom and the state's power to impose restrictions. A similar issue in Mumbai, addressed by the High Court of Bombay and the Supreme Court's intervention in the special leave petition, has further raised this debate.<sup>4</sup> This paper examines the hijab ban issue with constitutional provisions, judicial pronouncements, and socio-political discussion relating to its impact on secularism in India. The topic assumes great importance because the Hijab controversy affirms the need for promoting religious freedom among individuals while maintaining national interest in promoting religious amity in society. Solving these will be

---

<sup>1</sup> 4<sup>th</sup> Semester LL.M Student, Govt. Law College Trivandrum, +918547580691, visitarchanaprakash@gmail.com

<sup>2</sup> Resham and Another v. State of Karnataka and Others, 2022 LiveLaw (Kar)42

<sup>3</sup> Aishat Shifa v. State of Karnataka and Others, (2022) SCC OnLine SC 1394

<sup>4</sup> Zainab Abdul Quayyum Chaudhary and Ors. v. Chembur Trombay Education Societies and Ors 2024 SCC OnLine SC 1940

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

pivotal in determining the future of secularism in India, yet it would require balanced approach which respect both legal obligations as well as social obligations.

**KEYWORDS:** Secularism, Hijab Ban, Religious Freedom, Restrictions, Essential Religious Practices.

## **INTRODUCTION**

All constitutions in the world have a philosophy of their own.<sup>5</sup> The fundamental philosophy of the Indian Constitution is well enshrined in the Preamble to the Constitution. The secular vision of the Constitution was formally inserted into the Preamble by the Constitution (42nd Amendment) Act, 1976.<sup>6</sup> The Indian concept of secularism doesn't imply complete disengagement from religious affairs, rather, it means that the state protects each religion equally and no particular religion enjoys patronage from the state. In the case of *S.R Bommai v. Union of India*,<sup>7</sup> the Hon'ble Supreme Court of India identified the concept of secularism as the basic feature of the constitution.

The Preamble also states that every citizen has the liberty of belief, faith and to worship, which in other words, mentions the concept of religious freedom in India.<sup>8</sup> Article 1 of the Universal Declaration of Human Rights adopted by the United Nations stress on the spirit of brotherhood.<sup>9</sup> The concept of securing fraternity as mentioned in the preamble also reflects the concept of brotherhood and guarantees religious harmony, which is very much needed in a plural society like India. The people of India have also a fundamental duty as provided in Article 51A(e) to promote harmony and the spirit of brotherhood transcending all religious diversities.<sup>10</sup> Very importantly, Articles 25 to 28 of Part III of the Indian Constitution explicitly provide for the fundamental right to freedom of religion, allowing individuals to worship according to the dictates of their conscience. However, this freedom is not absolute and is subject to state restrictions.<sup>11</sup> The balance between this religious freedom and state intervention often leads to tension, as seen in issues like the ongoing debates around the hijab.

---

<sup>5</sup>DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA, 20, (Lexis Nexis, 2018)

<sup>6</sup>*Id.* at 28

<sup>7</sup>*S.R Bommai v. Union of India* (1994) 3 SCC 1

<sup>8</sup> Dr. J. N PANDEY, CONSTITUTIONAL LAW OF INDIA, 27, (Central Law Agency, Allahabad, 2016)

<sup>9</sup> DURGA DAS BASU, *supra* note 4 at 28

<sup>10</sup>INDIA CONST. art 51 A (e)

<sup>11</sup>PANDEY, *supra* note 7

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

**THE HIJAB BAN: JUDICIAL DECISIONS AND AFTERMATH**

In the case of *Ziyouddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra & Ors*<sup>12</sup>, the Honourable Supreme Court of India observed that a secular state, meant about rising above all differences of religion and which attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. The controversial hijab ban issue, which began in December 2021 when a group of hijab-wearing Muslim girls were denied entry into the classrooms of PU College in Udupi, Karnataka, poses a serious threat to the concept of secularism in India. The issue intensified as protests took the shape of Hindu students wearing saffron shawls, ultimately escalating to a condition of dividing young minds along religious lines, which is an unwelcoming attitude considering the nature of Indian secular democracy. Some students had filed a writ petition before the Karnataka High Court through the case of *Resham and Ors. v. State of Karnataka and Ors*<sup>13</sup> challenging the GO dated 05.02.2022 which gave a directive that the uniform or dress code prescribed by the College Development Committees shall be mandatorily followed by the students and it banned clothing that disturbs equality, unity, and public order. The Petitioners made their stand clear as the Government Order being unconstitutional under articles 14, 15, 19, 21 and 25 of the Constitution of India, that it is an essential religious practice.<sup>14</sup>

The decision of the Karnataka High Court on March 15, 2022, as the ban on hijab was a constitutionally permissible restriction only, was not satisfactory for many, and hence they preferred the case before the higher judiciary through the case of *Aishat Shifa v. State of Karnataka and Ors.*<sup>15</sup> But the matter is yet to be resolved as on October 13, 2022, a two-judge bench of the Supreme Court delivered a split verdict in which Justice Hemant Gupta in chorus with the Karnataka High Court's decision, upheld the ban, whereas Justice Sudhanshu Dhulia dissented, stating that wearing the hijab is a matter of choice and overturning the High Court's judgment. In view of the different opinions expressed by the Bench, the matter is placed before Hon'ble the Chief Justice of India for constitution of an appropriate Bench.

---

<sup>12</sup> *Ziyouddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra & Ors* (1976) 2 SCC 17

<sup>13</sup> *Resham and Another v. State of Karnataka and Others*, 2022 LiveLaw (Kar) 42

<sup>14</sup> Kruthika Dudharejiya, *Women's Voice Intervention in Resham and Another v. State of Karnataka and Others*, CENTRE FOR LAW AND POLICY RESEARCH (Nov 22, 2024, 11:00 A.M) <https://clpr.org.in/litigation/10963/>

<sup>15</sup> *Aishat Shifa v. State of Karnataka and Others*, (2022) SCC OnLine SC 1394

The terrible ban on hijab actually affected Muslim girls considering their education, social and psychological consequences. A study conducted by the People's Union for Civil Liberties, Karnataka unit, released the report titled 'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka',<sup>16</sup> which states that Muslim women students were not only prevented from accessing their right to education but also bore the brunt of a climate of hate, hostility, and misinformation. The PUCL study explains that the response of the state government in the Karnataka Legislative Assembly revealed that a total of 1,010 hijab-wearing girls dropped out of PU colleges because of the hijab ban and other reasons as well. From this, it is clear and certain that the government has failed to fulfil its obligation to uphold the directive provided in Article 41 of the Constitution.<sup>17</sup>

Not only in Karnataka, but a situation like this occurred in Mumbai as well. The hijab ban issue in Mumbai emerged when nine students from the Chembur Trombay Education Society's NG Acharya & DK Marathe College challenged a new dress code imposed by the college, which banned the wearing of hijabs, burqas, and niqabs on campus. The Bombay High Court upheld the college's directive, stating it aimed to prevent the disclosure of students' religious identities, thus focusing on education. Aggrieved by this, the students filed a special leave petition<sup>18</sup> before the Supreme Court, arguing that the restrictions violated their fundamental rights. The Supreme Court, in a bench comprising Justices Sanjiv Khanna and Sanjay Kumar partly stayed the circular, specifically the clause prohibiting hijabs, caps, and badges. The Court criticized the rationale behind the college's decision, emphasizing that such rules hindered women's empowerment and violated constitutional rights, particularly Article 15, which ensures equality and non-discrimination.<sup>19</sup> It is a hard reality that interferences of this kind endanger the secular framework of the country and ultimately disrupt religious tolerance and harmony.

---

<sup>16</sup>PEOPLES UNION OF CIVIL LIBERTIES- KARNATAKA UNIT, *Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka*, 2023, <http://www.puclkarnataka.org/>

<sup>17</sup>Express News Service, *over 1000 Muslim Girls Dropped Out of PU Colleges in Karnataka during Hijab Controversy: PUCL Report*, THE INDIAN EXPRESS (Jan 10, 2023, 02:15 IST) <https://indianexpress.com/article/cities/bangalore/pucl-releases-report-on-impact-of-hijab-ban-on-muslim-girl-students-in-karnataka-8371485/>

<sup>18</sup> Zainab Abdul Quayyum Chaudhary and Ors. v. Chembur Trombay Education Societies and Ors 2024 SCC OnLine SC 1940

<sup>19</sup> Apoorva, *Supreme Court Partly Stays Hijab Ban by Mumbai Colleges: Issues Notice to College*, SCC ONLINE TIMES (Nov22, 2024, 10:30 AM) <https://www.scconline.com/blog/post/2024/08/12/supreme-court-partly-stays-hijab-ban-mumbai-college-issues-notice-to-college/>

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



**INDIVIDUAL RELIGIOUS FREEDOM AND STATE RESTRICTIONS**

In the case of *PMA Metropolitan v. Moran Mar Marthoma*<sup>20</sup> the Supreme Court has observed that religion is the belief which binds spiritual nature of men to super-natural being. It includes worship, belief, faith, devotion, etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it.<sup>21</sup> The freedom of religion, which is intrinsic to the secular nature of the state, is well represented by providing Articles 25-28 in the Constitution.

Very importantly, Article 25 guarantees the freedom of conscience and the free profession, practice, and propagation of religion. Explaining the scope of Article 25, the Supreme Court has observed in *Sri Lakshmana Yatendrulu v. State of Andhra Pradesh*<sup>22</sup> that Article 25 assures to every person, subject to public order, health, and morality, freedom not only to entertain their religious beliefs, as may be approved by their judgment and conscience, but also to exhibit such beliefs outwardly.<sup>23</sup> Article 25(1) specifically mentions the restrictive power of the state in religious freedom. Under Article 25(2)(a), it states that the state can also make laws regulating or restricting any economic, financial, political, or other secular activities which may be associated with religious practices. Furthermore, the state can enact laws for social welfare and reform or for opening Hindu religious institutions of public character to all classes and sections of Hindus, as provided under Article 25(2)(b). This clearly reflects that, in India, the state will not be completely separated from all aspects of religion, and it adopts an attitude of religious tolerance, which is still subject to restrictions from the state on constitutional grounds. Sikhs are particularly permitted to wear and carry kirpans as a religious practice under Explanation 1 to Article 25 of the Constitution of India<sup>24</sup> because the kirpan is considered an essential symbol of their faith. In the debate regarding the hijab as well, the important contention raised by the petitioners was with regard to the Essential Religious Practice test.

---

<sup>20</sup>*PMA Metropolitan v. Moran Mar Marthoma* AIR 1995 SC 2001

<sup>21</sup>M. P JAIN, *INDIAN CONSTITUTIONAL LAW*, 1300, (Lexis Nexis, 2018)

<sup>22</sup>*Sri Lakshmana Yatendrulu v. State of Andhra Pradesh* AIR 1996 SC 1414

<sup>23</sup>JAIN, *supra* note 20 at 1301

<sup>24</sup>INDIA CONST. art 25

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

The concept of 'essential religious practices' appears to have its origins in the discussions of the Constituent Assembly. In response to a question, Dr. Ambedkar made it clear that Article 25 of the Constitution does not protect all religious practices indiscriminately but only those that are fundamentally religious in nature. As he stated during the Constituent Assembly Debates, "*there is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious*"<sup>25</sup> In line with this the Supreme Court has observed in the case *HH Srimad Perarulala Ethiraja Ramanuja Jeeyar Swamy v. State of Tamil Nadu*<sup>26</sup>, what constitutes an essential part of a religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion. As early as in 1963, the Supreme Court, in *Tilkayat Shri Govindlaji Maharaj v. State of Rajasthan*,<sup>27</sup> observed that determining whether a religious practice is an integral part of a religion depends on whether the community considers it essential. This question must be resolved by the court, which may need to examine if the practice is religious in nature and integral to the religion, based on evidence regarding the community's conscience and religious tenets. It is notable that courts often refer to scriptures to determine the significance of such practices.<sup>28</sup>

The test of essentiality was applied in the case of *Nikhil Soni v. Union of India*,<sup>29</sup> where the Rajasthan High Court concluded that Santhara was not an integral aspect of Jainism, thereby allowing the court to prohibit the practice. The judgment relied on the flawed essential part of religion test, though it could have justified the law banning Santhara as a measure promoting social reform by disallowing the practice.<sup>30</sup> Similarly, the case of *Shayara Bano v. Union of India and Ors*,<sup>31</sup> the majority opinion concluded that Triple Talaq is not an essential religious practice among Sunni Muslims but rather an irregular one. It was observed "*it is clear that Triple Talaq is only a form of talaq which is permissible in law, but at the same time, stated to*

---

<sup>25</sup>CONSTITUENT ASSEMBLY DEBATES, *Volume VII*, December 2, 1948, 781.

<sup>26</sup>*HH Srimad Perarulala Ethiraja Ramanuja Jeeyar Swamy v. State of Tamil Nadu* AIR 1972 SC1586

<sup>27</sup> *Tilkayat Shri Govindlaji Maharaj v. State of Rajasthan* AIR 1963 SC 1638

<sup>28</sup> JAIN, *supra* note 20 at 1302

<sup>29</sup> *Nikhil Soni v. Union of India* 2015 SCC OnLine Raj 2042

<sup>30</sup> Vipula Bhatt, *Rise of Religious Unfreedom in India: Inception and Exigency of the Essential Religious Practice Test*, 3.2, RGNUL STUDENT RESEARCH REVIEW (RSRR), 126, 133

<sup>31</sup> *Shayara Bano v. Union of India and Ors* AIR 2017 SC 4609

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

*be sinful by the very Hanafi School which tolerates it. According to Javed,<sup>32</sup> therefore, this would not form part of any essential religious practice. Applying the test stated in Acharya Jagadishwarananda<sup>33</sup> it is equally clear that the fundamental nature of the Islamic religion, as seen through an Indian Sunni Muslim's eye, will not change without this practice."*

In the case concerning the hijab ban, the Karnataka High Court stated that there was no evidence presented to establish that wearing the hijab is an essential religious practice in Islam, nor that the petitioners had always worn it as part of their faith. The court emphasized that attire, such as wearing a hijab, cannot be considered fundamental to the Islamic faith.<sup>34</sup> On the other hand, Justice Sudhanshu Dhulia of the Supreme Court, while dealing with the matter emphasized that Article 25 of the Constitution guarantees freedom of conscience and the free practice of religion, which doesn't require the concept of "essential religious practice" to determine the right to wear a hijab. The dispute, according to him, hinges on the freedom to express religious identity, not on whether wearing the hijab qualifies as an essential practice within Islam. If the belief is sincere and doesn't harm others, there is no legitimate reason to ban hijabs in classrooms.<sup>35</sup> So, when protection is sought under Article 25(1) of the Constitution of India, it is not necessary for an individual to establish that what they assert is an essential religious practice, it may simply be a matter of faith or conscience, provided it does not contravene public order, morality, health, or any other provisions of Part III of the Constitution.<sup>36</sup>

### **OTHER CONSTITUTIONAL PROVISIONS AND HIJAB BAN**

Fundamental rights under Part III of the Indian Constitution comprises the right to equality<sup>37</sup> and non-discrimination,<sup>38</sup> freedom of speech and expression,<sup>39</sup> dignity, privacy<sup>40</sup> etc. Protection from arbitrariness of the state and right to education with no discrimination also falls within this purview. Restrictions on attire, whether religious or not, cast a shadow over the broader implications on these constitutionally guaranteed rights rather than its religious

---

<sup>32</sup> Javed v State of Haryana, (2003) 8 SCC 369

<sup>33</sup> Acharya J. Avadhuta & Ors. v. Commissioner of Police, Calcutta & Anr (1983) 4 SCC 522

<sup>34</sup> Resham and Another v. State of Karnataka and Others, 2022 LiveLaw (Kar) 42

<sup>35</sup> Aishat Shifa v. State of Karnataka and Others, (2023) 2 SCC

<sup>36</sup> INDIA CONST. art 25 cl 1

<sup>37</sup> INDIA CONST. art 14

<sup>38</sup> INDIA CONST. art 15

<sup>39</sup> INDIA CONST. art 19 cl 1(a)

<sup>40</sup> INDIA CONST. art 21

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)



significance. These violations are interconnected, overlapping, and mutually reinforcing; often, leading to deeper oppression and systemic violence.<sup>41</sup>

#### A. FREEDOM FROM ARBITRARY STATE ACTION

Article 14 of the Indian Constitution promises equality before the law as well as equal protection under the law. The idea of equality before the law goes well with Dicey's concept of the rule of law as practiced in England. According to Dicey, the rule of law emphasizes absence of arbitrary power and vindicates the supremacy of law against any arbitrary or tyrannical government action. In effect, this principle ensures that all actions of the authorities must be based on well-established principles of law so as not to subject any individual to unjust or discretionary treatment.<sup>42</sup> Additionally, the Supreme Court has interpreted Article 14 as also having protection against arbitrary actions of the state. In the case of *Shayara Bano v. Union of India*<sup>43</sup>, the Court observed that "manifest arbitrariness" refers to actions by the legislature that are capricious, irrational, or lacking a clear guiding principle. Additionally, if a legislative act is excessive or disproportionate, it would also be deemed manifestly arbitrary. The Court concluded that this principle of arbitrariness could be invoked to invalidate legislation under Article 14.

The hijab ban imposed in the Karnataka was arbitrary in nature. The order lacked a clear determining principle or justification and was a disproportionate and excessive response to the goal of maintaining discipline in educational institutions through uniform mandates. Its implementation across districts further highlighted its arbitrary nature, as colleges interpreted and enforced the order inconsistently. This led to confusion, denial of redressal mechanisms, and sudden restrictions on the hijab, often during critical times like examinations, reflecting the absence of a coherent and fair application of the rules. In the case of *Lucknow Development Authority v. M.K. Gupta*,<sup>44</sup> the Supreme Court ruled that when a citizen suffers loss or injury due to arbitrary actions by the state, the state is liable to compensate the affected individual. The facts of the case were entirely different from the hijab ban, but what

---

<sup>41</sup>Abhimanyu Charan, *Case Comment: Resham v. State of Karnataka*, 2.3, (JUS CORPUS LAW JOURNAL), 1679, 1681

<sup>42</sup> PANDEY, *supra* note 7 at 78

<sup>43</sup> *Shayara Bano v. Union of India and Ors* AIR 2017 SC 4609

<sup>44</sup> *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>



actually happened due to this hijab ban is also that a lot of girl students suffered heavily. The state is responsible for this.

### B. RIGHT TO DIGNITY AND RIGHT TO PRIVACY

Article 21 of the Indian Constitution effectively guarantees that no person shall be deprived of his life or personal liberty except according to the procedure established by law.<sup>45</sup> Though it is negatively stated, it now comprehends the negative aspect as well as the affirmative aspect<sup>46</sup>. In the landmark case of *Maneka Gandhi v. Union of India*,<sup>47</sup> the Court clarified that the right to life is not merely confined to physical existence but includes the right to live with human dignity. In *Navtej Singh Johar v. Union of India*,<sup>48</sup> a case notable for its acknowledgment of the private rights of homosexuals, the Court stated: “The essence of dignity, and we say this without any inhibition, is that it is our constitutional duty to allow the individual to behave and conduct himself/herself as he/she desires and to allow him/her to express himself/herself, of course, with the consent of the other. That is the right to choose without fear.”

The hijab bans in Karnataka severely infringed upon the right to dignity of Muslim female students, leading to harassment, public humiliation, and targeted discrimination by individuals in positions of authority. Many students were forced to choose between their education and their religious identity, an impossible and deeply distressing decision. For instance, a student in Udupi shared how removing her hijab for examinations felt like a betrayal of her faith, yet financial constraints left her with no alternative. The compulsion to abandon their hijab to access education was experienced as a form of violence, undermining their self-esteem and sense of personhood. This inclement practice was further extended to another form of harassment - targeted harassment, with Muslim girls being ridiculed, ostracized, and even by their teachers and peers, amid a troubling diminished regard for their basic dignity and equality.<sup>49</sup>

---

<sup>45</sup>INDIA CONST. art 21

<sup>46</sup>PANDEY, *supra* note 7 at 260

<sup>47</sup>*Maneka Gandhi v. Union of India* AIR 1978 SC 597

<sup>48</sup>*Navtej Singh Johar v. Union of India* AIR 2018 SC 4321

<sup>49</sup>PEOPLES UNION OF CIVIL LIBERTIES, *supra* note 16 at 29-30

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

The Indian Constitution does not specifically confer the right of privacy as a Fundamental Right, but the Supreme Court has inferred that, from Article 21 and other provisions. This issue was first raised in *Kharak Singh v. State of Uttar Pradesh*,<sup>50</sup>, where the Court looked into whether privacy could be derived from Fundamental Rights. While the majority of judges concluded that the Constitution does not explicitly recognize this right, Justice Subba Rao, in his dissent, argued that privacy is a vital aspect of personal liberty under Article 21. He emphasized that personal liberty encompasses freedom from physical restrictions and protection from intrusion into one's private life. Subba Rao's view highlighted privacy as a fundamental component of democratic values, underscoring its importance in safeguarding domestic life and personal autonomy. This dissent later paved the way for judicial recognition of privacy as a fundamental right in India.<sup>51</sup>In the *K.S Puttaswamy v. Union of India*<sup>52</sup>case, the Court emphasized that privacy upholds individual autonomy, allowing a person to make decisions about crucial aspects of their life. It highlighted that personal choices related to one's lifestyle are fundamental to privacy. Furthermore, privacy is seen as a safeguard for diversity, acknowledging the plurality and variety inherent in our culture. Considering this, the ban on the hijab not only questions the dignity of Muslim women but also intrudes into their privacy, which can be seen as a challenge to the concept of unity in diversity that India proudly holds.

Students encountered with deeply humiliating experiences, including being filmed by media without consent, facing online harassment, and enduring a lack of support from their peers and college authorities. In Udupi, a student's private photo without a hijab was leaked on social media, leading to depression and hospitalization after receiving vulgar messages and threats. Other incidents involved police and media presence outside colleges, creating an intimidating environment. The pervasive surveillance, harassment, and lack of solidarity have left many Muslim students feeling unsafe, humiliated, and deprived of their right to privacy and dignity.<sup>53</sup>

### C. RIGHT TO FREEDOM OF EXPRESSION

---

<sup>50</sup>*Kharak Singh v. State of Uttar Pradesh* AIR 1963 SC 1295

<sup>51</sup>JAIN, *supra* note 20 at 1219

<sup>52</sup>*K.S Puttaswamy v. Union of India* (2017) 10 SCC 1

<sup>53</sup>PEOPLES UNION OF CIVIL LIBERTIES *supra* note 16 at 32- 33

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

Article 19 (1) (a) says that all citizens shall have the right to freedom of speech and expression. But it is subject to limitations imposed under Article 19 (2) which empowers the state to put reasonable restriction on certain grounds.<sup>54</sup> Freedom of speech and expression serves as the foundation and essential prerequisite for nearly all other freedoms. It is the source of civilization, and without it, freedom of thought would wither.<sup>55</sup> The prohibition on the Hijab on the other hand necessarily impacted on the free expression of Muslim girls-particularly their freedom of choice.

The Hon'ble Supreme Court observed in *Navtej Singh Johar v. Union of India*<sup>56</sup> that denying someone the ability to express themselves is similar to denying them life itself. In *NALSA v. Union of India*,<sup>57</sup> the Supreme Court read the right to the dress of one's choice within the meaning of the freedom of expression in Article 19(1)(a). No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution. The Court broadens the scope of freedom of expression to incorporate the liberty to choose one's clothing and attire, recognizing it as a fundamental aspect of individuality.

Freedom of speech includes the freedom of silence. In the National Anthem case,<sup>58</sup> the Supreme Court observed that no one can be forced to sing the National Anthem if they have a genuine conscientious objection based on religious faith. It is true that the freedom to choose one's attire is a form of autonomy and expression, but it can be reasonably restricted in public spaces like schools to maintain order and decorum.<sup>59</sup> However, the hijab-wearing girls faced the same dilemma as the Jehovah's Witnesses in the above case. They too wore the hijab as an article of their faith. They too believe that it is a part of their religion and social practice. Considering this aspect, the hijab ban should be covered by the National Anthem case and the ratio laid down therein.<sup>60</sup>

#### D. RIGHT TO NON- DISCRIMINATION

---

<sup>54</sup> PANDEY, *supra* note 7 at 189

<sup>55</sup> DURGA DAS BASU, *supra* note 4 at 113

<sup>56</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1

<sup>57</sup> *NALSA v. Union of India* (2014) 5 SCC 438

<sup>58</sup> *Bijoe Emmanuel v. State of Kerala* (1986) 3 SCC 615

<sup>59</sup> Aditya Sirkar, *Right to Hijab & Right to Expression; A Critical Study*, 3.1, (JUS CORPUS LAW JOURNAL), 2043, 2050, (2022)

<sup>60</sup> *Aishat Shifa v. State of Karnataka and Others*, (2022) SCC OnLine SC 1394

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>



The right to non-discrimination is a key aspect of equality, and the Constitution under Article 15 protects citizens from discrimination based on religion, race, caste, sex or place of birth.<sup>61</sup> The Muslim students in Karnataka have faced violations of this right, particularly with the hijab ban and the harassment they endured. In various districts, students were segregated, pressured to remove their hijabs, and faced punishment for adhering to their religious practices. The ban also led to protests, harassment in public spaces, and stereotypes against hijab-wearing students. Some were even forced to travel in Muslim-owned buses for safety. The state and citizens discriminated against these students by denying them the right to education and expression, fuelling hate and violating their constitutional rights. The impact of these actions was severe, affecting their academic lives, aspirations, and social relations, while also diminishing their self-confidence. The state's failure to protect their rights and its role in enabling discrimination from other actors, including educational and law enforcement authorities, calls for the amplification of the voices of the affected students and accountability for the violations.<sup>62</sup>

### **CONCLUSION: WAY FORWARD**

There are several instances around the world of hijab bans. Recently, the Tajikistan parliament passed a law prohibiting the hijab, labelling it as "alien garments," particularly during the periods of Eid al-Fitr and Eid al-Adha, with penalties for offenders. This move is part of the government's ongoing efforts to restrict public displays of religious symbols and to promote Tajik culture.<sup>63</sup> Tajikistan is a Muslim-majority country, with more than 90% of the population being Muslim. Technically, freedom of religion is enshrined in the constitution of Tajikistan. However, in practice, religious practice at least for members of the country's Muslim majority is tightly controlled by the state.<sup>64</sup> Such control is practically impossible in India, as we are a secular democracy that proudly upholds unity in diversity, and such measures would ultimately disrupt the framework of the nation.

---

<sup>61</sup>INDIA CONST. art 15

<sup>62</sup>PEOPLES UNION OF CIVIL LIBERTIES, *supra* note 16 at 36

<sup>63</sup>TOI World Desk, *Tajikistan Bans Hijab in Campaign against Public Religiosity: All You Need to Know*, THE TIMES OF INDIA (Jun23, 2024, 00:59 IST) <https://timesofindia.indiatimes.com/world/rest-of-world/tajikistan-bans-hijab-in-campaign-against-public-religiosity-all-you-need-to-know/articleshow/111195960.cms>

<sup>64</sup>Catherine Putz, *Tajikistan: No Hajj, No Hijab and Shave Your Beard*, THE DIPLOMAT, (Apr 17, 2015, 10:05 IST) <https://thediplomat.com/2015/04/tajikistan-no-hajj-no-hijab-and-shave-your-beard/>

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

The central issue concerning the hijab in India revolves around the right to education for the girl child. As Justice Sudhanshu Dhulia observed in his split verdict, that accessing education is much more difficult for a girl than for her brother. In rural and semi urban areas, it is common for a girl to help her mother with daily chores before even picking up her school bag. The challenges and obstacles a girl face in obtaining an education is far greater than those faced by a boy. Therefore, the case must be examined in light of the additional difficulties already faced by a girl child in getting to school. So, the actual question before the Court was whether we are making life better for a girl by denying her education simply because she wears a hijab.<sup>65</sup> The Indian Constitution clearly states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.<sup>66</sup> The hijab ban marks a regression by the state government in fulfilling its constitutional duty to ensure the right to education for all, regardless of religion, caste, creed, or gender. Rather than upholding this fundamental right, the government's actions appear to intentionally obstruct it. Instead of encouraging inclusivity and bringing students into classrooms, this decision has effectively excluded minority students, pushing them further away from access to education.<sup>67</sup>

The hijab debate is not about dress codes, but rather the right to education for every child. Education opens minds of people in terms of their perspectives, which, among other aspects, helps to mould their religious thoughts, thus strengthens the secularism of the country at large. Therefore, any force against this right to education has to be taken very seriously. It should be equally important that no woman is compelled to put on the hijab or even any other type of clothing. The decision over what one wears should remain a personal choice, an expression of individual autonomy. Respecting this autonomy while striving for education can contribute towards building an inclusive society. To address the immediate challenges in India, uniformity can actually be accommodated with religious freedoms, or rights, like the wearing of a hijab, by schools without compromising their discipline norms. In this manner, schools can promote cultural diversity, as well as religious freedom, in the interest of all students and school decorum by allowing not a single student to be denied education because of his or her beliefs.

---

<sup>65</sup>Aishat Shifa v. State of Karnataka and Others, (2022) SCC OnLine SC 1394

<sup>66</sup>INDIA CONST. art 21-A

<sup>67</sup>PEOPLES UNION OF CIVIL LIBERTIES, *supra* note 16 at 21

For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>



For general queries or to submit your research for publication, kindly email us at [ijalr.editorial@gmail.com](mailto:ijalr.editorial@gmail.com)

<https://www.ijalr.in/>

©2025 International Journal of Advanced Legal Research