**The Culture of ‘Hijab’: A Justiciable Freedom of Expression or Arbitrary Denial of Educational Rights of Muslim Women in India**

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***Abstract***

*Ideals of secularism in Indian democracy allow individuals to freely profess, practice, and propagate their religion without any fear of being discriminated against or barred from exercising the right to education. The cultural practice of wearing a hijab symbolizes an individual’s freedom to choose one’s religious belief. The practice of ‘Hijab’ is considered as a social fact. It is often questioned to be an “essential religious practice.” But by no means could such expression of freedom be curtailed just in the name of protecting students from discrimination by disclosing any religious affiliations. In numerous instances, the judiciary demonstrated a balancing approach to uphold the validity of the ‘Hijab’ in the frame of constitutionality, public interest, and communal harmony. The paper intends to interpret different tests and review measures adopted in handling instances of conflict between religious practices and fundamental rights, and analyse ‘hijab’ as a barrier to access to education.*

**Keywords**: Hijab, Religious Practices, Essential, Education, Muslim, Constitution

1. **Introduction**

‘Hijab’ is an Arabic term that denotes covering, hiding, or closure. Its etymology can be traced back to the Arabic verb “Hajaba” which encompasses the concept of concealing. It is commonly understood as a headscarf worn by Muslim women and essentially forms a component of their everyday attire, which is typically intended to cover the body. At the same time, ‘Hijab’ carries great significance for the community as it symbolizes faith, modesty, privacy, and religious identity, rather than just being a piece of cloth. The concept of the Hijab is deeply rooted in Islamic teachings, their religion, culture, and traditions. Wearing a Hijab protects women from unwanted attention and serves as a form of empowerment, enabling them to assert their autonomy and challenge societal norms. It is an essential component of their cultural legacy and social living.

In Islamic teachings, beliefs hold that God commanded women to wear a Hijab to become mode stand to redirect the attention of men from the materialistic world towards the spiritual realm of God. Donning a Hijab and other outfits like the chador, burka, orniqab, is often misunderstood as a required Islamic custom. A Hijab may be referred to as a veil. Islam holds that it servesboth as ethical for women to cloth themselves and to safeguard their modesty. The historical proportion of the Hijab can be tracked down from the early phases of Islam and the teachings of the Quran and Hadith. The opening of the Hijab of the verses quoted from the Qur'an is as follows:

“*And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for the necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.)*“ (al-Nur 24:31).[[3]](#footnote-4)

Yet the practice of veiling, often referred to as Hijab is not among the five pillars of Islam. Additionally, both the Quran (the sacred book of Islam) and the Hadith (the customs or sayings of the Prophet)have ambiguity on appropriate attire.

Long before the emergence of Islam in the seventh century, the practice of veiling was already in existence. Conflicting interpretations of theHijab as a fabric and other types of veiling have developed over time and place. Even inthe twenty-firstcentury,some people consider the Muslim women who desire to wear a veil as uneducated, downtrodden, or politically radical. However,wearing a veil can bemarked off as an ideogram of devotion, cultural tradition, freedom of religion, or personal seclusion. The traditional significance of the Hijab enables women to be judged basedon their character and intellect rather than their physical appearance giving them a sense ofliberation and self-confidence. Wearing a Hijab appears to be more prevalent in the southern states of India.A majority of Muslim women wear a burqa covering their entire face. About 64 percent of women wear a burqa, 12 percentof women wear a niqab and 8 percent of women wear Hijab in India.[[4]](#footnote-5)Prof. Leila Ahmed expresses the capacity of the Hijab which can be used to express protests against the opinions of the majority, to turn its wearers into a dissenting minority, expressing their heritage and values, and to challenge the injustices and inequalities of the society at large.[[5]](#footnote-6)

**2. Hijab: A Cultural and Religious Symbol**

The practice of veiling has historical roots in ancientcivilizations, where it was common toconceal one’s adornments and practice modestyacrossdiverse cultures. This headscarf worn by Muslim women carries a significant historical background and bears cultural significance across different regions and times. The Hijab represents a symbol of identity, modesty, and women empowerment for countless Muslim women around the globe, going beyond its religious obligation.

The cultural relevance of theHijab can be witnessed in different regions of the world. It is more than just a cloth; it is a practice that indicates personal beliefs and cultural traditions. In certain countries like Saudi Arabia and Iran, women wear the ‘Abaya’ or ‘Chador’, which are loose-fitting outer cloththat envelopes the whole body. In other regions, like Turkey and Indonesia,local traditions and customs are reflected in a headscarf, with various styles and materials.[[6]](#footnote-7)Wearing the Hijab is a highly personal choice. The decision to wear the Hijab is rooted in an individual’s religious belief and preference to adhere to Islamic principles.[[7]](#footnote-8) The Hijab represents a woman’s devotion to her religious faith and beliefs. It also expresses her determination to manifest modesty in her appearance within Islamic principles. Such a practice enables women to pompously affirm their agency, urging respect and acknowledgment for their religious convictions and cultural heritage. It continues to be a conservative symbol central to the identity of Muslim women. A strict interpretation of Islamic law across many countries makes Hijab a mandatory norm in public places.

Simultaneously, the Hijab is no more confined to personal belief, but rather a larger dialogue of Human rights. In the recent past, a global surge of activism has been witnessed across various Universities by students over any particular version of religious expression or nationalism. Perception of the ‘Hijab’ or headscarf is associated either with free choice of culture or with compulsion and public intolerance. As the ambit of the Hijab is a matter of controversy on many fronts be it personal or public, it is investigated with caution.

**3. Hijab: A Constitutional and Legal Right**

 The right to adequate clothing or the right to clothing is acknowledged as a basic human entitlement a cross numerous International Conventions and moreover, it serves as a part of the right to an adequate standard of living as sighted under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976. Further, this right is simultaneously recognized under Article 25 of the Universal Declaration of Human Rights (UDHR),1948.

Under the Indian Constitution, Article 21 outlines the provisionfor the protection of rights and personal liberty and expresses that, “*No person shall be deprived of his right to life or personal liberty except according to the procedure established by law*.”Additionally, it is specifically established by the ruling in ***Justice K. S. Puttaswamy v. Union of India[[8]](#footnote-9)***, that decisions made in public, like one’s religion or the clothes one decides to wearare part of one’s basic right to privacy. The notion of privacy being a fundamental right includes decisional privacy. In concert with this, freedom of clothing or attire encompasses a core dimension of peculiarity. Furthermore, in ***NALSA v. Union of India[[9]](#footnote-10)***, the Apex Court settled the right to clothing of own option within the ambit of the freedom of expression under Article 19(1)(a) by expanding its scope. Thus, forbidding someone from expressing their belief and style of dress infringes the fundamental rights warranted under Article 19(1), and Article 21. Since Sikh turbans, Christian crosses, and Hindu necklaces can be worn freely, the Hijab controversy raises concern about the right to equality ensured under Article 14 of the Indian Constitution.

Right to religion too weighs its significance in one’s life and way of living. Every citizen is entitled to exercise and propagate one's faith; unless it does not intervene or degrade the religion of others. The liberty to exercise the faith of an individual is a fundamental prerogative guaranteed by the Indian constitution with reasonable restrictions. However, the history of instances of imposition of ‘dress code’ banning the practice of religious dictates like hijab, burka, niqab, scarfs, caps, bracelets/kada, kirpan, etc., and any kinds of badges, etc. remains a matter of public debate and judicial scrutiny from time to time. It is also closely associated with access to many freedoms and hence, a necessary discussion ofthe educational rights of individuals.

1. ***Right to Religion and Right to Hijab:***

The Constitution of India outlines the provision for freedom of religion. Simultaneously, freedom of conscience and free profession, practice, and propagation of religion are warranted by Article 25 of the Constitution. In tune with this legislative intent, Article 26 secures the freedom to manage religious affairs, however subjectto health, morality, and public order. India being a secular nation embodies the principle of Universal brotherhood and respects all religions alike, and in its preamble vision under theforty-secondAmendment to secure it as a fundamental right. It asserts equal freedom to every religious community to uphold and promote their respective sacramental beliefs and faith. In ***S.R. Bommai& Others* v. *Union of India & Others***,[[10]](#footnote-11)the nine-Judges bench upheldthat,the practice of any religion is not prohibited under the Constitution, either in private or in public and therefore, it is the right of a Muslim woman to wear a ‘Hijab’ as a component of their cultural and religious custom.

Wearing ‘Hijab’has always been an integral element of the identity of Muslim Women and is enumerated in their religious scriptures. In ***Shaheena& Another* v. *State of Karnataka & Others[[11]](#footnote-12)***, it was asserted that Verse 26 of Chapter 7, Verse 31 of Chapter 24, and Verse 59 of Chapter 33 of the Holy Quran have enough evidence that in the Islamic faith covering one’s head with a headscarf is an integral aspect of their religious identity. Additionally, supporting claims would be validated through various landmark judgments of other High Courts.

1. ***Right to Hijab vis-à-vis Right to Education:***

Access to education in India has been a privileged right for a few sections of society. In the patriarchal norms of society, the right to education is categorically denied to women. Education is like a lightened lamp in a dark room, and the mainstay of all-around development. Educational institutions are considered as the temples of learning that stand in the need for discipline to be kept alive between the teacher and the pupil. The primary aim of educational institutions must be to impart education to the pupils.[[12]](#footnote-13)Even in the wake of modernization and liberalization, education for girls seems to be a distant dream in certain rural or underdeveloped areas and among backward communities.

 In the twenty-first century too, the gender gap remains widely visible even in the presence offundamental right guaranteed under Article 21A securing free and compulsory education for children from 6 to 14 years.In ***Unni Krishan v. State of Andhra Pradesh***[[13]](#footnote-14)***,*** the Hon’ble Apex Courtcategorically held that *the right to free and compulsory education for children between theagesof 6 to 14 years is a fundamental right as stated in Article 21*. The proposition that, every student is entitled to the right to education without any form of prejudice can be emerged after conjoint reading of Article 21, Article 21A, and Article 15 of the Constitution of India. International Conventions also outline the provisions for the right to education as a basic entitlement.[[14]](#footnote-15)It was commented in the Gopal Singh Committee, 1983 report that the Muslim minority can be classified as a backward community primarily due to their extremely low socio-economic status, dismal educational record, and high percentage of dropouts at the stage of elementary education, especially among Muslim Women.[[15]](#footnote-16)Further, in the Sachar Committee’s study of parameters of socio-economic development, education is the domain where the minority community is found to be lagging far behind due to lack of access to educational facilities, especially, higher education.[[16]](#footnote-17) All India Survey on Higher Education, (2014-15) has reported that14 percent of India’s Muslim population accounts for only 4.4 percent of students in higher education.[[17]](#footnote-18)Moreover, education being the component of a nation’s economic development and progress,the Apex Court in ***Mohini Jain v. State of Karnataka*[[18]](#footnote-19)** asserted the right to education as a core element of the right to live with dignity guaranteed under Article 21 which needs to be essentially made available for all persons even exceeding fourteen years such as pre-university education imparted in colleges and universities. Also, it cannot be denied that Indian society suffers from cultural dogmatism and dominance of patriarchal values across diverse religious communities which discriminates education over gender. Hence, further restrictions by educational institutions with regard to ‘uniform’ particularly on Muslim girls for whom getting to the school gates was never an easy task is adding more challenge to their lives. Education for girls still feels like a dream in certain rural areas and among backward communities.

The Hijab controversy emerged when there was a closing of gates to education, where six Muslim girls wearing the Hijab were denied entry into the classroom of the Government Pre-University College in Udupiin the state of Karnataka. They were further instructed to follow the guidelines provided by the college concerning that of uniform. This incident subsequently snowballed to other educational institutions in that state. The Karnataka Govt. declared for closing of educational institutions for three days to control the situation. By the end of February 2022, over sixty-four colleges situated in twenty-four districts across Karnataka closed the gates of their institutions to hundreds of students wearing the Hijab.[[19]](#footnote-20)Such a discriminatory incident was also noticed earlier during the last decade in Bantwal, Mangalore, Moodbidri, and other districts, which either debarred or opposed Muslim women students donning the burqa or hijab.[[20]](#footnote-21)This present matter in hand on ‘Hijab’ as a uniform in educational institutions is a concern of cultural and legitimate scrutiny.Earlier,Muslim women’s freedom to choose a uniform in the form of the Hijab was justified in the earlier case of ***Nadha Raheem v. C.B.S.E.[[21]](#footnote-22)***, wherein the **Central Board of Secondary Education (**CBSE) prescribed a Dress code (half-sleeve kurta or salwar) for the competitive examinations of All India Pre-Medical (AIPMT)/Pre-Dental Examinationswas criticized by Muslim women to be prejudicial to their religious custom of wearing a headscarf and full sleeve dresses. However, the administration sought it appropriate to impose such measures to check ingenious methods of malpractice. Justice Chandran noted the reality of Indian culture but did not draw any observation or conclusion over the ‘Hijab’ being an essential component of religion or not.[[22]](#footnote-23)The very next year,a similar issue gathered momentum before the Kerala High Court on the same AIPMT examination conducted by CBSE in ***Amnah Bint Basheer and Another*v. *CBSE, New Delhi & Another.[[23]](#footnote-24)***Following its earlier precedent, this right of donning a Hijab was held to constitute “essential religious practice” and the judiciary upheld that,a woman’s right to choose her attire based on religious injunctions is a fundamental right safeguarded under Article 25(1) of the Constitution of India, when such uniform is an essential component of their religious faith. However, it did not quash the CBSE Rule prescribing dress code in the AIPMT of 2016.[[24]](#footnote-25)In the continuing saga of dilemma and neglect on this critical issue, the Apex Court was called out to settle the matter in 2018 involving a petition filed bythe minor female students of a school in ***Fathima’s*case**. This case adopted a different approach to fundamental rights and as this case was factually varying from previous cases in terms of it being a private institution and no state interference was done, The Court observed that; *“if the dominant interest was not allowed to prevail, subservient interest would march over the dominant interest resulting in chaos.”*Thus*,* all earlier precedents were overruled with the observation that, in a private institution, students cannot insist on a specific dress code.It was also attended with criticism that one isat liberty to adhereto his own notions and convictions regarding dress code. At the same time, the court is under obligation to weigh the conflicting Fundamental Rights and resolvethe issue accordingly, when a private entity is targeted by asserting such a right and when such entity possesses an equal right to manage and administer its institution[[25]](#footnote-26).

There have been controversies and debates over recognizing the ambit of freedom of expressionguaranteed under Article 19(1)(a) involving individual liberty towards religious preferences***.*** Often there is a dichotomy over understanding what liberty is and what entails the extent and scope of‘freedom’.In light of the right to education and the right to religion, there seems no controversy as these rights are complementary and cohesive toeach other. But in a country like India, with multiple religious communities and diverse religious beliefs, politicaltensions and moral policingare often witnessed in some other form. Under these challenging circumstances, the basic human right to a dignified life with fair access to education is a justified claim for every individual.

*If Muslim girls with Hijab are not allowed into educational institutions, is their right to education not being veiled?*The answer to this question has been addressed in the complaint filed by girls from different public University colleges of Udupi. In a series of writ petitions filed against the Karnataka Government’s Directive (datedFebruary 5, 2022), the Hon’ble High Court of Karnatakaaddressed underlying issues on ‘the right to Hijab’ in the case of ***Resham* v.*State of Karnataka.***[[26]](#footnote-27)The verdict released on March 15, 2022, dismissed a challenge to the Government Order of February 5, 2022 which mandated uniform across Pre-University schools and colleges. The concerns raised were;

a) Whether or not,Hijab was an essential practice of Islam? and;

b) Whether or not, Hijab should be prohibited in educational institutions?

Addressing these issues, theCourtsuitably observed that, Hijab does not fall within ‘*an essential practice’* of Islam, but a cultural practice of Islam and the fundamentalfreedom of speech and expression warranted under Article 19(1)(a)of the Constitution of India was not transgressed by the banning on wearing a Hijab in public schools. The Hijab could be considered directory rather than mandatory, and therefore does not qualify to be an “*essential religious practice”* (ERP) in Islam which is indicative of the fact that, the choice to weara Hijab isbeyondthe domain offreedom to practice, propagate, and profess religion conferred under Article 25.[[27]](#footnote-28)

The above verdict, however, undermined the petitioners’ rights and a series of appeals were preferred before the Apex Court**.** The “Hijab Ban” case soon spiraled controversial and diametrically opposite views widening the scopetowards a desired precedent. In***AishatShifa*** *v.* ***The State of Karnataka,[[28]](#footnote-29)***the two judges'bench had conflicting and opposing opinionswhich further added to the dilemma. A gamut of additional issues emerged raging from a) the right to practice own religion, equality, right to access to education, right to speech, right to privacy including the right to dress with dignity; and b) interpretation of reasonable restrictions of fundamental rights.The Government Orderwhich stems from Rule 11 of the [Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995](https://dpal.karnataka.gov.in/storage/pdf-files/Karnataka%20Rules/01%20of%201995%20Rules%20%28E%29%281%29.pdf) was argued to be justified on the ground that there was only a prescription for a ‘religion-neutral’ uniform. It is not anti-minority, because the State governments run many welfare schemes in the interest of the community. Also, Article 30 of the Indian constitution does not intend to offer absolute terms and if needed needs regulation. Moreover, educational institutions need to be secular and cannot encourage religious symbols.

But, in determining the constitutionality of the order, the Apex Court preferred to adopt a balancing approach to settle this contentious issue of “essential religious practice” via the lens of any socio-cultural temperament as well as guaranteed constitutional rights.

***Application of test of “Essential Religious Practice” (ERP)***

The test of “*Whether all religious practices are integral to the religion*?” was once again mooted for interpretation in the current case, which has earlier been put to test for the first time in 1951 in***State ofBombay v. NarasuAppa Mali,[[29]](#footnote-30)***wherein the judiciary observed that any issues having relevance to personal law or religion encompassing religious customs or practices shallnever be included within the realm of fundamental rights.Hence, the term “laws in force” as employed in Article 13 of the Indian Constitution excluded the personal laws by effectually suggesting that these laws of religion, etc. need not undergo any test of constitutionality i.e.fundamental rights[[30]](#footnote-31). Although the Court refrained from making any strong suggestion, in the landmark judgment in ***Shirur Mutt* Case,[[31]](#footnote-32)** the seven judges bench of the Apex judiciary asserted that“the Constitution protects religious practices unless they conflict with public order, health or morality”. It also interpreted the legitimate ambit of States’ regulation of religious activities under [Article 25(2)](https://indiankanoon.org/doc/555375/) of the Constitution, but such determination as to which activities would constitute essential religious practices was left with the judiciary.

A well-settled principle of law is that the analysis of ERP is undertaken only if rights conferred under bothArticles 25 and 26 are in issue,but thescope for analysis of an ERP is negatived where the rights conferred under both Articles 19(1)(a) and 25(1) are in issue. Moreover, this test is specific to resolve only disputes of a particular nature i.e. where customary practices like observance of rituals or customs of religion, sect,etc. urge protection from unreasonable meddling by the State. The present controversy primarily sets to interpret the lawful exercise of freedom of expression warranted under [Article 19(1)(a)](https://indiankanoon.org/doc/1378441/). Such a question of law is not a new challenge for the judiciary, yet requires further review in light of the dynamicof rights and choice.

India being home to diverse religious communities and sectsoften grapples with these contentious issues, may it be onexclusion of women from dargah[[32]](#footnote-33)or system of triple talaq[[33]](#footnote-34), religious conversions,[[34]](#footnote-35)wearing a turbanor a religious braceletor pendent (amulet, cross, or any symbol of God), etc. As because religious appearances are community and region-specific; these must be left to individual’s liberty and preferences rather than being judged until itaffects public order or the larger interest of communal harmony.

The judgment in ***AishatShifa v. The State of Karnataka[[35]](#footnote-36)*** witnessed a divided analysis in the ratio of 1:1 over claims of elements of ERP.Hon’ble Justice Hemant Gupta opined thatthe sole intent and object of thedirectivewhich forbids the wearing of a Hijab is to uphold uniformity within the school through the adoption ofa prescribed uniform.Hence, it is justifiable and reasonable as it has the efficacy toregulate the freedom of expression warranted under Article 19(1)(a). The proscription on wearing of Hijab is not an infringement of rights by the State. Further, students are not denied free ingress into the classrooms by the State.Donninga Hijab is a voluntary deed of the students and does not violate Article 19, Article 29 or any other rights. Also,Government-run schoolshave the authority to prescribe a uniform that is within the mandate of the Karnataka Education Act,1983 and it cannot be said to be arbitrary.

At the same time, givingaccord to one religious community, to put on their religious symbol in any Government or Government-added schools would be antithesis to secularism. In fact, the school dress codefostersa sense of uniformity and equality among pupils within school premises. Furthermore, the right to enter intoa secular school wearing a Hijab cannot beclaimed as a matter of right, although theyhave the freedom to profess their religion beyond the school premises.

***Theory of Reasonable Accommodation:***

On the contrary, Hon’ble Justice Sudhansu Dhulia was of the opinion that,asking girls not to wear a Hijab and to take off the same before entering into the classroom or school premises is an invasion of their privacy. It undermines their dignity and eventuallydenies them access to secular education. On the question, of whether ‘Hijab’ falls under the category of “*essential religious practice*”, he opined that it is a choice or preference under the Constitutional purview and hence, may or may not be a matter of ERP but, it shall be a matter of belief, conscience, and expression. If one wishes to wear a Hijab in the classroom, she cannot be denied so to do.[[36]](#footnote-37)The court clarified that conscience is an internal belief whereas religious expression is an outward display of religion. Banning of Hijab violates the fundamental rights guaranteed under Article 19(1)(a), Article 21, and Article 25 of the Constitution, and therefore, there shall not be any constraint ondonningthe Hijab anywhere within the educational institutions,and noted:

“*it does not appeal to my logic or reason as to how a girl child who is wearing Hijab in a classroom is a public order problem. To the contrary, reasonable accommodation, in this case, would be a sign of a mature society which has learned to live and adjust with its differences”.[[37]](#footnote-38)*

The test of ERP can be specifically denied of its application in cases where the practice is mostly an assertion of citizens’ rights against the State. Moreover, it needs to be apprised that, women do not question the constitutional validity of a religious practicebecause it subverts them, but are in the quest for autonomy to choose and not just under the dictate of the State.

***Question of Essentiality v. Proportionality***

The ongoing fallout of the Hijab ban incident, it must be asked; *if access to education is allowed with conditions over observance of certain secular standards of uniform, is it a justified restriction or an unreasonable restriction?* After a thorough analysis and judicial scrutiny, it could only be suggested thatthe test of essentiality as well as proportionality review must be undertaken diligently. However, the judiciaryseems to have stepped over the rule of ‘proportionality’ which suitably applies to settle two or more colliding legitimate rights to ultimately decide upon one right prevailing at the expense of another.[[38]](#footnote-39) With a half-settled precedent and feeble stand of the Court, politicization and unrest are expected to erupt in the future with people’s representatives molding their private interests of vote bank over the larger secular interest of India in the continuing complex socio-cultural dynamics of India.

***Impact***

In the aftermath of the split verdict, there are still unsolved queries about the validity of the Hijab and its justification for banning in educational institutions. The case in hand is now posted before the Hon’ble Chief Justice of India for hearing by a larger constitutional bench. In the meantime, reports have suggested that with the split verdict of the Hijab-row, the state of Karnataka witnessed a rise in the instances of circumscription on the fundamental right to education. Post the directive and judicial verdict, there were significant ramifications to this “de-facto” policy of banning the hijab. Over a question enquired by MLA Sowmya Reddy on September 22, 2022 on total drop-outs girls who wear Hijab (between the ages of 6 to 18 years), the Ministry of Primary and Secondary Education furnished constituency-wise statistics with around 1010 students, quitting schools either because of Hijab ban or allied reasons.[[39]](#footnote-40)Even across adjoining districts like Shivamogga, Hijab-wearing students of Karnataka Public School went backhome following the denial of entering the school. Similar events have been documented in Indavara in Chikkamagaluru taluk, Belur in Hassan district, and Shiralakoppa and Shikaripur in Shivamogga district. Furthermore, protests have broken out in various places of the State against Muslim girls wearing hijabs, causing concern among the students.[[40]](#footnote-41)

Following the Karnataka incident, the Hon’ble High Court of Bombay was confronted with similar contentious issues recently raised in the case of [***Zainab Abdul QayyumChoudhary*v. *ChemburTrombay Education Society***](https://www.scconline.com/blog/post/2024/07/04/bombay-hc-holds-dress-code-restricting-hijab-niqab-non-violative-of-fundamental-rights/)’***s.[[41]](#footnote-42)***In the judgment delivered on June 26, 2024, the court dismissed the Hijab as ERP under Article 25 and upheld a ban imposed by the ChemburTrombay Education Society’ on the Hijab inside the college campus keeping in view the ‘larger academic interest.’ Clause 2 of the notification stated:

“*You shall follow the college dress code of formal and decent attire which shall not reveal anyone’s religion such as No Burkha, No Nakab, No Hijab, No Cap, No Badge, No Stole, etc. Only full or half shirts and normal trousers for boys and any Indian/ Western non-revealing dresses for girls on the college campus. Changing room available for girls*”.

Further, the Court was of the view that the instruction towards the prescribed‘dress code’ is justified in the light of the right of the Collegeadministration to administer under Article 19(1)(g) and Article 26 of the Constitution. Moreover, there is no infirmity in disciplinary instruction for students. Therefore, it doesn’t violate Article 19(1)(a) and Article 25.

In the absence of any conclusive stand by the Apex Court earlier in the 2022 case, the Bombay High Court too could not appreciate the need and ambit of religious freedom. Allowingdiscipline over freedom of clothing is certainly a constitutional safeguard, but, no attempt by the Court towards re-evaluating or rephrasing the language of notification,and just a plain acceptance of the contention that, ‘religion has no place in public spaces’, seems a little unsatisfactory.

These instances of bigotry would substantially escalate the learning gap between Muslim women students and their classmates. Amidst this parallel interpretation, the practice of ‘Hijab’ appears to be more of a form of religious expression and hence be seen as a preferable religious practice among Muslim women.

**4. Conclusion and Suggestion**

India is a country with religious and cultural diversity. Discrimination based caste, race, color, and gender has always been a debatable topic in the country. For a diverse country like India, it emerges as a challenge to attain social justice. Unfortunately, the issue of Hijab has been politicized. University environments are critical in fostering a sense of solidarity among diverse religious and cultural communities of the nation and encouraging the value of fraternity among students along with a common understanding of the indispensable value of dignity. The decision of educational institutions over ‘dress code’ or ‘uniform’ must not violate the fundamental right to education. Implementation of the ‘right to equality’ among communities, diverse castes, and religions is a complex equation and needs appropriate caution while deciding on matters of such disciplinary measures, either with respect to enforcement of dress code or facilitating any cultural and religious rights of minority communities.

In framing suitable legislative or administrative policies, conflicting freedoms of different sections of the society need a balancing approach to ensure equitable expression of fundamental rights such as freedom of expression, right to education, etc., and States’ initiatives towards maintaining public order and principles of the Constitution. Moreover, India’s effort towards women empowerment as an element of social justice can be achieved by barrier-free access to education while ensuring adequate safeguards against any arbitrary interference either by any private institutions or government functionaries of the State. In other words, religious freedom seeks state neutrality and equality before the law. At this juncture, the principle of reasonable accommodation is suitably called out to fill in the controversies and any constitutional gaps in the policy framework to see the feasibility of the co-existence of individual liberty as well as State’s discretionary power. The interventionist approach of either the State or any Institution should be evaluated on measures of primacy of interests of parties in case of conflicting ideologies or perceptions. Hence, allowing the wearing of the Hijab of the same color as that of the prescribed uniform would be a healthy assimilation of the ideals of democracy.

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