



## High Court Upholds Hijab Ban in Colleges

**For Prelims: Supreme Court, Hijab, Fundamental Rights, Cases Related to Freedom of Religion**

**For mains: Fundamental Rights, Judiciary, Government Policies & Interventions, Women's Issues, Cases Related to Freedom of Religion.**

[Source: IE](#)

### Why in News?

Recently, the **Bombay High Court dismissed a plea** by 9 students who have challenged the **college's new dress code** that banned the wearing of hijabs, burqas, niqabs, and any other religious identifiers inside the college premises.

- The court held that the dress code was decided in the "**larger academic interest**" of the students.

### Note

- Recently, **Tajikistan** has officially **banned hijabs** for women despite over **95%** of the population being Muslim.
- It is also banned in Germany, Australia, Austria, Bosnia, Herzegovina, France, Canada, Kazakhstan, Kosovo, Kyrgyzstan, Russia, and Uzbekistan **with varying degrees of restrictions.**
- **Iran Hijab Movement:**
  - Iranian women have a long history of fighting for choice regarding the hijab. After the **1979 revolution**, mandatory hijab sparked protests. Women have continuously resisted through various acts, with major events like the "**Girl of Enghelab Street**" (where a woman tied her white headscarf to a stick and waved it in the air, a silent act of defiance against compulsory hijab) and **Mahsa Amini's death** fueling protests. Despite government enforcement, the movement persists, with many Iranians, both men and women, **opposing compulsory hijab.**
  - The new **law** in Iran has made it **mandatory** for **Iranian women to wear the hijab**, enforcing this dress code with **fines and imprisonment** for those who do not comply.

### What were the Key Arguments and Court's Ruling?

- **Arguments of Students:**
  - Students argued that the **college dress code** infringes on their **religious freedom and right to education.** They believe the college doesn't have the authority to impose such restrictions, especially since it hinders access to education for minority communities.
    - They claim the restrictions violate specific articles of the constitution [Article](#)

**19(1)(a) (Right to Freedom of Expression) and Article 25 (Right to Freedom of Religion).**

- They also claimed the decision was in violation of **University Grants Commission (Promotion of Equity in Higher Educational Institutions) Regulations, 2012** meant to increase access to higher education for SC,ST, OBC and minority communities.
- **Arguments of College Administration:**
  - The college administration, however, argued that the **dress code was applicable to all students, across religious and community lines**. It said that the objective behind the rules was to **not reveal students' religion**.
    - They relied on the **2022 judgement of Karnataka High Court** which stated that **donning the hijab or niqab was "not an essential religious practice"** for women professing Islam.
    - The college also said that this was an **internal matter**, and **a part of its right to maintain discipline**.
    - It held that the dress code, which prescribed **"any Indian/western non-revealing dress"** for girls, was **applicable to all students across religious and community lines**.
- **Bombay High Court's Ruling:**
  - The Bombay HC **rejected the students' argument** that wearing the hijab is an **"essential religious practice"** emphasising the **dress code was applicable uniformly to all students**, irrespective of their "caste, creed, religion or language" which did **not violate the UGC regulations** on promoting equity in higher education.
  - It held that between the **competing rights of a student's choice of dress** and the **institution's right to maintain discipline**, the **"larger rights" of the college must prevail**, as students are expected to attend the institution for academic advancement.
  - The court relied on and expressed **"full agreement" with the 2022 judgement of the Karnataka High Court (HC) on Resham v. State of Karnataka, 2022** which had **validated the state government's ban on hijabs in government colleges**.
- **Challenged in Supreme Court:**
  - However, the **Karnataka HC judgement on hijab ban** is itself currently **under challenge in the Supreme Court**, where a 2-judge bench delivered a split verdict in **October 2022**. The case has now been referred to a larger bench of the Supreme Court.
    - This Bombay HC verdict is also likely to be contested in the **Supreme Court**.

## Karnataka Government on Hijab Ban

- In 2022, the **Karnataka government passed an order** prohibiting the wearing of **hijab (headscarf)** in government educational institutions.
- The order cited **Section 133(2) of the Karnataka Education Act, 1983**, which grants the state powers to issue directives for government schools to follow.
- In 2013, the state used this provision to **make uniforms compulsory**. The latest order states that the **hijab is not an essential religious practice for Muslims** that can be protected under the Constitution.

## How Have Courts Ruled so far on the Issue of a Hijab?

- **Bombay High Court, 2003:**
  - In **Fathema Hussain Sayed v Bharat Education Society**, the court held that the **Quran** does not prescribe the wearing of a headscarf, and a **girl student not wearing a headscarf cannot be seen as violating Islamic injunctions**.
- **2015 Kerala High Court Cases:**
  - Two petitions challenged the dress code for the **All India Pre-Medical Entrance**, which prescribed light clothes with half sleeves and slippers instead of shoes.
  - The **Central Board of School Education (CBSE)** argued that the dress code was to

prevent unfair practices.

- The Kerala HC directed the CBSE to implement additional measures for students wishing to wear religious attire.

▪ [Amna Bint Basheer v CBSE, 2016:](#)

- The Kerala HC ruled that **wearing a hijab is an essential religious practice but upheld the CBSE dress code**, allowing additional measures and safeguards as in 2015.

▪ **Kerala High Court, 2018:**

- In [Fathima Thasneem v State of Kerala](#), the court ruled in favour of a Christian missionary school's decision **to deny permission to wear headscarves**, stating that the **"collective rights" of the school must take precedence** over individual student rights.

▪ **Supreme Court Split Verdict on Hijab Ban:**

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# Divergent views

A look at what was emphasised by the two verdicts on the hijab ban

DELIVERED BY  
**JUSTICE HEMANT GUPTA**

"Secularism is applicable to all citizens, therefore, permitting one ... community to wear their religious symbols would be antithesis to secularism."

**SCHOOL AND RELIGION:** Religion has no meaning in a secular school run by the state. "Students are free to profess their religion and carry out religious activities other than when they're attending a classroom."

**UNIFORM, EQUALITY:** "... Uniform fosters a sense of 'equality' amongst students- instills a sense of oneness, diminishes individual differences..."

DELIVERED BY  
**JUSTICE SUDHANSHU DHULIA**

"Wearing hijab should be simply a matter of choice. It may or may not be a matter of essential religious practice, but it still is, a matter of conscience, belief, expression."

**CLASSROOM IS DIFFERENT:** Though discipline is required in educational institutions, they can't be put on par with a jail or a military camp, as was cited by HC while describing schools as "qualified public spaces"

**TICKET TO EDUCATION:** "If it is worn as a matter of her choice, as it may be the only way her conservative family will permit her to go to school... her hijab is her ticket to education"

## What is the Constitutional Framework for Religious Freedom in India?

- **Right to Freedom of Religion: Articles 25-28 of Part-3 ([Fundamental Rights](#)) of the Constitution confers the right to freedom of religion to all persons.**
  - **Article 25(1):** This article grants the **"freedom of conscience and the right to freely profess, practice, and propagate religion."** It establishes a negative liberty, wherein the state cannot obstruct the exercise of this right.
  - **Article 26:** This article provides the **"freedom to manage religious affairs"** subject to public order, morality, and health.
    - It allows **religious denominations to establish and maintain institutions** for religious and charitable purposes.
  - **Article 27:** This article **prohibits the state from compelling any citizen to pay taxes for the promotion or maintenance of any particular religion.** It upholds the principle



of secularism.

- **Article 28:** This article deals with the **freedom to attend religious instruction or worship in certain educational institutions.**
  - It allows the state to **provide religious instruction in state-recognized or state-funded educational institutions.**
- Further, **Articles 29 and 30 of the Constitution** deal with the protection of the interests of minorities.

## Way Forward

- **Judicial Consensus & Supreme Court's Role:** Aligning High Court judgments can indicate an emerging judicial view. The Supreme Court's verdict will be crucial for a clear legal framework.
- **Balancing Rights & Institutional Needs:** **The challenge lies in balancing individual religious freedom with institutions' autonomy to implement dress codes. This needs careful consideration in each educational context.**
- **Comprehensive Guidelines & Inclusivity:** **The lack of national-level dress code guidelines necessitates clear policies from the UGC,** ensuring uniformity and protecting fundamental rights.
  - **Formulating dress codes through a consultative process** involving all stakeholders is needed to foster inclusivity and address concerns regarding diverse religious practices.

## Conclusion

The Bombay HC verdict is a significant development in the hijab controversy, reaffirming the courts' position on the permissibility of dress code regulations in educational institutions. However, it requires a balanced approach that upholds the fundamental rights of students while also preserving the autonomy and academic interests of educational institutions.

### **Drishti Mains Question:**

Discuss the potential impact of the Bombay High Court's judgement on the ongoing legal and social debates surrounding the hijab controversy in India.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### **Mains:**

- Q.** How the Indian concept of secularism is different from the western model of secularism? Discuss. **(2016)**
- Q.** Are tolerance, assimilation and pluralism the key elements in the making of an Indian form of secularism? Justify your answer. **(2022)**
- Q.** How is the Indian concept of secularism different from the western model of secularism? Discuss. **(2018)**
- Q.** Distinguish between religiousness/religiosity and communalism giving one example of how the former has transformed into the latter in independent India. **(2017)**

