



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)**

