

INTERROGATING EQUAL CITIZENSHIP AND GLOBAL ISLAMOPHOBIA: CONTEXTUALISING THE HIJAB BAN IN INDIA

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ABSTRACT

This paper critically examines the 2021–22 hijab ban in educational institutions in the Indian state of Karnataka through a dual analytical framework: the principles of equal citizenship within India’s constitutional secularism and the pervasive influence of global Islamophobic narratives. Employing a qualitative, interdisciplinary methodology, the study integrates doctrinal legal analysis with critical theoretical perspectives on minority rights, educational autonomy, and intersectional discrimination. It draws upon constitutional and statutory interpretation, judicial decisions, and secondary sources such as human rights reports and academic literature to assess the socio-legal implications of the ban. The paper argues that the Karnataka hijab ban fundamentally undermines the tenets of equal citizenship by creating a two-tiered system of rights for Muslim

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minorities. By contextualising the Indian hijab ban within global Islamophobic discourses and comparative legal frameworks such as the French model of *laïcité*, the paper analyses how misrepresented notions of gender roles in Islam are weaponised to justify restrictions on Muslim women's attire, thereby reinforcing existing prejudices within the Indian socio-political landscape. The paper also critically engages with the judicial discourse surrounding the ban, including the Karnataka High Court's verdict and the Supreme Court's split judgment, highlighting their implications for the protection and interpretation of religious minority rights in India. By synthesising these lenses, the paper offers a comprehensive understanding of the multifaceted challenges posed by the Karnataka hijab ban to democratic ideals and social cohesion in a diverse, secular nation.

Keywords: Hijab Ban, Equal Citizenship, Islamophobia, Minority Rights, Educational Autonomy, Intersectional Discrimination.

MEMPERTIMBANGKAN KEWARGANEGARAAN SETARA DAN ISLAMOFOBIA GLOBAL: MENKONTEKSTUALKAN LARANGAN HIJAB DI INDIA

ABSTRAK

Kertas ini mengkaji secara kritis larangan hijab 2021–22 di institusi pendidikan di Karnataka, sebuah negeri di India, melalui rangka kerja analitikal dua hala: prinsip kewarganegaraan setara dalam kerangka sekularisme perlembagaan India dan pengaruh meluas naratif Islamofobia global. Menggunakan metodologi kualitatif dan antara disiplin, kajian ini menggabungkan analisis undang-undang doktrinal dengan perspektif teori kritikal mengenai hak minoriti, autonomi pendidikan, dan diskriminasi interseksional. Ia merujuk kepada tafsiran perlembagaan dan statutori, keputusan kehakiman, serta sumber sekunder seperti laporan hak asasi manusia dan kesusasteraan akademik untuk menilai implikasi sosial-perundangan larangan tersebut. Makalah ini berpendapat bahawa larangan hijab di Karnataka secara asasnya melemahkan prinsip kewarganegaraan setara dengan mewujudkan sistem dua peringkat hak untuk minoriti Muslim.

Dengan mengkontekstualkan larangan hijab di India dalam wacana Islamofobia global dan kerangka undang-undang perbandingan seperti model *laïcité* Perancis, makalah ini menganalisis bagaimana tafsiran yang salah mengenai peranan jantina dalam Islam dimanipulasikan untuk menghalalkan sekatan terhadap pakaian wanita Muslim, sekali gus mengukuhkan prasangka sedia ada dalam landskap sosio-politik India. Makalah ini turut mengkritik wacana kehakiman berkenaan larangan tersebut, termasuk keputusan Mahkamah Tinggi Karnataka dan penghakiman terbahagi Mahkamah Agung, dengan menonjolkan implikasinya terhadap perlindungan dan tafsiran hak-hak minoriti agama di India. Dengan mensintesis pendekatan-pendekatan ini, makalah ini menawarkan pemahaman menyeluruh terhadap cabaran pelbagai dimensi yang ditimbulkan oleh larangan hijab Karnataka terhadap cita-cita demokratik dan perpaduan sosial dalam sebuah negara sekular yang berbilang kaum.

Kata Kunci: Larangan Hijab, Kewarganegaraan Setara, Islamofobia, Hak Minoriti, Autonomi Pendidikan, Diskriminasi Interseksional.

INTRODUCTION

In early 2022, the southern Indian state of Karnataka became the epicentre of a national discourse on religious freedom, secularism, and gender rights when several Muslim female students were barred from attending pre-university classes for wearing the hijab.¹ This episode not only sparked polarised public debate and campus protests but also triggered a cascade of court interventions, culminating in a landmark judgement by the Karnataka High Court and a split verdict thereafter by the Supreme Court of India.

The hijab, or Islamic veil, has been the focus of public discourse and legal regulation across various global contexts. In France, legislative measures restricting the hijab initiated in 2004 have undergone significant evolution over the past two decades, eliciting

¹'Karnataka Colleges Deny Entry to Women Wearing Hijabs, Students Protest at Some Places', Scroll.in, 16, February 2022, accessed September 9, 2025, <https://scroll.in/latest/1017521/karnataka-colleges-deny-entry-to-students-wearing-hijabs-protests-erupt-at-some-places>.

sustained engagement from both the public and academic spheres.² These regulatory efforts, rooted in the French Republican principle of *laïcité*, prescribe a strict separation between religion and the state, serving as the foundational rationale for the state's intervention in matters of religious expression in public spaces.³

While the French hijab bans are often justified through a rigid interpretation of secularism, the Indian context presents a distinct, yet increasingly convergent, trajectory. India's constitutional secularism historically emphasised the accommodation of religious and cultural diversity.⁴ However, the Karnataka hijab controversy of 2022 signals a shift towards a more restrictive and majoritarian understanding of secularism.

The ban on wearing the hijab in government educational institutions in Karnataka, supported by the state government and later endorsed by the High Court, was legally justified as a measure to enforce uniformity and discipline.⁵ Though it originated from a seemingly innocuous dispute, the issue rapidly escalated into widespread debate about the erosion of minority rights, gender justice, and the instrumentalisation of secularism to assert cultural hegemony.

²Khaled A. Beydoun, 'Laïcité, Liberalism, and the Headscarf', *Journal of Islamic Law and Culture* 10, no. 2 (July 2008): 191–215, <https://doi.org/10.1080/15288170802285439>; Mohammad Mazher Idriss, 'Laïcité and the Banning of the "Hijab" in France', *Legal Studies* 25, no. 2 (2005): 260–95, <https://doi.org/10.1111/J.1748-121X.2005.TB00615.X>.

³Idriss, 'Laïcité and the Banning of the "Hijab" in France'; Beydoun, 'Laïcité, Liberalism, and the Headscarf'.

⁴Werner Menski, "Indian Secular Pluralism and Its Relevance for Europe," in *Legal Practice and Cultural Diversity*, ed. Ralph Grillo, Roger Ballard, Alessandro Ferrari, André J. Hoekema, Marcel Maussen, and Prakash Shah, (London: Routledge, 2009), 31-48. <https://doi.org/10.4324/9781315250557>; Rochana Bajpai, "Multiculturalism in India: An Exception?" in *Multiculturalism in the British Commonwealth: Comparative Perspectives on Theory and Practice*, ed. Richard T. Ashcroft and Mark Bevir, 1st ed. (Oakland: University of California Press, 2019), 127–49.

⁵Ayushi Saraogi, "Hijab Ban Appeal #9: Karnataka Gov Recasts Hijab Ban as a Policy for Equality and Discipline," Supreme Court Observer, September 21, 2022, <https://www.scobserver.in/reports/hijab-ban-appeal-9-karnataka-gov-recasts-hijab-ban-as-a-policy-for-equality-and-discipline/> (accessed September 6, 2025).

Throughout the life of the Indian Republic, key battles on the contours of national unity, belonging, and the meaning of secularism predominantly manifested themselves through issues concerning the Muslim woman.⁶ This episode marked a critical moment in India's evolving secular ethos, wherein the Muslim woman's attire once again became a site of contestation over national identity, public order, and the limits of religious freedom.

While the Hijab ban and ensuing court cases reflect the Hindu nationalist renegotiation of citizenship and belonging, which is redefining who belongs to the nation and on what terms.⁷ Concurrently, the ban also draws upon broader Islamophobic narratives that often target aspects of Muslim identity, particularly gender roles and practices like the hijab, viewing them with suspicion or hostility. This paper analyses the hijab ban through the dual perspectives of equal citizenship and Islamophobia. While the former integrates theoretical perspectives on minority rights, educational autonomy, and intersectional discrimination, the latter contextualises the hijab ban through global Islamophobic narratives on gender roles in Islam and ensuing hijab bans.

The principle of equal citizenship, a cornerstone of India's constitutional framework, envisions a society in which all citizens, regardless of religious affiliation, enjoy parity in rights, opportunities, and recognition.⁸ For religious minorities, this principle implies a state that accommodates diverse religious and cultural practices, provided they do not infringe upon the rights of others or the foundational

⁶Shilpi Pandey, 'The Burden of Being a Muslim Woman in India—The Instrumentalisation of Muslim Women at the Intersection of Gender, Religion, Colonialism, and Secularism', *Religions* 15, no. 3 (2024): 291, <https://doi.org/10.3390/rel15030291>.

⁷Anjali Mody, 'The Karnataka Campaign Isn't Just about the Hijab – It's Mainly about Showing Muslims Their Place', Scroll.in, 8 February 2022, accessed September 9, 2025, <https://scroll.in/article/1016858/the-karnataka-campaign-is-about-the-hijab-but-mainly-about-showing-muslims-their-place>.

⁸Niraja Gopal Jayal, 'Reinventing the Republic: Faith and Citizenship in India', *Studies in Indian Politics*, 10, no. 1 (June 2022): 14–30, <https://doi.org/10.1177/23210230221082799>.

principles of the state.⁹ The imposition of the hijab ban, however, appears to establish a hierarchy where the religious expression of a specific community was deemed incompatible with institutional norms, thereby impeding their full and equal participation in the public sphere of education.¹⁰

Simultaneously, the Indian socio-political landscape has been increasingly shaped by a rising tide of Islamophobia, often amplified by political rhetoric and media narratives.¹¹ This phenomenon, which constructs Islam and Muslims as inherently “other” and often threatening, finds fertile ground in pre-existing biases.¹² Within these Islamophobic narratives, Muslim women, and specifically the hijab, frequently become sites for projecting anxieties about modernity, national identity, and the perceived backwardness of Islamic traditions. This paper argues that the Karnataka hijab ban was not an isolated administrative decision but was deeply embedded within this broader Islamophobic framework, exploiting existing prejudices and reinforcing stereotypes about Muslim women’s agency and autonomy, often under the guise of secularism or gender equality.

⁹Laura Dudley Jenkins, “Diversity and the Constitution in India: What Is Religious Freedom?” *Drake Law Review* 57, no. 4 (2009): 913–41.

¹⁰Farrah Ahmed, Mohsin Alam Bhat, Aparna Chandra, Raunaq Jaiswal, Gauri Pillai, Faiza Rahman, Rishika Sahgal, John Sebastian, and Anup Surendranath, “Prohibiting Hijab in Educational Institutions: A Constitutional Assessment,” *Asian Legal Conversations*, published by LiveLaw, March 17, 2022, accessed September 9, 2025, <https://law.unimelb.edu.au/centres/alc/engagement/asian-legalconversations/conversations/prohibiting-hijab-in-educational-institutions-a-constitutional-assessment>.

¹¹Shakuntala Banaji and Ramnath Bhat, ‘Social Media, Violence and Hierarchies of Hate in India’, in *Social Media and Hate* (London: Routledge, 2021), 75–95, <https://doi.org/10.4324/9781003083078-4/Social-Media-Violence-Hierarchies-Hate-India-Shakuntala-Banaji-Ramnath-Bhat>.

¹²Abid Yousuf Bhat and Nor Hafizah Bt Mohd Badrol Afandi, “Beyond Citizenship (Amendment) Act, 2019: Understanding the Right-Wing Populist Challenge to Minority Citizenship of Muslims in India,” *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 3 (2025): 159–81.

The intersecting lenses of equal citizenship and global Islamophobia explain the Hijab ban not merely as the denial of equal citizenship to Muslim women, but also as an instance of India's participation in the reproduction of a global regime of Islamophobic governance. In this sense, Muslim women are subjected to double precarity, manifested in the curtailment of their constitutional rights by majoritarian interpretations of secularism and equality, as participants in a global Muslim community disproportionately subjected to suspicion, exclusion, and regulation. This intersection highlights that the Karnataka hijab ban is both a national constitutional crisis and a local manifestation of a global Islamophobic order, underscoring how transnational ideologies shape and exacerbate domestic inequalities.

RESEARCH METHODOLOGY

This study adopts a qualitative and interdisciplinary methodology, integrating doctrinal legal analysis with critical theoretical perspectives. The doctrinal component engages with constitutional provisions, statutory law, and judicial decisions on the hijab ban, while the critical framework draws upon theories of equal citizenship, intersectionality, and Islamophobia to evaluate the broader socio-legal implications. The analysis relies on primary sources, including constitutional texts, court judgments, and government orders, and secondary sources such as human rights reports, academic scholarship, and media accounts. Through textual interpretation and thematic analysis, the study situates the Karnataka hijab ban within both India's constitutional secularism and global Islamophobic narratives, thereby offering a comprehensive, evidence-based understanding of its impact on Muslim women's rights and access to education.

THE MAKING OF THE KARNATAKA HIJAB BAN

The issue began in December 2021, when several Muslim female students were denied entry to the college for wearing hijabs, predicated on an alleged violation of the established uniform policy. Subsequently, the students' request to wear scarves that matched the colour of their uniform was declined. Later, they were allowed to enter the campus wearing hijabs but were not permitted to attend classes. This

development precipitated protests by student groups affiliated with Hindu nationalist organisations, who donned saffron scarves to demonstrate their opposition to the accommodation of hijabs among Muslim students within educational institutions.¹³

The legal journey of the Karnataka hijab ban began with the state government's Order on February 5, 2022 (the Order), invoking the state Education Act to mandate that school and pre-university college students adhere to prescribed uniforms, and where no dress code was prescribed, such attire "that do not threaten equality, unity, and public order"¹⁴ to be adhered to. The Order explicitly, though in the inoperative part, mentioned and justified the prohibition of wearing headscarves or head coverings. Interestingly, the directive did not prohibit other forms of religious attire or symbols like *Sindhoor*, *kirpan*, cross, and turban. This stance was subsequently affirmed by an official pronouncement from the state government, which exempted the wearing of the turban, following the Karnataka High Court's confirmation of the hijab ban.¹⁵

The Education Minister, B. Nagesh, also issued a warning stating that stringent measures will be taken against educational institutions that prohibit students from entering schools or colleges for wearing traditional religious symbols such as a tilak, *kumkum*, *bindi*, or *sindhur*.¹⁶ He called these symbols cultural, juxtaposing them against hijab, which he said was a religious symbol. This is a similar line of reasoning to that adopted by the European Court of Human Rights in

¹³Karnataka's saffron scarf protests against the hijab aren't new. A college in Koppa saw one in 2018

¹⁴Karnataka Government Order on Dress Code for Students' (Translated to English) Supreme Court Observer, accessed 24 June 2025, <https://www.scobserver.in/journal/karnataka-government-order-on-dress-code-for-students/>

¹⁵Niranjan Kaggere, "HC Interim Order Not Applicable on Turban-Wearing Students: BC Nagesh," Deccan Herald, February 24, 2022, accessed September 9, 2025, <https://www.deccanherald.com/india/karnataka/hc-interim-order-not-applicable-on-turban-wearing-students-bc-nagesh-1084863.html> .

¹⁶Strict Action Will Be Taken If Students Are Forced to Remove Tilak, Kumkum, Bindi Etc: Karnataka Education Minister', accessed 20 June 2025, <https://www.opindia.com/2022/02/strict-action-will-be-taken-if-students-are-forced-to-remove-tilak-kumkum-bindi-etc-karnataka-education-minister/>.

*Lautsi v. Italy*¹⁷, which emphasised the notion of the crucifix as a “passive symbol,” distinguishing it from overt religious indoctrination and instead framing it as part of Italy’s cultural heritage and democratic tradition.

In effect, the government order extended a localised institutional issue to the whole state, and many institutions that had previously been accommodating hijab also started barring students from entering the colleges for wearing hijab. Consequently, numerous students lodged a petition with the Karnataka High Court,¹⁸ contesting the prohibition of hijab-wearing students from accessing educational institutions. They challenged the prohibition on multiple grounds, asserting that it violated the fundamental rights to freedom of conscience and the practice of religion. Furthermore, they contended that it infringed on freedom of expression, personal choice and privacy, constituted gender-based discrimination and violated the right to education.¹⁹

EQUAL CITIZENSHIP AND RIGHTS OF MINORITIES

Equal citizenship denotes the principle that all individuals, regardless of their race, gender, religion, or socio-economic status, are entitled to the same rights, protections, and responsibilities under the law, thereby ensuring formal and substantive equality within the framework of constitutional and democratic governance. The ideal of equal citizenship in a diverse and constitutionally secular country like India demands a delicate balance between individual liberties and collective norms. For religious minorities, this translates into the expectation that the state will accommodate their religious practices unless compelling and demonstrably proportionate reasons necessitate restriction.²⁰

¹⁷(Eur. Ct. H. R. 2012) E.H.R.R.3

¹⁸Writ Petition No. 2347/2022

¹⁹ Mustafa Plumber, ‘Hijab Ban: How Can Girls Going to School Wearing Head Scarf Be Public Order Issue? Petitioners Argue In Karnataka High Court’, LiveLaw, 8 February 2022, accessed September 9, 2025, <https://www.livelaw.in/top-stories/hijab-ban-govt-college-karnataka-high-court-muslim-girls-students-public-order-191432>.

²⁰Rajeev Dhavan and Fali S. Nariman, “The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities,” in *Supreme but Not Infallible: Essays in Honour of the Supreme Court of*

The hijab ban in Karnataka's educational institutions constitutes a substantive challenge to the principle of equal citizenship (Article 14), as it imposes a discriminatory burden on Muslim girls and women by constraining their access to formal education and compelling a trade-off between the expression of religious identity (Article 19 and Article 25), right to privacy (Article 21) and the exercise of their constitutionally guaranteed right to education (Article 21 A).

Accordingly, the students did not challenge the ban solely on the basis of their religious rights. Instead, they articulated their demands in a broader language of equal rights, rights against discrimination, and rights to liberty, privacy, and dignity. In Karnataka, a decision over school uniforms became a lightning rod for a much larger conversation: where should the line be drawn between personal religious freedoms and state-imposed uniformity?

MINORITY RIGHTS AND RELIGIOUS FREEDOM UNDER ARTICLE 25

The Constitution of India, under Article 25, guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion. For a significant number of Muslim women, the hijab represents a fundamental and deeply personal manifestation of religious identity and devotion, grounded in their interpretive engagement with Islamic tenets. When the Karnataka government and educational institutions prohibited the hijab, they directly infringed upon this fundamental right, compelling individuals to compromise their religious convictions to access basic public goods like education.

The core of the judicial challenge in Karnataka revolved around whether the hijab constituted an “Essential Religious Practice” (hereinafter ERP) within the framework of Islamic doctrine. The Karnataka High Court, in its March 2022 judgement,²¹ held that the hijab is not an ERP, thereby concluding that the state's restriction did not violate Article 25. This application of the ERP doctrine, which has been criticised for empowering courts to determine the theological

India, ed. B. N. Kirpal, A. H. Desai, G. Subramaniam, R. Dhavan, and R. Ramachandran (New Delhi: Oxford University Press, 2000), 256–87.

²¹ *Resham and Anr v. State of Karnataka and Ors.* 2022 LiveLaw (Kar) 75.

essence of a religion,²² became a critical point of contention, effectively reducing religious freedom to a judicially determined minimum rather than a broad space for individual expression.

EDUCATIONAL AUTONOMY AND ACCESS IN THE CONTEXT OF THE BAN

Education is a recognised human right and a crucial determinant of social mobility and personal development. When hijab bans were enforced in Karnataka's schools and pre-university colleges, they created a significant and immediate barrier to education for Muslim women. Reports emerged of students being denied entry,²³ missing examinations,²⁴ and even dropping out of educational institutions rather than abandoning their hijab.²⁵ This presented a stark dilemma: conform to dress codes that conflicted with their religious beliefs and choices or forfeit educational opportunities. Such policies not only limited individual choice and agency but also had broader societal implications, potentially leading to the marginalisation of an entire segment of the Muslim population in the state.

The state's argument, often articulated as promoting "uniformity" and "secularism" in classrooms, undermined the very

²²Faizan Mustafa and Jagtshwar Singh Sohi, "Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy," *BYU Law Review* 2017, no. 4 (2018): 915, <https://digitalcommons.law.byu.edu/lawreview/vol2017/iss4/9>; Jaclyn L. Neo, "Definitional Imbroglios: A Critique of the Definition of Religion and Essential Practice Tests in Religious Freedom Adjudication," *International Journal of Constitutional Law* 16, no. 2 (April 2018): 574–595, <https://doi.org/10.1093/icon/moy055>.

²³'Karnataka Colleges Deny Entry to Women Wearing Hijabs, Students Protest at Some Places'.

²⁴Anusha Ravi Sood, 'Karnataka Hijab Petitioners Turned Away from Exam Centre, Likely to Lose Academic Year', *ThePrint.in*, 22 April 2022, accessed September 9, 2025. <https://theprint.in/india/karnataka-hijab-petitioners-turned-away-from-exam-centre-likely-to-lose-academic-year/926631/>.

²⁵'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka' (People's Union for Civil Liberties, 9 January 2023), accessed September 9, 2025. https://pucl.org/wp-content/uploads/2023/05/PUCL-K_Closing-the-Gates-to-Education_Feb42023.pdf.

goal of inclusive education by creating an environment of exclusion and alienation for Muslim students, and by creating an unnecessary hurdle for already disadvantaged students.²⁶ A report by the People's Union for Civil Liberties observed that the hijab ban represented not merely a retreat by the state from its constitutional obligation to ensure the right to education for all, but also constituted a "deliberate attempt to deny" that right.²⁷

Judicial Discourse in the Aftermath of the Ban

The judicial journey of the Karnataka hijab ban underscores the deep divisions and complexities in interpreting constitutional rights in contemporary India, particularly concerning religious minorities.

The High Court Verdict

The Karnataka High Court's verdict²⁸, delivered on March 15, 2022, upheld the hijab ban. The court framed three key questions, the most central being: Is wearing the hijab an "essential religious practice"²⁹ (ERP) in Islam protected by Article 25? The High Court, after a scholarly examination of Islamic scriptures, concluded that the hijab was more of a cultural practice, evolved as a social safeguard in historical contexts, not an inviolable religious practice, and "much less essential to the Islamic faith."³⁰ By ruling the hijab as non-essential, the court effectively removed it from the shield of Article 25, freedom of religion. The framing of the hijab in the essential/non-essential binary has been criticised on two grounds. First, the essential religious

²⁶Fatima Juned, 'Hijab-Ban, Right to Education and Question of Agency of Muslim Women', *Context*, vol. 1, 2022, https://sprf.in/wp-content/uploads/2024/12/SPRF-2022_DP_Hijab-Ban_Final_2.pdf.

²⁷'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka'.

²⁸*Resham and Anr v. State of Karnataka and Ors.* 2022 LiveLaw (Kar) 75.

²⁹The Essential Religious Practices (ERP) test, a judicial doctrine, originated from earlier Supreme Court pronouncements, beginning with the *Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt* (1954 AIR 282). This jurisprudence posited that only those religious practices deemed essential or integral to a faith are safeguarded from state interference under Article 25 of the Indian Constitution.

³⁰*Resham*, Para XII

practice test was introduced in contexts pertaining to the administration of religious property, social reform, or the assertion of group rights against the state.³¹ Second, the essentiality test necessitates that arguments be framed within the discourse of religious compulsion, thereby precluding Muslim women from articulating their claims as matters of religious choice.³²

Another question the High Court addressed was whether the ban violated other fundamental rights, such as freedom of expression under Article 19(1)(a) or privacy/autonomy under Article 21. The court acknowledged that dressing was an aspect of both the right to freedom of expression and the right to privacy. However, it noted that the violation in this case was of “derivative rights... (that do not go to the core of substantive rights as such but lie in the penumbra thereof).”³³ As a result, this logic led the court to prefer institutional discipline over fundamental rights of freedom and dignity. Conceptually, privacy has been acknowledged as an attribute of persons rather than of physical spaces within Indian human rights jurisprudence³⁴; hence, individuals retain their right to privacy even while situated in public spaces, including schools and other educational institutions.³⁵

The students had argued that wearing the hijab is a form of expression of their identity and religious belief, and also a matter of privacy and choice, invoking the Supreme Court’s privacy judgement in *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.*³⁶ They even suggested that “reasonable accommodation” could be made, for instance, allowing a matching hijab in uniform colour. The High Court, however, held that the uniform requirement was a reasonable restriction on these rights and not violative of constitutional guarantees.

³¹Farrah Ahmed, “Prohibiting Hijab in Educational Institutions: A Constitutional Assessment,” Gautam Bhatia, *Unsealed Covers: A Decade of the Constitution, the Courts and the State* (New Delhi: Harper Collins, 2023).

³²Bhatia, *Unsealed Covers: A Decade of the Constitution, the Courts and the State*.

³³Resham, Para XIV

³⁴*Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.*, (2017) 10 SCC 1, AIR 2017 SC 4161

³⁵Farrah Ahmed, “Prohibiting Hijab in Educational Institutions: A Constitutional Assessment.

³⁶(2017) 10 SCC 1, AIR 2017 SC 4161

However, the court did not engage in the proportionality test³⁷, which is used to determine whether a limitation imposed on the fundamental right is reasonable.

The petitioners contended that India's model of "positive" secularism promotes religious pluralism and toleration and is not anti-religious. Although the court accepted the argument, it invoked the Fundamental Duty to promote harmony and brotherhood³⁸, as reflected in the Karnataka Education Act, 1983, to assert that secularism is best upheld by transcending religious diversities.

The emphasis of the High Court on uniformity thus "particularised citizenship through a notion of uniformity as discipline posited by the state."³⁹ The court noted that the uniform creates a homogeneous class that serves Constitutional Secularism. It is doubtful how the government and the court could justify the hijab ban through secularism, as Indian secularism, in contradistinction with the French doctrine of *laïcité*, is not anti-religious and does not seek to sanitise the public space from religion.⁴⁰

Contrary to the perception of neutrality as detachment, Indian secularism actively protects, fosters, and affirms the collective rights of traditional communities, particularly those rooted in religious doctrines, cultural and social practices, and linguistic heritage.⁴¹ The state's approach to secularism is multifaceted and guided by the normative objective of advancing the constitutional ideals of freedom, equality, and fraternity.⁴² Consequently, the state continuously

³⁷Laid down in *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353

³⁸Constitution of India, Article 51-A (e)

³⁹Keertana Kannabiran Tella, 'Challenging the Hijab Ban in India: Plural Embodiment and Secular Constitutionalism', *International Journal of Law in Context* 21, no. 1 (2025): 139–56, <https://doi.org/10.1017/S1744552324000417>.

⁴⁰Ronojoy Sen, 'Secularism and Religious Freedom', in *The Oxford Handbook of the Indian Constitution*, ed. Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (Online edn: Oxford University Press, 2016), 885–902, <https://doi.org/10.1093/LAW/9780198704898.003.0049>

⁴¹Dhavan and Nariman, 'The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities'.

⁴²Rajeev Bhargava, 'Indian Secularism at Crossroads An Interpretation', in *The Oxford Handbook of Indian Politics* (Online edn: Oxford University

negotiates between contrasting modes of engagement and disengagement, or facilitation and restraint, to advance this objective. Moreover, secularism, rather than serving as a vehicle for imposing majoritarian practices on minority communities, is fundamentally associated with the protection and advancement of the rights of religious minorities.⁴³ As prominent Indian jurists Rajeev Dhavan and Fali S. Nariman argue that the Indian modernist secularism was not meant “to dissolve India’s diversity into nothingness.”⁴⁴

The Constitution of India, under Article 25, specifically affords protection to the carrying and wearing of the *kirpan*⁴⁵ and *Kada* by Sikhs, demonstrating the inclusive nature of Indian secularism in matters of religious dress, which is elevated to the level of a constitutionally guaranteed right.

The third issue that the court considered was whether the Government Order was legally invalid due to the lack of the requisite competence on the part of the issuing authority. The petitioners also argued that the failure to exercise due diligence made the Order manifestly arbitrary and in violation of Articles 14 and 15 of the Constitution of India. The court ruled that the government did have the authority to issue the Order and that there was no valid reason to invalidate it. Following the High Court’s verdict, the prohibition was later extended to include teaching staff.⁴⁶

Press, 2024), 391–405, <https://doi.org/10.1093/OXFORDHDB/9780198894261.013.24>

⁴³Rajeev Bhargava, ‘Indian Secularism at Crossroads An Interpretation’, 391–405.

⁴⁴Dhavan and Nariman, ‘The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities’.

⁴⁵The *kirpan* is a ceremonial dagger or short sword that constitutes a mandatory article of faith for Sikhs. It symbolises their religious commitment to the principles of justice, compassion, and the duty of self-defence. The *kara*, or *kada*, is a steel or cast-iron bangle traditionally worn by Sikhs. It serves as a symbol of unbreakable attachment to and enduring commitment toward God, reflecting the values of restraint, unity, and moral integrity in Sikhism.

⁴⁶‘Karnataka: Hijab-Wearing Teachers Won’t Be Allowed inside Exam Halls, Says Education Minister’, Scroll.in, 5 April 2022, accessed September 9, 2025. <https://scroll.in/latest/1021105/teachers-wearing-hijab-wont-be-allowed-in-examination-halls-says-karnataka-education-minister>.

The Challenge Before the Supreme Court

The petitioners subsequently appealed to the Supreme Court of India against the decision of the Karnataka High Court. A two-judge bench of the Supreme Court, led by Justice Hemant Gupta and Justice Sudhanshu Dhulia, delivered a split verdict in October 2022.⁴⁷ Justice Gupta, echoing the High Court, held that the state government was within its rights to enforce the uniform and ban hijabs in the interest of fraternity and equality among students. Justice Gupta concluded that the impugned order did not constitute a violation of the rights to religious freedom, education, and privacy, given its neutral application and its contribution to upholding institutional discipline by promoting uniformity.

However, Justice Sudhanshu Dhulia, offering a divergent perspective, maintained that denying individuals the right to wear the veil infringed upon their inherent dignity, privacy, and freedom of conscience. He acknowledged the importance of discipline in schools but cautioned that it cannot be enforced ‘... at the cost of freedom, not at the cost of dignity’.⁴⁸

He also noted that applying the essential religious practice test in the case was incorrect. He further pointed out that the test was only relevant in cases of group claims for religious freedom, not in individual claims, and primarily in cases involving state regulation of religious institutions.

What we see in the split verdict is essentially the two divergent perspectives on citizenship and belonging that are contesting against one another in the Indian politico-legal discourse. Justice Gupta’s position underscores an absolute notion of uniformity and a formal notion of equality. In contrast, Justice Dhulia’s position, grounded in a substantive notion of equality, posits that educational institutions are optimal environments for fostering constitutional values of tolerance and accommodation. The Supreme Court, in its adjudication, refrained from applying the proportionality test, an established standard for evaluating the legitimacy and necessity of restrictions on fundamental rights. The resulting judgment, delivered by a divided bench (1:1), did not conclusively determine the constitutionality of the hijab ban, nor

⁴⁷*Aishat Shifa v. State of Karnataka and Ors.* 2022 LiveLaw (SC) 842.

⁴⁸Dhulia, J. Para. 52, *Aishat Shifa v. State of Karnataka and Ors.* 2022 LiveLaw (SC) 842.

did it establish a binding precedent. It is, nevertheless, notable for illuminating the contemporary judicial disjuncture concerning the protection and interpretation of the rights of religious minorities.

INDIRECT AND INTERSECTIONAL DISCRIMINATION

Intersectionality, a concept introduced by an African American legal theorist Kimberlé Williams Crenshaw, then based at Columbia University, serves as a critical response to the limitations of prevailing anti-discrimination legal frameworks.⁴⁹ Grounded in the racialised experiences of minority ethnic women in the United States, it has become a prominent analytical tool across disciplines. In legal scholarship, it provides a critical framework for understanding how overlapping grounds of marginalisation, such as race, gender, and disability, interact to produce distinct and compounded forms of disadvantage within legal and institutional contexts.⁵⁰

The case surrounding the Karnataka hijab ban underscores a pivotal moment in Indian constitutional jurisprudence, one where the courts are increasingly called upon to address the subtle, cumulative harms of intersectional and indirect discrimination. During the case proceedings, the court observed that the government order was neutral and non-sectarian. However, legal scholars have contended that a compelling case for indirect discrimination is nonetheless established⁵¹

⁴⁹Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” in *Feminist Legal Theories*, ed. Karen Maschke (New York: Routledge, 2013), 23–51; Kimberlé Williams Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” in *The Public Nature of Private Violence: Women and the Discovery of Abuse*, ed. Martha Albertson Fineman and Roxanne Mykitiuk (New York: Routledge, 1994), 93–118.

⁵⁰Grace Ajele and Jena McGill, ‘*Intersectionality in Law and Legal Contexts*’, Toronto: Women’s Legal Education and Action Fund, 2020.

⁵¹Farrah Ahmed, ‘Prohibiting Hijab in Educational Institutions: A Constitutional Assessment’; Bhatia, *Unsealed Covers: A Decade of the Constitution, the Courts and the State*; Umang Poddar, ‘Hijab Ban Interview: Why a Secular Court Should Not Tell a Citizen What Her Religion Is’, 2, April 2022, <https://scroll.in/article/1020506/hijab-ban>

as the government order disproportionately affected Muslim women compared to other religious or non-religious groups, whose visible religious symbols (like bindis, turbans, or crucifixes) were not similarly targeted. Under Indian law, an instance of indirect discrimination is established when a seemingly impartial rule or regulation exerts a disproportionate adverse effect on individuals belonging to a protected demographic.⁵² This impact consequently perpetuates their systemic disadvantage across multiple spheres, encompassing economic, social, physical, psychological, and political dimensions.⁵³

The Karnataka hijab ban vividly highlighted the intersectional nature of discrimination faced by Muslim women in India. By virtue of their gender and religious identity, Muslim women often encounter compounded challenges. The hijab, in this context, became a visible marker that subjected them to heightened scrutiny, prejudice, and discrimination. In recent years, the Indian judicial discourse has increasingly recognised the intersectional nature of discrimination.⁵⁴ The evolving jurisprudence brings intersectional discrimination well within the prohibition under Article 15(1) of the Constitution.⁵⁵ The court has recontextualised the concept of intersectionality within the framework of discrimination law.⁵⁶ The prohibition, in this instance, not only infringed upon the personal autonomy and privacy of the women but also abridged their religious freedom. Furthermore, it transgressed their dignity, as they were required to remove their hijabs before entering educational institutions, and in other cases, were relegated to segregated classrooms. Muslim girl students lag significantly behind not only their male counterparts but also students from all other communities across all levels of education.⁵⁷ The ban

interview-why-a-secular-court-should-not-tell-a-citizen-what-her-religion-is.

⁵²*Lt Col Nitisha v Union of India* 2021 SCC OnLine SC 261

⁵³Farrah Ahmed, 'Prohibiting Hijab in Educational Institutions: A Constitutional Assessment'.

⁵⁴*Navtej Singh Johar v Union of India* AIR 2018 SC 4321, *Patan Jamal Vali v State of Andhra Pradesh* AIR 2021 SC 2190.

⁵⁵Article 15 (1) prohibits discrimination on grounds only of religion, race, caste, sex, place of birth.

⁵⁶Farrah Ahmed, 'Prohibiting Hijab in Educational Institutions: A Constitutional Assessment'.

⁵⁷Salikin Zainus, Shadab Ahmad Siddiqui, and Ahmad Khan, "Educational Status of Muslim Women in India: A Comparative Study," *International*

created more barriers and additional impediments to their access to education.⁵⁸ The state government's data indicates that 1,010 Muslim girls dropped out of pre-university colleges across Karnataka in the aftermath of the ban.⁵⁹ This underscored how gendered Islamophobic narratives can manifest in policies that specifically target and disempower Muslim women.

The Indian Hijab Ban in the Context of Global Islamophobic Narratives

The question of the role of Muslim women in society has been subjected to persistent contestation globally. The discourse surrounding hijab, polygamy, and women's participation in public life has generated complex debates that traverse multiple domains encompassing religious freedom, gender rights, cultural identity, patriarchy, oppression, and liberation.⁶⁰ These controversies reflect broader tensions between religious expression and secular governance. Recent scholarship demonstrates how these debates often serve as proxy battlegrounds for larger political and ideological conflicts over citizenship, belonging, and the place of Islam in modern society.⁶¹

Journal of Creative Research Thoughts (JCRT) 10, no. 2 (2022): 687–91.

⁵⁸Rebecca Rose Varghese and Vignesh Radhakrishnan, 'Hijab Row: Why the Ban Is a Double Blow to Muslim Girl Students' *The Hindu*, 13 March 2022, accessed September 9, 2025. <https://www.thehindu.com/data/data-hijab-row-why-the-ban-is-a-double-blow-for-muslim-girl-students/article65066546.ece>.

⁵⁹'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka'

⁶⁰Lila Abu-Lughod, *Do Muslim Women Need Saving?* (Cambridge, MA and London, England: Harvard University Press, 2013); S. N. Ansari and T. G. Patel, "Islamophobia as Intersectional Phenomenon," in *The Palgrave Handbook of Gendered Islamophobia*, ed. A. Easat-Daas and I. Zempi (Cham: Palgrave Macmillan, 2024), https://doi.org/10.1007/978-3-031-52022-8_2.

⁶¹Nasar Meer, Claire Dwyer, and Tariq Modood, 'Embodying Nationhood? Conceptions of British National Identity, Citizenship, and Gender in the "Veil Affair"' 58, no. 1 (1 February 2010): 84–111, <https://doi.org/10.1111/J.1467-954X.2009.01877.X>; Mayanthi L. Fernando, *The Republic Unsettled* (New York, USA: Duke University Press, 2014), <https://doi.org/10.1515/9780822376286>.

The hijab and other modes of dress are often accused of being patriarchal impositions, infringing women's agency, and consequently incompatible with liberal democratic values. This reductive view, however, overlooks the complexities of choice, agency, and how women's bodies are policed both within and outside religious contexts. The widespread support for the burqa bans in the Global North, particularly in Western Europe,⁶² often arises from a colonial and Eurocentric perspective that deems certain cultural practices as inherently oppressive, while failing to interrogate how Western ideals themselves are implicated in structures of domination. What is framed as 'liberation' for women in these contexts often reproduces forms of control that erase the agency of women who choose to wear these garments, rendering their autonomy invisible in the discourse of freedom and empowerment.

This has resulted in the regulation of the hijab in many countries, extending as far as legal bans on the hijab. Critics of the hijab argue that visible symbols like the hijab challenge Western conceptions of citizenship⁶³ and civic participation.⁶⁴ Curiously, such objections are not raised against the religious attire of Christianity or Judaism or face covering for the reasons of health, hygiene, or climatic conditions, leading to the inference that it is not the covering but the Muslim covering that leads to mistrust and unease. Thus, it reveals underlying biases and discriminatory attitudes toward Muslim religious expression.⁶⁵

⁶²'Widespread Support for Banning Full Islamic Veil in Western Europe' Pew Research Center', accessed 17 April 2024, <https://www.pewresearch.org/global/2010/07/08/widespread-support-for-banning-full-islamic-veil-in-western-europe/>.

⁶³Anisa Mustafa, 'Active Citizenship, Dissent and Civic Consciousness: Young Muslims Redefining Citizenship on Their Own Terms', *Identities* 23, no. 4 (3 July 2016): 454–69, <https://doi.org/10.1080/1070289X.2015.1024127>

⁶⁴Peter Baehr and Daniel Gordon, 'On the Edge of Solidarity: The Burqa and Public Life', *Society* 49, no. 5 (September 2012): 457-67, <https://doi.org/10.1007/S12115-012-9584-2>.

⁶⁵Martha Nussbaum, 'Veiled Threats?' *The New York Times*, accessed 17 April 2024, <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2010/07/11/veiled-threats/>.

Contemporary research has demonstrated how publicly visible signs of religiosity can lead to racialisation⁶⁶ and are considered an impediment to full integration into society.⁶⁷ These processes operate through multiple institutional channels, affecting access to education, employment, and public services.⁶⁸ The consequences are also faced by Muslim men, for whom true acceptance can only come through an inordinate display of loyalty, distancing from ‘questionable’ Muslim practices, and dissociation from visible markers of sociocultural identity.⁶⁹

The prevailing discourse surrounding gender roles among Muslims is frequently constructed in such a manner that portrays ‘Muslim women have always been deprived, and Muslim men have always been depraved’.⁷⁰ However, most of these narratives reflect a pervasive misreading and lack of nuanced understanding of the gender discourse in Islam, notably the hijab. The oversimplified narrative

⁶⁶Patrick Michael Casey, ‘The Racialization of American Muslim Converts by the Presence of Religious Markers’, *Ethnicities* 21, no. 3 (27 June 2021): 521–37, <https://doi.org/10.1177/146879682111015210>.

⁶⁷Valérie Amiraux, ‘Racialization and the Challenge of Muslim Integration in the European Union,’ in *Routledge Handbook of Political Islam*, ed. Shahram Akbarzadeh (London and New York: Routledge, 2012), 205–24.; Valérie Amiraux and Pierre-Luc Beauchesne, ‘Racialization and the Construction of the Problem of the Muslim Presence in Western Societies,’ in *Routledge Handbook of Political Islam*, 2nd ed., ed. Shahram Akbarzadeh (London and New York: Routledge, 2021), 363–82, <https://doi.org/10.4324/9780429425165-27>

⁶⁸Iffath Unissa Syed, ‘Hijab, Niqab, and the Religious Symbol Debates: Consequences for Health and Human Rights’, *The International Journal of Human Rights* 25, no. 9 (21 October 2021): 1420–35, <https://doi.org/10.1080/13642987.2020.1826451>; An Van Raemdonck, ‘Incomplete Lives: Experiences of Islamophobia as Governmentality in Education and Employment in Flanders, Belgium’, *Ethnic and Racial Studies* 47, no. 4 (11 March 2024): 831–51, <https://doi.org/10.1080/01419870.2023.2224853>.

⁶⁹Isobel Ingham-Barrow, ‘Beyond the Bakwaas: Securitising Muslim Male Identities,’ in *The Palgrave Handbook of Gendered Islamophobia*, ed. Amina Easat-Daas and Irene Zempi (Cham: Palgrave Macmillan, 2024), 125–45, https://doi.org/10.1007/978-3-031-52022-8_8.

⁷⁰Madhavi Menon, ‘Hadiya, Hinduism and Heterosexuality’, *Socio-Legal Rev.* 17 (2021): 52, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/soclerev17&div=8&id=&page=>.

obscures the complex realities of gender relations in Muslim communities, ignoring the diverse ways Muslim women exercise agency and negotiate their religious and gender identities.⁷¹

These misunderstandings persist despite extensive scholarship demonstrating the multifaceted theological and social foundations of Islamic practices relating to gender and modesty.⁷² It reflects a deeply embedded orientalist construction of Muslim women as subjugated, in need of rescue from the chains imposed by their faith. Thus, the contemporary issue of Islamophobia represents a transformation of historic orientalist prejudice, where racial discrimination has evolved into cultural and religious bias.⁷³

Such perspectives ignore the myriad ways Muslim women exercise agency within their religious and cultural frameworks.⁷⁴ The “choice argument” may not be unproblematic, as many times it is assumed that such a choice is a result of subjugated Muslim women somehow persuaded by men to cover up against their will.⁷⁵ Contemporary ethnographic research reveals multiple meanings and motivations behind hijab practices. For many women, the hijab may be a symbol of resistance to the commodification of women’s bodies, a safeguard against sexual harassment in public transport, or simply an economic necessity for working women to save costs incurred on dressing, and most importantly, the Islamic virtues of female modesty or piety.⁷⁶

⁷¹Saba Mahmood, *Politics of Piety* (Princeton, NJ: Princeton University Press, 2011).

⁷²Farha Ternikar, ‘Hijab and the Abrahamic Traditions: A Comparative Analysis of the Muslim Veil’, *Sociology Compass* 3, no. 5 (1 September 2009): 754–63, <https://doi.org/10.1111/J.1751-9020.2009.00237.X>.

⁷³Haleh Afshar, ‘Can I See Your Hair? Choice, Agency and Attitudes: The Dilemma of Faith and Feminism for Muslim Women Who Cover’, *Ethnic and Racial Studies* 31, no. 2 (1 February 2008): 411–27, <https://doi.org/10.1080/01419870701710930>.

⁷⁴Mahmood, *Politics of Piety*.

⁷⁵Sana Ahmad, ‘The Burkini Ban Shows Our Power’. Islam21c, 26 January 2017, accessed September 9, 2025. <https://www.islam21c.com/politics/the-burkini-ban-shows-our-power/>.

⁷⁶Mahmood, *Politics of Piety*; Zerrin Karakavak and Tuğba Özbölük, “When Modesty Meets Fashion: How Social Media and Influencers Change the Meaning of Hijab,” *Journal of Islamic Marketing* 14, no. 11 (October 25,

For Muslim converts, the hijab underscores their religious identity, securing them a standing within the Muslim community without a repudiation of their home, familial ties, and relationships with non-Muslim families and parents.⁷⁷ The legal and administrative measures prohibiting the donning of the Islamic veil in public spaces have significant implications for Muslim women's participation in public life. It harbours the risk of immobilising women, relegating them to private or domestic spheres, often resulting in reduced educational and economic opportunities.⁷⁸

However, Muslim women demonstrate significant agency in navigating these challenges as their perspectives on the hijab are adaptable and flexible; they consistently negotiate with their surroundings to secure a balance that allows them to embrace their faith and the demands of secular activities.⁷⁹ An illustrative example in this respect is the creativity that Muslim women have displayed in negotiating the apparent contradiction between the Islamic dress code and liberal democratic values of full participation in sports culture. The innovations in the form of faith-compliant sports gear, including a swimsuit called 'Burqini',⁸⁰ have enabled Muslim women to express their agency in sports culture while remaining committed to the requirements of modest dressing.

Thus, these endeavours by Muslim women have led to developments that reflect a display of multicultural sensitivity from

2023): 2907–2927, <https://doi.org/10.1108/JIMA-05-2021-0152>; N. Abd Kadir, "The Veiled Identity: A Sociocultural Examination of the Hijab and Its Multifaceted Meanings among Muslim Women in the West," *Semarak International Journal of Islamic Studies and Culture* 1, no. 1 (2024): 1–13, <https://doi.org/10.37934/sijisc.1.1.113b>.

⁷⁷Afshar, 'Can I See Your Hair? Choice, Agency and Attitudes: The Dilemma of Faith and Feminism for Muslim Women Who Cover'.

⁷⁸Bryan S. Turner, 'The Enclave Society: Towards a Sociology of Immobility', *European Journal of Social Theory* 10, no. 2 (24 May 2007): 287–304, <https://doi.org/10.1177/1368431007077807>.

⁷⁹Haniya Rumania and Sujata Sriram, 'Not Without My Hijab: Experiences of Veiled Muslim Women in India', *Human Arenas* 6, no. 1 (24 March 2023): 1–24, <https://doi.org/10.1007/s42087-021-00193-3>.

⁸⁰Aheda Zanetti, 'I Created the Burkini to Give Women Freedom, Not to Take It Away', *The Guardian*, 24 August 2016, accessed September 9, 2025, <https://www.theguardian.com/commentisfree/2016/aug/24/i-created-the-burkini-to-give-women-freedom-not-to-take-it-away>.

multiple sports bodies. These include lifting the hijab bans by the International Federation of Association Football (FIFA)⁸¹ and the International Basketball Federation (FIBA).⁸² One notable feature of Muslim women's campaigning for the right to wear the hijab has been the adoption of rights-based discourse and the appeal to national values through the incorporation of national symbols such as Marianne in France, and the Union Jack in the UK.⁸³

Nevertheless, the intersection of gender and religious identity creates multiple layers of marginalisation for Muslim women. Contemporary research reveals how these intersecting identities affect educational opportunities and outcomes,⁸⁴ professional advancement and workplace discrimination,⁸⁵ and access to legal rights and protections.⁸⁶

Looking forward, the challenge lies in developing frameworks that can accommodate religious expression while ensuring equal rights and opportunities. This requires moving beyond both restrictive state policies that limit women's choices while emphasising the voices and experiences of Muslim women themselves in these debates.⁸⁷ These global patterns and challenges find particular resonance in the Indian context, where the hijab controversy has become a focal point for

⁸¹'FIFA Lifts Ban on Head Covers', Al Jazeera, 1 March 2014, accessed September 9, 2025, <https://www.aljazeera.com/sports/2014/3/1/fifa-lifts-ban-on-head-covers>.

⁸²'FIBA Allows Hijab in Professional Basketball', Al Jazeera, 2017, accessed September 9, 2025, <https://www.aljazeera.com/sports/2017/5/4/fiba-allows-hijab-in-professional-basketball>.

⁸³June Edmunds, 'The "new" Barbarians: Governmentality, Securitization and Islam in Western Europe', *Contemporary Islam* 6, no. 1 (23 April 2012): 67–84, <https://doi.org/10.1007/S11562-011-0159-6/METRICS>.

⁸⁴Ibtihal Ramadan, 'When Faith Intersects with Gender: The Challenges and Successes in the Experiences of Muslim Women Academics', *Gender and Education* 34, no. 1 (2 January 2022): 33–48, <https://doi.org/10.1080/09540253.2021.1893664>.

⁸⁵Ramadan, 'When Faith Intersects with Gender: The Challenges and Successes in the Experiences of Muslim Women Academics',

⁸⁶Rojan Afrouz, Beth R. Crisp, and Ann Taket, 'Seeking Help in Domestic Violence Among Muslim Women in Muslim-Majority and Non-Muslim-Majority Countries: A Literature Review', *Trauma, Violence, & Abuse* 21, no. 3 (July 2020): 551–66, <https://doi.org/10.1177/1524838018781102>.

⁸⁷Mahmood, *Politics of Piety*.

broader debates about religious freedom, gender rights, and minority identity.

ISSUES OF ISLAM, GENDER, AND HIJAB IN INDIA

The Indian experience of Muslim women's rights, particularly concerning the hijab, presents a distinctive convergence of Hindu nationalist ideology and orientalist narratives regarding Muslim women. Contemporary political discourse in India demonstrates how Hindu ethnonationalism closely follows the Islamophobic notions of Western Orientalism's quest to save Muslim women⁸⁸, adapting them to serve domestic political objectives.⁸⁹

Gender issues figure prominently in Hindu nationalist discourse, wherein the Muslim male is essentially violent and aggressive, while Muslim women are essentially vulnerable and victimised.⁹⁰ The gendered imagery of Muslim men in Hindu nationalist imagery, as an embodiment of Muslim identity, is characterised by violence and aggression, especially of a sexual nature.⁹¹ Muslim men are persistently characterised through a lens of pernicious stereotypes.⁹² Curiously, the Hindu man is portrayed as decent, with delinquents very rare and, in any case, less threatening.⁹³ Historical analysis reveals how these

⁸⁸Abu-Lughod, *Do Muslim Women Need Saving?*

⁸⁹Nitasha Kaul and Annapurna Menon, 'Hindutva, Muslim Women and Islamophobic Governance in India', in *The Palgrave Handbook of Gendered Islamophobia* (Cham: Palgrave Macmillan, 2024), 377–96, https://doi.org/10.1007/978-3-031-52022-8_21.

⁹⁰Patricia Jeffery and Roger Jeffery, *Confronting Saffron Demography: Religion, Fertility, and Women's Status in India* (Gurgaon: Three Essays Collective, 2006).

⁹¹Paola Bacchetta, 'All Our Goddesses Are Armed: Religion, Resistance, and Revenge in the Life of a Militant Hindu Nationalist Woman', *Bulletin of Concerned Asian Scholars* 25, no. 4 (5 December 1993): 38–52, <https://doi.org/10.1080/14672715.1993.10416137>.

⁹²Runa Das, 'Encountering Hindutva, Interrogating Religious Nationalism and (En) Gendering a Hindu Patriarchy in India's Nuclear Policies', *International Feminist Journal of Politics* 8, no. 3 (2006): 370–93, <https://doi.org/10.1080/14616740600792988>.

⁹³Bacchetta, 'All Our Goddesses Are Armed: Religion, Resistance, and Revenge in the Life of a Militant Hindu Nationalist Woman'; Charu

gendered stereotypes were systematically developed through influential Hindu nationalist writings, exemplified by Savarkar's characterisation of Muslim men as religiously mandated predators of Hindu women.⁹⁴

Furthermore, these writings portray that not only are Hindu women in need of protection from the purported sexual predation of Muslim men, euphemistically termed "love jihad", but also Muslim women who are perpetual captives of an oppressive patriarchal system manifested through the imposition of the hijab, polygamy, *nikah halala*, triple talaq (instant divorce), and the expectation of high fertility rates.⁹⁵ These practices are framed as forms of domestic subjugation, thereby constructing Muslim women as subjects requiring emancipation from their own cultural and religious milieu.⁹⁶

The Hindu nationalist discourse on gender can also be read as its efforts to make femininity a site of cultural engineering for a minority that refuses to assimilate. The discourse of saving vulnerable women from predatory Muslim men is now so mainstream that it animated the judgement of the Kerala High Court in the famous *Hadiya case*⁹⁷, where instead of ensuring the freedom of religion, privacy and the right to choose a life partner, the judges of the court insisted on saving her from herself and the suspected terrorist organisation and its alleged criminal members who are Muslim men.⁹⁸

Gupta, *Sexuality, Obscenity and Community: Women, Muslims, and the Hindu Public in Colonial India* (New York: Palgrave Macmillan, 2001) ; Laura Dudley Jenkins, *Religious Freedom and Mass Conversion in India* (Philadelphia: University of Pennsylvania Press, 2019); Debaditya Chakraborty, "Men in the Making of Nations: Understanding the Nexus between Nation, Belonging, and Complicit Masculinity," *National Identities* 27, no. 3 (2024): 281–98, <https://doi.org/10.1080/14608944.2024.2421009>

⁹⁴Das, 'Encountering Hindutva, Interrogating Religious Nationalism and (En) Gendering a Hindu Patriarchy in India's Nuclear Policies'.

⁹⁵Kaul and Menon, 'Hindutva, Muslim Women and Islamophobic Governance in India'.

⁹⁶Kaul and Menon, 'Hindutva, Muslim Women and Islamophobic Governance in India'.

⁹⁷*Asokan K.M. v. State of Kerala* (2016) SCC Online Ker 972

⁹⁸Menon, 'Hadiya, Hinduism and Heterosexuality'.

The Muslim Women (Protection of Rights on Marriage) Act, 2019, represents a significant example of how gender rights discourse is deployed selectively. The law, while ostensibly aimed at women's empowerment, was neither a result of any demand by Muslim women groups nor a part of any larger agenda of the government to ensure gender justice; its enactment was directed as a benevolent offering in the form of "protective discrimination" to save Muslim women from the subjugation of their rigorous Islamic practice.⁹⁹

The implication of these ideological frameworks became more evident when the BJP-led state government in the State of Karnataka imposed a ban on the hijab in educational institutions.¹⁰⁰ It has been a critical moment in the intersection of state power, educational rights, religious freedom, and gender justice in contemporary India. This gendered Islamophobia led to severe restrictions on Muslim women's access to education, including around 1000 girls opting out of college.¹⁰¹ The *Akhil Bhartiya Vidyarthi Parishad* (ABVP), BJP's student wing, started a mass campaign against the hijab in campuses, and the High Court held that the hijab is not an essential practice of Islam.¹⁰² This ongoing educational crisis threatens Muslim women's access to education and professional opportunities in India, underscoring the urgent need for policies that both respect religious diversity and ensure equal educational access.

The assertion of their rights by Muslim women without compromising their cultural identity led them to be targeted through shameful mock auctions on online platforms like the 'Sulli Deals' and 'Bulli Bai'.¹⁰³ They specifically targeted notable Muslim women in academia, media, and other professional women in public life for

⁹⁹Kaul and Menon, 'Hindutva, Muslim Women and Islamophobic Governance in India'.

¹⁰⁰'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka'.

¹⁰¹'Closing the Gates to Education: Violations of Rights of Muslim Women Students in Karnataka'.

¹⁰²*Resham v. State of Karnataka and Others 2022 LiveLaw (Kar) 75*

¹⁰³Tania Saeed, 'Hindutva and the Muslim Problem: An Exploration of Gendered Islamophobia in India', in *The Palgrave Handbook of Gendered Islamophobia* (Cham: Palgrave Macmillan, 2024), 353–76, https://doi.org/10.1007/978-3-031-52022-8_20.

speaking against the BJP and its anti-minority policies.¹⁰⁴ The bogus auction where Hindu men could lay claim to the hyper-sexualised bodies of Muslim women meant to intimidate and harass Muslim women into silence. This convergence of gender-based discrimination and religious prejudice has significant implications for Muslim women's participation in public life. Apart from emerging forms of resistance and advocacy, as Muslim women develop new strategies for asserting their rights while maintaining their religious and cultural identity, the experience has resulted in increasing self-censorship among Muslim women professionals, restricted educational choices, and limited public participation.¹⁰⁵ Thus, Hindu nationalism has amplified exoticising and derogatory stereotypes of Muslim women.¹⁰⁶ The experiences of Muslim women in India underscore the need for policies that safeguard religious freedom and gender rights while ensuring equal access to education and public life. Their struggles and responses provide crucial insights into the broader challenges of maintaining religious identity and securing equal rights in an increasingly polarised society.

Hindu nationalism and the Co-Option of Secularism and Gender Equality

The Karnataka hijab ban unfolded within a political environment increasingly dominated by a Hindu nationalist vision of India. The Hindu nationalists often seek to marginalise religious minorities, particularly Muslims. In this context, the concepts of “secularism” and “gender equality” were, arguably, co-opted and weaponised to justify the ban. Instead of promoting genuine equality and a diverse secular fabric, these principles were reinterpreted to demand conformity and

¹⁰⁴Saeed, ‘Hindutva and the Muslim Problem: An Exploration of Gendered Islamophobia in India’.

¹⁰⁵Sherin K. Rahiman, Faisal P., and V. P. Anvar Sadhath, “Disinformation as a Weapon: Gendered Attacks on Women Journalists in India’s Polarized Media Landscape,” *Media Asia* 52, no. 4 (2025): 607–17, <https://doi.org/10.1080/01296612.2025.2546719>. ; Nayla Khan, “Surge in Hate Crimes Raises Anxieties among Muslim Women,” *Maktoob Media*, August 16, 2023, accessed September 9, 2025 <https://maktoobmedia.com/features/surge-in-hate-crimes-raises-anxieties-among-muslim-women/>.

¹⁰⁶Kaul and Menon, ‘Hindutva, Muslim Women and Islamophobic Governance in India’.

uniformity that disproportionately affected Muslim women. The rhetoric of “positive secularism” put forth by the Karnataka High Court in the Hijab judgement suggested that religious expression in public spaces could hinder emancipation, thereby delineating an interpretation of secularism closely aligned with the French republican model of *laïcité*.¹⁰⁷ Thus, it not only denied substantive equality to women¹⁰⁸ but can be seen as a thinly veiled attempt to enforce a majoritarian understanding of secularism that enforces a religious apartheid against Muslim women.¹⁰⁹ This mirrors global Islamophobic trends where the Muslim practice of hijab is singled out for legal regulation and the language of liberalism is used to justify illiberal policies against Muslim communities¹¹⁰, as reflected in the *Lautsi v. Italy* case as well.

CONCLUSION

The Karnataka hijab ban of 2021-22 serves as a stark illustration of the dialectical relationship between equal citizenship and entrenched Islamophobia in India. Under the guise of promoting secularism and uniformity, the ban effectively marginalised Muslim female students, denying them full and equal participation in the educational sphere. The judicial discourse, particularly the Karnataka High Court’s emphasis on the “essential religious practice” doctrine and the Supreme Court’s split verdict, underscores the precarious position of minority rights in an increasingly majoritarian political climate. However, the resistance demonstrated by Muslim women against the Hijab ban directly challenges prevailing Islamophobic narratives that portray Muslim women as inherently subjugated and devoid of personal agency.

¹⁰⁷Kannabiran Tella, ‘Challenging the Hijab Ban in India: Plural Embodiment and Secular Constitutionalism’.

¹⁰⁸Kannabiran Tella, ‘Challenging the Hijab Ban in India: Plural Embodiment and Secular Constitutionalism’.

¹⁰⁹Shaheen Abdulla and Hanan Zaffar, “‘How Is This Not Apartheid?’: Muslims in India Denounce Hijab Ban”, TRTWORLD, 2022, accessed 1 August 2025. <https://www.trtworld.com/magazine/how-is-this-not-apartheid-muslims-in-india-denounce-hijab-ban-54657>.

¹¹⁰Medha Srivastava, ‘The Hijab Ban in India Has Nothing to Do with Secularism’, *Verfassungsblog*, 16 March 2022, <https://doi.org/10.17176/20220317-001240-0>.

The analysis through the lens of equal citizenship reveals how such bans can undermine the very fabric of a diverse, constitutional democracy by creating a two-tiered system of rights and forcing a choice between identity and education. Simultaneously, by contextualising the ban within broader Islamophobic narratives, it becomes clear how deeply ingrained prejudices about Muslim women's agency and the perceived threat of Islamic symbols contribute to the justification and perpetuation of discriminatory policies. The judicial process, while intended to uphold constitutional values, became a site of competing narratives, leading to an uncertain outcome that leaves thousands of students in limbo.

Ultimately, the Karnataka hijab ban highlights the urgent need for a robust reaffirmation of inclusive citizenship that celebrates diversity rather than demanding conformity. It calls for a judiciary that actively safeguards minority rights against majoritarian pressures and for a societal discourse that critically examines and challenges the insidious spread of Islamophobia, recognising that true secularism in India thrives on the accommodation and respect of all faiths, not their suppression. The unresolved nature of the judicial debate necessitates a deeper engagement with these fundamental questions to ensure that the constitutional promise of equality and freedom is extended to all citizens, irrespective of their religious identity. If secularism is to retain any meaningful relevance in India, it must be re-envisioned not as the negation or erasure of difference but as its ethical accommodation.¹¹¹ This inclusive framework upholds the principles of dignity, autonomy, and equal citizenship for all, particularly for those situated at the social and political margins.

¹¹¹Sonia Sikka, "The Ideal of Multicultural Nationalism and the Othering of Muslims," *Ethnic and Racial Studies*, (2025): 1–9, <https://doi.org/10.1080/01419870.2025.2452909> .

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