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## Human Rights Violation in India's Hijab Ban and the Need for Community Advocacy

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### Abstract

The Karnataka state government banned the hijab in schools on February 5, 2022, and several women petitioned the Karnataka High Court to overturn it. A panel of three judges concluded on March 15, 2022, that the hijab is not an important Islamic practice. By punishing females for their wardrobe choices, the court stressed conformity above girls' access to education. The hijab prohibition is part of a pattern of discrimination against Muslim women that violates their human rights. With the rise of authoritarianism, a new form of feminism is emerging in which Muslim girls in India are challenging the authorities and resisting asserting their identity and preferences. Previous research has described human rights violations experienced by Indian female students regarding court decisions. Therefore, the purpose of the research is to investigate the human rights violations that have been disclosed as a result of India's hijab ban which employs normative juridical research methodologies. The method refers to a legal research approach that involves the examination of written law from multiple perspectives. The High Court's verdict worsens Muslim girls and women's education-related harassment, trauma, and prejudice. Muslim students removing their hijabs and burqas before entering schools is a difficult topic that requires neutrality. The verdict would affect the Indian Constitution and the Muslim population, especially hijab-wearing women. United Nations (UN) Women has backed all initiatives of India's Ministry of Women and Child Development that seek to advocate for those affected by the hijab ban to promote gender equality and prevent discrimination against women.

**Keywords:** Discrimination; Hijab Ban; Human Rights Violation; India; Resistance.

### Introduction

In recent years, the issue of religious freedom and the preservation of human rights has emerged as one of the most controversial issues on a global scale. One such difficult issue has arisen in India, where the adoption of a hijab ban has triggered

a wave of indignation and demonstrations against the government's decision.<sup>1</sup> The prohibition, which seeks to prevent Muslim women from covering their heads with the hijab, a religious headscarf, has roused long-suppressed feelings and brought to light worries over the loss of religious liberty and the violation of human rights.<sup>2</sup>

India has been praised for a long time as a country that respects and defends the right to freedom of religion. The country is known for having a rich cultural variety and a secular constitutional framework.<sup>3</sup> Nevertheless, concerns have been voiced over the degree to which these principles are being respected and safeguarded as a result of the ban on the hijab. The restriction has given rise to a divisive and contentious discussion, which has pitted supporters of secularism and gender equality against those who advocate for the freedom of religion and the autonomy of culture.

Muskan Khan, a 19-year-old college student from Mandya, Karnataka, became an example of fortitude in February 2022 when a video of her response to a group of Hindutva (right-wing) males who taunted her for donning a hijab in her college went viral.<sup>4</sup> When a group of males aggressively chanted "Jai Shri Ram" at the campus gate, she was the only female present. She became enraged, yelled "Allahu Akbar" in response, and refused to yield to the heckling pressure.<sup>5</sup> In a subsequent interview, she explained that she has worn a hijab since she was seven years old and regards it as 'her dignity, her identity, and her pride' and that she was oblivious to the protest regarding the hijab prohibition on the day she went to college.

This conflict arises from the fact that two basic human rights: the right to freedom of religion and the right to gender equality, are in direct opposition

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<sup>1</sup> Laila Kadiwal, 'Critical Feminist Resistance to the Politics of Hate in India' (2023) 21 *Globalisation, Societies and Education*. [734].

<sup>2</sup> Erica Howard, 'Headscarf-Wearing Employees and the CJEU: What Employers Can and Cannot Do', *ERA Forum* (Springer 2021).

<sup>3</sup> Dr Anamika Das, 'Secularism and Communalism in India: Role of the State and the Citizens' (2022) 4 *International Journal of Political Science and Governance*. [129].

<sup>4</sup> DNAIndiaNews.com, 'Exclusive: Muskan Khan Opens about Shouting 'Allah U Akbar', Hijab Row' (2022).

<sup>5</sup> Rabia Shireen, 'I Didn't Say 'Allahu Akbar' to Offend Those Who Said 'Jai Shri Ram': Muskan Khan' (*The Wire*, 2022).

to one another.<sup>6</sup> Those who advocate for the prohibition of the hijab argue that it is an essential move toward achieving gender equality because it frees women from what is seen as repressive religious customs. They argue that the prohibition encourages women to participate in public life by freeing them from the constraints of patriarchal standards and making it easier for them to participate.<sup>7</sup> On the other side, those who oppose the ban on hijab claim that it violates a person's freedom to freely follow their faith and express who they are in whatever way they want. They contend that this law violates their rights to religious freedom and cultural expression by singling out one particular religious community as a target for this prohibition and therefore engaging in discriminatory behavior.

The Bharatiya Janata Party (BJP) led state government of Karnataka issued a circular on February 5, 2022, during the midst of the semester, prohibiting students from wearing a hijab on college grounds.<sup>8</sup> Surprisingly, the practice of donning a hijab is considered “deviant.” To challenge this circular, several students lodged petitions with the Karnataka High Court so that they could study while also practicing their religion. Petitioners stated that they chose to wear the hijab. It is not imposed upon them, nor is it an indication of oppression. The petitioners argued that the government's order is arbitrary, discriminatory, and violates their right to agency autonomy. It violates their dignity and restricts their religious liberty. Petitioners also complained about the administration's hostile attitude. Consequently, numerous liberties are at issue.

The case of *Resham v. State of Karnataka and others*<sup>9</sup> decided on March 15, 2022, saw a three-judge bench ruling that the act of Muslim women wearing a hijab is not deemed an indispensable religious practice within the Islamic faith. Instead, it was determined to be a cultural practice that does not possess the characteristics

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<sup>6</sup> Arumbinang, M. H., Gunawan, Y., & Salim, A. A. ‘Prohibition of Child Recruitment as Soldiers: An International Regulatory Discourse’ (2023) 30 (1) *Jurnal Media Hukum*. [21-32].

<sup>7</sup> Irene Zempi, ‘Veiled Muslim Women's Views on Law Banning the Wearing of the Niqab (Face Veil) in Public’ (2019) 42 *Ethnic and Racial Studies*. [2585].

<sup>8</sup> Kanak K Khan and Suman Chib, ‘Opinion of Students of Lovely Professional University on HIJAB CONTROVERSY’ [2022] *Journal of Positive School Psychology*. [4529].

<sup>9</sup> Karnataka High Court, ‘Smt Resham and another Vs. State of Karnataka and Others’ (2022).

of a fundamental religious tenet. The court affirmed the validity of the order issued by the state government, stating that it was in accordance with the Karnataka Education Act of 1983. Furthermore, the court determined that the restrictions imposed on the hijab are both reasonable and constitutionally permissible.<sup>10</sup> It has been clarified that educational institutions possess the jurisdiction to enforce a dress code policy, and instructors within these establishments are vested with “parental authority”. The court’s decision determined that the dress code would not infringe upon women’s autonomy or their right to education, as long as they were permitted to wear clothing of their preference outside of the classroom. The court addresses the matter of the right to dignity, focusing not on student rights, but rather on the “institutional dignity and effectiveness of the government”. The request for *parens patriae* jurisdiction was made without taking into account the historical or sociopolitical context surrounding the practice of wearing hijab.

The implementation of the hijab prohibition in India has not only resulted in a dispute over the law and the Constitution, but it has also given birth to several breaches of human rights and actions that discriminate against people.<sup>11</sup> It has come to light that Muslim women who prefer to wear the hijab have been subjected to increasing instances of harassment, discrimination, and even violence as a direct result of the prohibition. This sheds light on the far-reaching implications of the ban. These occurrences shed even more light on the need to conduct a thorough investigation into the consequences of the hijab ban on human rights, as well as the possible breaches that might emerge from its implementation.

The petitioners sought affirmative action, but the court denied their request. The petitioners’ request for a disciplinary investigation against administration employees who require them to remove their hijabs is denied as unjustifiable. After the interim order was issued, many students and teachers were coercively deprived

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<sup>10</sup> Prabhash K Dutta, ‘4 Questions That Settled Hijab Debate in Karnataka High Court’ (*India Today*, 2022).

<sup>11</sup> Gunawan, Y. (2017). Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia. *Hasanuddin Law Review*, 3(1).[14-26].

of their dignity. The court ignored this fact. No orders were issued against the disruptive individuals who heckled the girls.<sup>12</sup>

Several lawyers,<sup>13</sup> activists,<sup>14</sup> women's rights groups,<sup>15</sup> and other organizations<sup>16</sup> criticized this verdict. It is stated that the court used terms such as "derivative rights", "discipline and decorum", and "qualified public spaces", but the context of these terms is not explained. Critics asserted that the court's reasoning distorted the constitutional provisions and lacked regard for the right to privacy and safety of women. Furthermore, the issue is handled in a manner that demeans a community by labeling a piece of apparel as oppressive.<sup>17</sup> Coercive unveiling entails disrobing and reducing the autonomy of women to deny them their individuality and personhood. It is argued that the intersection of patriarchy, nationalism, and Islamophobia is used to interpret women's attire as a symbol of surveillance and control over their private spaces and daily lives. It is alleged that the state is using the law as a weapon to enforce majoritarian ideology and impose the restrictive concept of "Hindu Rashtra"<sup>18</sup> on a large population. In the meantime, the Hindutva<sup>19</sup> group portrayed the rejection of the hijab prohibition as a denial of patriotism, while the liberals arrogantly justified the veil as a nuisance to be discarded. On 5 February 2022, the Bhartiya Janta Party-led government of Karnataka issued an order "the Order" mandating the uniform policy for all public schools in the state. The Order went on to say that all public junior colleges and universities were to wear the official sartorial guidelines set forth by their respective

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<sup>12</sup> *ibid.*

<sup>13</sup> Bhatia Gautam, 'While Upholding the Hijab Ban, Karnataka HC Misconstrued Several Constitutional Principles' (*The Wire*, 2022).

<sup>14</sup> Alishan Jafri and Apoorvanand, 'A Bindi, a Hijab and the Inequality in What Is Proclaimed to Be an Indian' (*The Wire*, 2022).

<sup>15</sup> ICF, 'On Karnataka's High Court Hijab Verdict' (2022).

<sup>16</sup> Saaliq Sheikh, 'Scholars, Activists Criticize School Hijab Ban Ruling in India' (*CTV News*, 2022).

<sup>17</sup> Gunawan, Y., Ritonga, P. Y., Amelia, M., Harun, S. S. K., & Ramadani, N. N. Does the protection of minority groups in Xinjiang fail (2020) 4 (2) Sriwijaya Law Review.[205-220].

<sup>18</sup> The concept of Hindu Polity called for the protection of Hindu people and their culture and emphasized that political and economic systems should be based on native thought rather than on the concepts borrowed from the West.

<sup>19</sup> Hindutva is a modern political ideology that advocates for Hindu supremacy and seeks to transform India.

boards of directors or the College Development Committee.<sup>20</sup> Students wearing hijabs were subsequently refused access to several more educational institutions in Karnataka. In an educational setting, the values of diversity, tolerance, and respect must be fostered, but the court ignored this concept.

The purpose of the research is to investigate the human rights violations that have been disclosed as a result of India's hijab ban. The authors believe that by investigating these abuses, they would shine a light on the structural obstacles that Muslim women who wear the hijab confront, as well as give a venue for their voices to be heard. Because of this case, the authors formulate two problems: what is the constitutionality of the hijab ban concerning the guarantees of religious freedom, equality, and non-discrimination in India? And how can community engagement contribute to mitigating tensions and fostering a more inclusive and harmonious environment?.

The research employs normative juridical research methodologies. The normative juridical method refers to a legal research approach that involves the analysis of the Karnataka High Court decision in March 2022 in *Resham v State of Karnataka* against the 1950 Indian Constitution. Several treaties that India has ratified such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).<sup>21</sup> The data utilized to understand this issue is obtained through a comprehensive review of existing literature, subsequently followed by qualitative analysis.

### **Inharmony of Hijab Ban Policy under Human Rights Legal Framework in India**

The jilbab is Muslim women's clothing that covers their aurat.<sup>22</sup> The hijab, on the other hand, has prompted several controversies and debates in a variety of

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<sup>20</sup> Rahman (n 17).

<sup>21</sup> Daniel E Harris and others, *Spiritually and Developmentally Mature Leadership: Towards an Expanded Understanding of Leadership in the 21st Century* (Springer 2019).

<sup>22</sup> According to Islam, aurat is a part of the body that must be covered and protected from view, meaning that it should not be visible to others except by those who are entitled to see it.

nations throughout the globe. India is one such case,<sup>23</sup> although there is no state-wide prohibition on wearing headscarves in India, certain educational institutions or companies have dress regulations that forbid wearing religious attire, including headscarves.<sup>24</sup> The legal and human rights validity of such limits is assessed by evaluating their conformity to local and international legal frameworks as well as their adherence to human rights norms.

Discussing the domestic legal framework, India has a constitution that grants its citizens essential rights, such as freedom of religion, speech, and equality before the law.<sup>25</sup> Any legislation or policy restricting these rights must pass the standards of legality, necessity, and proportionality to be valid. Thus, assessing the hijab ban requires analyzing its compatibility with India's constitutional framework. Some rights enshrined in the Indian Constitution of 1950 are the Right to Freedom of Religion and Equal Protection under the law. The right to freedom of religion is explained in Article 25 (1) of the Indian Constitution. The Article explains that India guarantees freedom of religion, giving people the right to freely profess, practice, and propagate their faith.<sup>26</sup>

Other constitutional provisions include the prohibition of discriminating against persons on the basis of their religion under Article 15 (1), the right of religious denominations to manage their affairs in matters of religion under Article 26 (b), the prohibition of religious instruction in educational institutions wholly maintained by State funds under Article 28 (1), and the right of religious minorities to establish and administer educational institutions.<sup>27</sup> This includes the right to wear religious clothing as a statement of religious identity, such as the hijab. Any restrictions on religious dress must be based on a legitimate aim and meet standards of necessity

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<sup>23</sup> SyahrulAlim, 'The Meaning of Religiosity among 'Slang Hijab' Wearer: A Phenomenological Study' (2017) 3 International E-Journal of Advances in Social Sciences.[1015].

<sup>24</sup> Haniya Rumaney and Sujata Sriram, 'Not without My Hijab: Experiences of Veiled Muslim Women in India' (2023) 6 Human Arenas.[1].

<sup>25</sup> Ms Sneha Kumari and others, 'Legal Status of Live-In-Relationship in India and Finland: A Reflection' (2022) 7 BiLD Law Journal.[64].

<sup>26</sup> Article 25 (1), Constitution of India.[1950].

<sup>27</sup> *ibid.*

and proportionality. Article 14 of the Indian Constitution enshrines the guarantee of equality before the law and prohibits discrimination on any grounds, including religious prejudice.<sup>28</sup> Any ban or restriction that targets a particular religious group or practice, such as the hijab, raises concerns about discrimination. It is crucial to determine whether the ban applies equally to all religious symbols and behaviors or whether it deliberately targets headscarves, thus violating the principle of equality.

For there to be any limitation on wearing headscarves, it must pass the tests of legality, need, and proportionality for Indian law to allow it. If there is an existing law or regulation that permits the limitation, then the ban ought to be legitimate since it derives its authority from that source. To demonstrate the need for a restriction, one must demonstrate that the limitation is required to accomplish a valid objective, such as ensuring the public's safety or security. The principle of proportionality requires that the limitation be fair and proportionate. On the other hand, the legal system puts a stop to feelings and operates according to the law of fairness, justice, and a good conscience, as well as the laws and legislation established to accomplish the goals of justice. Hence, less restrictive ways must be investigated before a complete prohibition is imposed.<sup>29</sup>

Since India has ratified an International human rights convention, countries that prohibit women from wearing headscarves are now guilty of violating human rights. Through the signature of the CEDAW, India committed to upholding the freedoms of speech, religion, and belief. Examine the constitutionality of India's prohibition on the hijab, being sure to take into account whether or not it satisfies specific obligations under international law. Several treaties that India has ratified include:

### **1. International Civil and Political Rights Covenant:**

The right to freedom of thought, conscience, religion, and expression is recognized in the UDHR. Article 18 expressly safeguards the right to religious

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<sup>28</sup> Niraja Gopal Jayal, 'Reconfiguring Citizenship in Contemporary India' (2019) 42 South Asia: Journal of South Asian Studies.[33].

<sup>29</sup> Mr Prahallad Reddy and Mr Divowkanand Rayachoty, 'The Veil as a Symbol of Revolution: Hijab, Feminism, and Authoritarianism in India' (2022) 1 Justice and Law Bulletin.[1].



freedom, which includes the ability to express their views via worship, observance, practice, and teaching. For many people, religious apparel, such as the hijab, is an essential aspect of their religious practice.<sup>30</sup> As a result, any restrictions on the hijab must be consistent with the principles described in the UDHR.<sup>31</sup>

India is a signatory to the ICCPR which safeguards several human rights, such as freedom of thought, conscience, religion, and expression.<sup>32</sup> Article 18 of ICCPR protects the right to freedom of religion and belief, including the right to express one's religion or belief via worship, observance, practice, and teaching.<sup>33</sup> Any restrictions on religious dress, such as the hijab, should be by the ICCPR. In Article 18, ICCPR also requires State parties to refrain from interfering with an individual's spiritual and moral existence.<sup>34</sup>

## **2. Convention to End All Forms of Discrimination Against Women:**

Another important international treaty India has accepted is CEDAW. CEDAW seeks to end discrimination against women in all aspects of life. When evaluating the hijab prohibition, it is critical to analyze the effect on gender equality. The restriction should not be applied disproportionately to women and should not infringe on their rights to free speech, religion, and personal autonomy.<sup>35</sup>

Freedom of religion and protection from discrimination are two fundamental tenets of laws protecting human rights. The wearing of the hijab should not be subject to any restrictions or limitations that might be construed as religious or gender discrimination. It should apply uniformly and equitably to all religious symbols and practices, with no exceptions made for the hijab. For example, Discrimination on the grounds of one's religious affiliation because it targets a

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<sup>30</sup> Rumaney and Sriram (n 24).

<sup>31</sup> Sumner B Twiss, 'Christian and Confucian Rapprochement in the UDHR Debate' (2019) 1 *Cross-cultural Human Rights Review*. [35].

<sup>32</sup> Gunawan, Y., & Endyka, Y. C. (2017). The Protection of Small and Medium Enterprises in Yogyakarta: The Challenges of ASEAN Economic Community. *Pertanika J. Soc. Sci. & Hum*, 25(2017). [199-206].

<sup>33</sup> Article 18 of the International Covenant on Civil and Political Rights 1966.

<sup>34</sup> Nora Hertz, 'Neurorights—Do We Need New Human Rights? A Reconsideration of the Right to Freedom of Thought' (2023) 16 *Neuroethics*. [5].

<sup>35</sup> Carolyn E Holmes, 'Conventions, Courts, and Communities: Gender Equity, CEDAW and Religious Personal Law in India' (2019) 54 *Journal of Asian and African Studies*. [965].

particular religious group, a limitation that singles out the hijab as its primary aim, may give rise to concerns about the practice of religious discrimination. Such a form of discrimination would be against the law on both the national and international levels.

Through the examples presented above, it is essential to examine whether the prohibition on the hijab is part of a dress code that prohibits all religious symbols and activities equally, or whether the ban has an unfair impact on Muslim women who wear the hijab. Then, Discrimination is based on a person's sexual orientation. The impact that the hijab ban will have on efforts to achieve gender equality should also be evaluated. Women choose to cover their hair and heads with the hijab for a variety of reasons, including to express their religious beliefs and personal preferences.<sup>36</sup> Any restriction on the hijab should be subject to scrutiny to ensure that it does not adversely affect women to a disproportionate degree and does not violate their rights to freedom of expression, freedom of religion, or personal autonomy. Women should not have to worry about being judged negatively or pressured by society over their attire.

It is of the utmost importance to ascertain whether credible information is available to support such arguments and if the hijab ban is justified on the grounds of public interest or security. Any limits placed on how people dress for religious purposes must be justified by a clear need and consistent with the desired outcome. It should not be a blanket restriction but rather a specific measure that is designed to solve the issues that have been identified. It is essential to investigate other approaches that do not infringe on the rights of individuals before enacting a complete prohibition.<sup>37</sup>

To examine the legal and human rights consequences of India's ban on hijab, a comprehensive analysis of both the domestic and international legal systems is

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<sup>36</sup> Abhijit Mohanty, 'The Hijab Controversy: The Conflicting Nature of Right to Religion' (2023) 5 Issue 2 Indian JL & Legal Rsch.[1].

<sup>37</sup> Agostina Latino, 'The Right to Dress in International Law as a Right in Itself and as a Parameter on the Ridge between Freedom of Expression and Prohibition of Discrimination' (2023) 9 Athens Journal of Law.[229].

necessary. The ban must conform with the Indian Constitution, ensuring it does not impede the rights to religious freedom, expression, or equality before the law. This must be accomplished before the prohibition can go into effect. In addition, it should be by the norms of international human rights, such as safeguarding the right to religious freedom and the non-discrimination principle.<sup>38</sup> Any restrictions on the hijab should be based on a sound objective, be necessary and reasonable, and steer clear of singling out certain religious or gender groups as potential victims. Even though no law in India prohibits women from wearing hijabs in public, any dress laws or policies that do so need to be investigated to see whether or not they are in line with legal and human rights issues.

International organizations serve multiple functions, including facilitating cooperation among member nations, facilitating negotiations, and generating mutually beneficial joint decisions. Occasionally, they also function as autonomous institutions responsible for executing essential undertakings, including social and humanitarian initiatives. The book by Kara Karnst and Mingst outlines six functions of international organizations. However, the author will solely discuss the fifth function, which pertains to rule supervision.<sup>39</sup> This entails monitoring the implementation of regulations, resolving disputes, and implementing enforcement measures<sup>40</sup>. It is highly advisable that legal experts and human rights organizations, including Cooperative and Assistance for Relief Everywhere (CARE) and UN Women, undertake an exhaustive inquiry into the precise historical context and legal structure governing the prohibition of the hijab in India.<sup>41</sup>

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<sup>38</sup> Paul Chaney, 'India at the Crossroads? Civil Society, Human Rights and Religious Freedom: Critical Analysis of CSOs' Third Cycle Universal Periodic Review Discourse 2012–2017' (2020) 24 *The International Journal of Human Rights*. [531].

<sup>39</sup> Margaret P Karns, Karen A Mingst and Kendall W Stiles, 'International Organizations: The Politics and Processes of Global Governance'.

<sup>40</sup> Gunawan, Y., Akbar, M. F., & Corral, E. F. 'WTO Trade War Resolution for Japan's Chemical Export Restrictions to South Korea' (2022) 9 (3) *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*. [408-431].

<sup>41</sup> Darko Dimovski, Nikola Obradović and Dragana Milovanović, 'Muslims in The Practice of The European Court of Human Rights through The Prism of Freedom of Religion in Education', *Proceedings of the International Scientific Conference " Social Changes in the Global World" (2022)*.

### **The Impact of India's Hijab Ban and Its Implications for Community Cohesion**

The prohibition of the hijab in India has provoked strong discussions and demonstrations, exposing its profound societal effect on impacted people and groups. The prohibition, which prevents Muslim women from wearing the hijab, has not only sparked problems about religious freedom but has also highlighted wider concerns surrounding communal cohesiveness and social peace.<sup>42</sup> Several impacts of the hijab ban in India and its far-reaching implications for community relationships, among others:<sup>43</sup>

1. **Disruption of Cultural Practices and Identities.** The hijab ban has significantly disrupted cultural practices and religious expressions within affected communities. For many Muslim women, the hijab is not merely a religious symbol but also an integral part of their cultural identity. The ban, by forbidding the hijab, undermines their ability to freely express their religious and cultural beliefs. This disruption erodes the sense of cultural autonomy and personal identity, leading to feelings of marginalization and exclusion.
2. **Interreligious Tensions and Perceptions.** The implementation of the hijab ban has exacerbated interreligious tensions and strained relationships between different religious communities in India. The ban as an encroachment on religious freedom, reinforcing perceptions of discrimination and bias against Muslim communities. This perception further deepens existing divisions, fostering a climate of distrust and animosity between religious groups.
3. **Increased Stigmatization and Prejudice.** The hijab ban has created an environment that perpetuates stigmatization and prejudice against Muslim women who choose to wear hijabs. The ban reinforces negative stereotypes and misconceptions, associating the hijab with extremism or oppression. As a result, Muslim women may face increased discrimination, bias, and social isolation, limiting their opportunities for education, employment, and participation in public life.
4. **Undermining Social Inclusion and Integration.** The hijab ban poses a significant challenge to social inclusion and integration efforts within diverse communities. By targeting a specific religious group, the ban undermines the principles of diversity, multiculturalism, and respect for differences fundamental to a harmonious society. The resulting divisions can hinder interactions, dialogue, and cooperation among different religious and cultural groups, hindering the development of shared values and collective identity.
5. **Fostering Dialogue and Understanding.** To address the sociocultural impact of

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<sup>42</sup> Shruti Jain, 'The Rising Fourth Wave: Feminist Activism on Digital Platforms in India' (2020) 384 ORF Issue Brief.[1].

<sup>43</sup> John T Jost, *A Theory of System Justification* (Harvard University Press 2020).

the hijab ban and its implications for community cohesion, it is crucial to foster dialogue and understanding among different stakeholders. Interfaith initiatives, community engagement programs, and cultural sensitivity training can play a vital role in promoting empathy, tolerance, and mutual respect. By providing platforms for open discussions and promoting cross-cultural exchange, these initiatives can help bridge the gaps between communities and foster a sense of shared humanity.

India's Karnataka state decision to implement a hijab ban has stirred significant controversy and sparked debates surrounding the implications for community cohesion.<sup>44</sup> The ban, which prohibits Muslim women from wearing the hijab, has triggered a wave of concern about its impact on social harmony and intergroup relationships.<sup>45</sup> The implications for community cohesion resulting from India's hijab ban, delving into the societal consequences and proposing avenues for fostering understanding and unity among diverse communities, among others:<sup>46</sup>

1. Fragmentation and Polarization. The hijab ban has contributed to the fragmentation and polarization of society, particularly along religious lines. It has deepened existing divisions and created an "us versus them" mentality, pitting religious groups against one another. This polarization undermines the fabric of social cohesion, hindering efforts to build bridges and foster inclusive communities.
2. Erosion of Trust and Social Bonds, the ban has eroded trust and weakened social bonds within communities. Targeting a specific religious practice has engendered a sense of distrust and apprehension among different religious groups. This erosion of trust poses a significant challenge to community cohesion, as it inhibits meaningful interactions, dialogue, and cooperation among diverse individuals and communities.
3. Marginalization and Exclusion. The hijab ban has contributed to the marginalization and exclusion of Muslim women who choose to wear hijabs. It perpetuates a narrative that undermines their autonomy and restricts their religious freedom, leading to their social and cultural exclusion. This marginalization affects the individuals directly impacted by the ban and hampers the collective well-being and unity of the wider community.
4. Strengthening Intercultural Understanding. To address the implications for community cohesion resulting from the hijab ban, there is a need to prioritize

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<sup>44</sup> Jamal Malik, 'Indian Muslims or Muslim Indians?(Approx. 1947–2019)', *Islam in South Asia* (Brill 2020).

<sup>45</sup> Kirsten Wesselhoeft, 'Mixité, Gender Difference, and the Politics of Islam in France after the Headscarf Ban', *The Routledge Handbook of Islam and Gender* (Routledge 2020).

<sup>46</sup> Laila Kadiwal, 'Feminists against Fascism: The Indian Female Muslim Protest in India' (2021) 11 *Education Sciences*. [793].

intercultural understanding and promote dialogue among diverse communities. Interfaith initiatives, cultural exchange programs, and community dialogues can play a pivotal role in fostering understanding, empathy, and respect across religious and cultural divides. By actively engaging individuals from different backgrounds, these initiatives have the potential to bridge gaps, challenge stereotypes, and build stronger bonds within the community.

5. Education and Awareness. Education and awareness programs are essential in addressing the misconceptions and biases contributing to social divisions. By providing accurate information about the hijab and its significance and dispelling myths, these programs can promote empathy and challenge preconceived notions. Integrating education on religious diversity and cultural acceptance into school curricula can also foster an environment of inclusivity from an early age.

### **Contradictory Interpretation by the Courts**

The court is widely regarded as a neutral arbiter in resolving conflicts. Nevertheless, the Karnataka High Court, in its decision to prohibit wearing headscarves, drew upon the precedent set by the case of *M Ajmal Khan v Election Commission of India*.<sup>47</sup> In this case, the Madras High Court dismissed a petition seeking the inclusion of photographs of eligible Muslim Gosha women voters in the voter list in Tamil Nadu. This particular case is not directly related to the fundamental right to education. Furthermore, it is worth noting that the principle established in the *State of Bombay v Narasu Appu Mali* case<sup>48</sup> delineates a clear distinction between religious beliefs, which are safeguarded by the state, and religious practices, which may be subject to prosecution in consideration of public morality, health, or social welfare. Regrettably, this principle has been disregarded.

The Karnataka Government decided on March 21 to deny students who participated in the boycott of class 12 examinations the opportunity to take their practical exams. This would imply that predominantly hijab-wearing female students would be at a disadvantage in terms of their performance in the board examinations.<sup>49</sup>

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<sup>47</sup> Madras High Court, '*M.Ajmal Khan vs The Election Commission Of India* on 7 September, 2006' (*Kanoon*, 2006).

<sup>48</sup> Chagla, '*The State Of Bombay vs Narasu Appa Mali* on 24 July, 1951'.

<sup>49</sup> The Times of India, '*No Class 12 Re-Exam for Hijab Protesters: Karnataka Govt*' (2022).

The practice of segregating Muslim students in educational institutions based on their attire is in direct opposition to Article 15 of the Indian Constitution. This constitutional provision explicitly prohibits the state from engaging in any form of discrimination against its citizens on the grounds of religion, race, caste, sex, or place of birth. The Constitution guarantees the protection of these fundamental rights. The order issued by the Karnataka Government on March 21 pertains to the boycott of students from taking exams violates the constitutional provision that prohibits direct discrimination based on religion, as well as the prohibition of religion intersecting with sex, as stated in Article 15 paragraph (1). The Karnataka High Court's ruling acknowledges the contention that the hijab constitutes an exercise of freedom of expression as protected by Article 19 paragraph (1) (a).<sup>50</sup> However, the court does not delineate the particular basis or bases within Article 19 paragraph (2) that would justify the prohibition of the hijab. Article 21 of the legal document stipulates that individuals cannot be deprived of their life or personal liberty unless a legally established procedure exists. The government's directive is in contravention of Article 25, which safeguards the right to religious freedom.<sup>51</sup>

In 2016, the Kerala High Court reached a divergent conclusion in the case of *Amnah Bint Basheer v Central Board of Secondary Education*.<sup>52</sup> The Central Board of Secondary Education has implemented a dress code for candidates participating in the entrance examination as a means of regulating instances of malpractice. The Petitioner challenged this provision, asserting that it infringed upon his fundamental rights as protected by Article 25 paragraph (1) of the Constitution. The court ruled in favor of the petition and declared that "the Council shall allow all candidates, who, due to religious observance, desire to don a headscarf and long sleeves, to participate in the examination". Nevertheless, the aforementioned line of reasoning

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<sup>50</sup> Maria Zehra, 'A Critical Evaluation of Karnataka High Court's Judgment Concerning the Hijab.' (2022) 18 *Manchester Journal of Transnational Islamic Law & Practice*.

<sup>51</sup> Live Law, 'Prohibiting Hijab in Educational Institutions: A Constitutional Assessment' (2022).

<sup>52</sup> Kerala High Court, 'Wp(C).No. 6813 Of 2016 (B) vs Unknown on 23 July, 2015' (*Kanoon*, 2016).

put forth by the knowledgeable judge of the Kerala High Court was disregarded by the collective body of the Karnataka High Court during the implementation of the prohibition on headscarves.

The High Court's decision exacerbates harassment, trauma, and discrimination directed against Muslim girls and women in education. The ruling regime has imprisoned several Muslim women who opposed the Citizenship Amendment Law. Furthermore, since the BJP took power, educated Muslim women have been targeted, vilified, and objectified on platforms such as GitHub (creating apps like Sulli Deals and Bulli Bai),<sup>53</sup> homes of those who speak out have been bulldozed, Muslim men have been lynched, and their businesses have been crushed. As a consequence, the goal is not to protect, but to criticize a community for failing to properly embody Hindutva standards, disregarding the fact that upper-caste Hindu males harass Hindu women as well. Data on crime against women demonstrate that, despite laws outlawing it, the incidences of sexual assault, domestic violence, incest, female feticide, infanticide, and dowry deaths have been increasing over time.<sup>54</sup>

Galanter critically examined the constitutional definition of affirmative action and concluded that the implementation of formal equality within a society characterized by significant disparities would inevitably exacerbate preexisting inequalities.<sup>55</sup> He posited that the primary function of a judge is to reconcile two conflicting disparities by considering factors such as merit, historical appropriation, and other relevant elements. In his analysis, he contends that courts exhibit a propensity towards a formalistic approach when evaluating the successes and shortcomings of judicial reasoning. Similarly, when considering the headscarf prohibition, judicial bodies must adhere to the principle of affirmative action while also considering the intricate social factors and contextual dynamics at play.<sup>56</sup>

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<sup>53</sup> Islamophobic slurs referring to Muslim women who have listed hundreds of Muslim women for "auction" and had their photos doctored and taken without their permission.

<sup>54</sup> Arvind Verma, Hanif Qureshi and Jee Yearn Kim, 'Exploring the Trend of Violence against Women in India', *Violence against Women in India* (Routledge 2019).

<sup>55</sup> Marc Galanter, 'Competing Equalities: Law and the Baclward Classes in India'.

<sup>56</sup> Das (n 3).



According to the study, the discrepancy between the law as it is written and the way it is implemented on grounds is referred to as an “operational gap”. This gap occurs when the courts make use of technical reasons, ideological assumptions, or paternalist thinking when deciding cases involving women’s issues.

### **Creating Community Advocacy for Those Affected by India’s Hijab Ban**

Creating community advocacy for those affected by India’s hijab ban is crucial in addressing their needs and amplifying their voices.<sup>57</sup> Here are some steps to guide the process:<sup>58</sup>

1. **Raise Awareness and Educate:** Start by raising awareness about the hijab ban and its impact on affected individuals. Conduct educational campaigns, organize community dialogues, and utilize social media platforms to disseminate accurate information, dispel misconceptions, and foster understanding.
2. **Form Support Networks:** Establish support networks that provide a safe space for individuals affected by the hijab ban to connect, share their experiences, and seek guidance. This can be done through local community centers, religious organizations, or online platforms that facilitate peer support and solidarity.
3. **Engage in Advocacy and Lobbying:** Advocate for policy changes and engage in lobbying efforts to challenge the hijab ban at the legislative and policy levels. This can involve organizing public demonstrations, writing petitions, engaging with policymakers, and collaborating with human rights organizations to highlight the impact of the ban and advocate for religious freedom and equality.
4. **Empower Affected Communities:** Conduct workshops, seminars, and training sessions to empower affected communities with knowledge about their rights, self-advocacy skills, and community organizing strategies. Encourage individuals to actively participate in decision-making processes, engage with local authorities, and share their experiences to effect change.
5. **Establish International Alliances:** Build alliances with international human rights organizations and networks focusing on religious freedom, gender equality, and human rights. These alliances can provide additional support, resources, and expertise to amplify the advocacy efforts and bring international attention to the hijab ban.
6. **Monitor and Report Violations:** Establish mechanisms to monitor and report

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<sup>57</sup> Zohreh Zara Zarezadeh and Raymond Rastegar, ‘Gender-Leisure Nexus through a Social Justice Lens: The Voice of Women from Iran’ (2023) 54 *Journal of Hospitality and Tourism Management*. [472].

<sup>58</sup> Hossein Kermani and Niloofar Hooman, ‘Hashtag Feminism in a Blocked Context: The Mechanisms of Unfolding and Disrupting #Rape on Persian Twitter’ (2022) *New Media & Society* <<https://doi.org/10.1177/14614448221128827>>.

instances of discrimination, human rights violations, and infringements on religious freedom resulting from the hijab ban. This information can be used to advocate for policy changes, inform legal strategies, and highlight the ongoing impact of the ban on affected individuals.

When it comes to gender-responsive budgets and strategies, UN Women plays a significant role in India. Numerous lobbying actions with government stakeholders, including the Ministry of Finance, have come from the Gender Responsive Budgeting Program. For gender equality and the reduction of discrimination against women in India, UN Women has supported all programs run by the Ministry of Women and Child Development. Together with the appropriate Indian ministries and civil society organizations, UN Women held three seminars in 2009 to discuss the CEDAW.<sup>59</sup>

Through the involvement of the media and schools, the government is working to eradicate gender stereotypes. Child marriage, *sati*,<sup>60</sup> selective abortion, *sumangali* (child labor) schemes, and other practices have been prohibited by law and encouraged by programs and interactions with society. Additionally, the government of India promotes women in the nation to participate in a variety of disciplines, including the military, the legislative branch, and other areas.

By following these steps and maintaining a collaborative and inclusive approach, it is possible to create effective advocacy and support mechanisms for those affected by India's hijab ban. These mechanisms can play a vital role in amplifying their voices, providing assistance, promoting awareness, and working towards a more inclusive and tolerant society.

## Conclusion

The hijab prohibition is part of a pattern of discrimination against Muslims, especially Muslim women, that violates their human rights. The High Court's

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<sup>59</sup> UN Women, 'India National Planning and Budgeting Programmes' (*UN Women*).

<sup>60</sup> *Sati* is an Indian culture that originates from an ancient Hindu tradition where a widow commits suicide by burning herself. This culture was initially carried out voluntarily because women considered themselves to be part of their husbands, so if their husbands died, they would also die by burning themselves.

verdict worsens Muslim girls and women's education-related harassment, trauma, and prejudice. Muslim instructors and students removing their hijabs and burqas before entering schools is a difficult topic that requires neutrality. The verdict would affect the Indian Constitution and the Muslim population, especially hijab-wearing women. The protests functioned as spaces for cultivating political awareness, fostering collective unity in the face of injustice, and promoting practices that challenge oppressive systems. The aforementioned scenario serves as a significant historical example of the influential entry of critical feminism into the dominant sphere of Indian politics, resulting in the transformation of notions surrounding gender, nationhood, citizenship, and the concept of belonging. The implementation of pandemic-related lockdown measures compelled the protesters to discontinue their sit-in demonstrations. However, the ongoing resistance persists, with students and protesters from the local community engaging in legal battles and utilizing online and offline platforms to challenge the state.

Creating community advocacy for people impacted by India's hijab prohibition is essential to meeting their needs and amplifying their voices. The actions that follow: (1) Educate and raise awareness. (2) Establish Support Networks. (3) Advocate and lobby. (4) Empower Affected Communities. By following these steps and maintaining a collaborative and inclusive attitude, it is feasible to build effective advocacy and support structures for people impacted by India's hijab ban. These tools may help magnify their voices, provide aid, raise awareness, and promote a more inclusive and accepting society.

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