

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

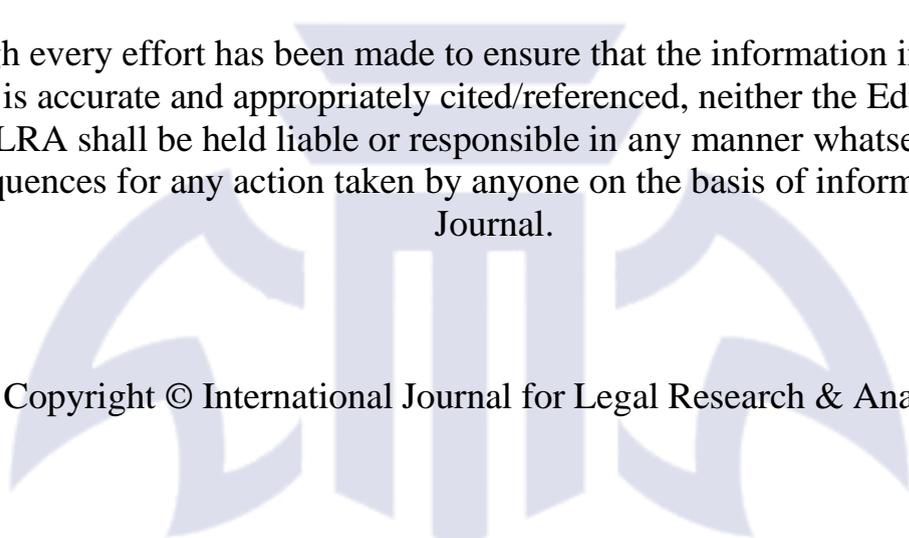
[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## EDITORIAL TEAM

### EDITORS

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## **Dr. Namita Jain**



**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## **Mrs.S.Kalpana**

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **KARNATAKA HIJAB BAN CASE: SUPREME COURT DELIVERS SPLIT VERDICT**

AUTHORED BY - SHIVAM SAURABH

[Shivam4045@gmail.com](mailto:Shivam4045@gmail.com)

8271204044

CHANAKYA NATIONAL LAW UNIVERSITY

## **INTRODUCTION**

At the beginning of February 2022, six female Muslim students were being restricted from entering in their college in the Indian state of Karnataka, because of the attire that is 'hijab' or 'veil'. They said that it was a violation of the college uniform policy which was observed by the students of the other religions as well. hijab or veil means that it is a cloth worn by Muslim women to hide their heads and there can be some other reasons also to why Muslim women opt to carry an attire as an identity of their religion, some have been believed while others have been neglected. As we saw, there was huge chaos in other universities. It was spreading to the different schools and universities across the state and groups of Hindu students staged rallies in reversal and start calling for the wearing of saffron scarves.

After looking at the present scenario, petitions were filed in the Karnataka high court. the high court ordered a temporary injunction prohibiting all the pupils from donning any kind of religious attire. And this order would be applicable in all schools<sup>1</sup> and colleges across Karnataka. the process of discussion still going in the high court and the court ruled that the hijab is not a requirement for practicing in Islam.<sup>1</sup>

## **ELEMENTS**

---

<sup>1</sup> *The Supreme Court's split verdict puts the education of young Muslim women in jeopardy., available at: [https://frontline.thehindu.com/news/understanding-the-split-verdict-on-hijab-ban/article66014782.ece#:~:text=This%20was%20upheld%20by%20the,permissible%20and%20a%20reasonable%20restriction.,\(last visited on December 12, 2022\).](https://frontline.thehindu.com/news/understanding-the-split-verdict-on-hijab-ban/article66014782.ece#:~:text=This%20was%20upheld%20by%20the,permissible%20and%20a%20reasonable%20restriction.,(last visited on December 12, 2022).)*

- UDUPI DISPUTE
- SAFFRON PROTEST
- GOVERNMENT REACTION

## **Udupi dispute**

This dispute was aroused at the government PU college. When the college administration stopped Muslim women to enter the classes because they wore veil. The college said that its uniform policy did not allow for the hijab, they started arguing that hijab was part of their faith and their constitutional right but the college refused to wear hijab inside the classroom. They started approaching high court through petition and also approached the national human rights commission.

## **Saffron dispute**

Hindu students began showing up at their campuses wearing saffron scarves as a form of protest against Muslim students being permitted to wear hijabs as soon as the Udupi story became known. "If ladies are permitted to wear hijab, then other students would come with saffron shawls to institutions".

## **Government reaction**

The Congress and the Bharatiya Janata Party (BJP) began tossing insults at one another over the Karnataka hijab incident. Congress accused the BJP of inciting students, but BJP officials said that Congress was responsible for the hijab controversy.

The Government decided to form a committee and this committee member would re-examine the issue after that we concluded. Till the time you all have to maintain the decorum of the schools and universities, and follows the rules and regulation as status quo (you have to follow the rules that is mentioned by the college till the high court will not come).<sup>2</sup>

## **Main reason behind the hijab**

---

<sup>2</sup> India dispatch: Karnataka school hijab ban provokes litigation, intimidation by Hindu majority., available at: <https://www.jurist.org/news/2022/02/india-dispatch-karnataka-school-hijab-ban-provokes-litigation-intimidation-by-hindu-majority/>, (last visited on December 22,2022).

The main problem in the hijab case is According to the court, the hijab is not a requirement for practicing Islam, and as a result, it is not covered by Article 25 of the Constitution, which establishes a person's basic right to profess their religion. The premise of the hijab defense is that females may choose to wear it or not, which is a gravely faulty notion. the rights of Muslim girls to wear their evil in schools or colleges are primarily based on the Constitution's provision of Fundamental Rights, which includes the right to free speech. But is the option to wear a hijab one of free will?

## **Importance and possible reasons of wearing Hijab**

Muslim women wore the hijab as a sign of submission to God's instruction in the Quran, where Allah (God) says:

“And instruct the believing women to cover [some of] their chests with their headcovers so as not to reveal their adornment, to reduce some of their eyesight, to preserve their private parts, and to not display their adornment until it is necessarily visible”.<sup>3</sup>

Muslims women also wore the niqab (a face veil), the niqab covers whole face excluding her eyes, Could they forced her to wear the hijab or was it mandatory to wear hijab? No, it was not compulsory but they just wore because to show the respect to GOD (prophet). At last, hijab should be a priority when it comes to access to education, travel, and relationships, but it has taken on a patriarchal form, supposed to lead to the dogmatism that consequences. Some families will indeed give their girls the minimal amount of education if they wear the hijab, which exemplifies their commitment to Islam.

## **The hijab controversy and what it means for women's education Hijab no more: a Phenomenological study**

This article mainly focused on the hijab issue and how this has been spreading for a quite number of days. The writer tries to focus more on women's empowerment and education. He discussed many provisions like articles 25 and 26. This article put more emphasis on the western countries' culture for the Muslim and also adopts a phenomenological logical research design. The writer tries to focus on the present and past scenarios of Muslim women, how this matter played an important role for

---

<sup>3</sup> SURAH AN-NUR AYAT 31 (24:31 QURAN) WITH TAFSIR., AVAILABLE AT: [HTTPS://MYISLAM.ORG/SURAH-NUR/AYAT-31/](https://myislam.org/surah-nur/ayat-31/) , (LAST VISITED ON DECEMBER 24,2022).

politicians and also tries to create a huge gap between secular and religious values.

### **Is Wearing the Hijab Protected by the Right to Freedom of Conscience?**

With the reference of case [Bijoe Emmanuel v State of Kerala, 1986](#),<sup>4</sup> she argued that wearing hijab is a part of their upright belief and ban on the hijab violated their fundamental right under article 25. Basically judgement read like:- The Court determined between "Freedom of Conscience" and "Religious Expression" in the conclusion, emphasizing that although the conscience is an internal beliefs, religious demonstration is an outward expression of this belief. The Essential Religious Practices requirements ought to be applied to hijab wearing given that it is a form of religious expression.

### **Is the Hijab an Obligatory Religious Observance in Islam?**

The high court upheld that wearing the hijab is not an essential religious practice. Muslims girls continuously arguing with the help of article 25, some Muslim scriptures and said wearing hijab is their an essential practice. So, the court cannot impose any restriction on this. The hijab is not a religious practice, as stated by the court. Nevertheless, it is a cultural convention. The hijab evolved as a measure to ensure women's safety and had a connection to the societal environment in which the Quran was written. It cannot be recognized as the religion's bedrock tenet.

Does the barring of the hijab in institutions violate students' expectations of privacy and freedom of expression?

The court endorse that under article 19(1)(a) of the constitution, right to freedom of speech and expression no where mentioned that put restriction on wearing hijab is the violation of fundamental right.

Every institutions that is run by the state government, they have some dress code and that dress code represents the principles of secularism (there will be no discrimination). The court put some reasonable restrictions to maintain the decorum of the institution.<sup>5</sup>

### **Supreme court delivers split verdict**

---

<sup>4</sup> <https://main.sci.gov.in/judgment/judis/8973.pdf>, ( last visited on December 25,2022)

<sup>5</sup> why wearing of Hijab is not a part of essential religious practice in Islam: Karnataka High Court unfolds.,<https://www.sconline.com/blog/post/2022/03/16/16-pointer-report-on-why-wearing-of-hijab-is-not-a-part-of-essential-religious-practice-in-islam/>, (last visited on January 3, 2023).

The petitions asking an urgent hearing of the case been dismissed by that of the Supreme Court of India. In necessary for the girls to register in the state exams and prolong the progress established the previous year, experts asked the judge to review their case as early as possible. N. V. Ramana, the Chief Justice of India, denied these request, indicating that the assessments had nothing to do with the circumstance and that it must not be provocative.

This case refer to two judge bench under the justice Hemant Gupta and the justice Sudhanshu Dhulia and a panel returned a split verdict on this issue.

Chief Justice Ritu Raj Awasthi presided over the Karnataka High Court in March and held The Muslim holy book, the Quran, does not require women to wear the headscarf. At most, the hijab serves as a way to enter public spaces and a "measure of social security." The Muslim Community later appealed the court's decision to support the ban to the Supreme Court.

On today's Karnataka High Court hijab ban judge's decision, two Supreme Court judges had varying viewpoints. The judges rendered a mixed opinion as to whether or not the hijab should retain in schools and recommended aa bigger bench to put it on. In their split decision, Justice Hemant Gupta and Justice Sudhanshu Dhulia recognised "a division of judgement" and urged Chief Justice of India U.U. Lalit to appoint a three-judge court to hear the case.

Justice Hemant gupta dismissed all the appeals and said that ban on hijab is not the prohibition of their fundamental right and the state government can enforce the dress code ad mandate. Put more emphasis on the principles of secularism that shows the togetherness and also promotes that there will be division between any students in the institutions, students are free to practice any type of their religious sentiment but outside the schools.<sup>6</sup>

Justice Sudhanshu dhulia is totally reverse the gupta judgement and said that wearing hijab should be simply a matter of choice and there cannot be any restriction against it. The education of a girl infant was really the matter that bothered Justice Dhulia the most, and the hijab banning would undoubtedly

---

<sup>6</sup> <https://indianexpress.com/article/explained/karnataka-hijab-ban-split-verdict-by-sc-where-judges-differed-justice-hemant-gupta-8207399/#:~:text=The%20Supreme%20Court%20on%20Thursday,students%20is%20also%20not%20tenable%22,>  
(last visited on January 3,2023)

prevent her from living a better life, he said. According to Justice Dhulia, it was not essential to consider on this subject in order to sort out the controversy whether or not wearing the hijab represented an important Islamic religious practise. He stated: "There can be no valid justifications for forbidding hijab in a classroom if the belief is legitimate and it doesn't hurt anybody else."<sup>7</sup> He believed that the young girl petitioners had pleaded for their own liberties, instead of the society. Given that there will always be different religious viewpoints on a certain religious issue, courts are not the appropriate places to resolve theological disputes, he claimed. Nothing permits the court to favour one party over another, thus it must refrain from interfering when constitutional constraints and bounds are crossed. He also talked about the what is more important dress code or education? He added that the court have to ask this question that the life of girls is important and give them better education not to wear hijab is important.the Karnataka high court fails to answer these question like the question of diversity, how a girl wearing a hijab in a school may be a concern for law and order or even for public safety. The importance of variety and a thriving, diversified culture was underscored by Justice Dhulia in the context of this particular case. He highlighted the Karnataka Education Act of 1983, which stipulated that the diverse and rich national culture be emphasised in school and college courses. The concepts of human dignity and brotherhood.

On the other hand, while Justice Gupta agreed with the Karnataka High Court that the hijab was not a necessary religious practise. He said that the court might have done so by first determining whether the government's restriction was legitimate or if it was "struck" by the proportionality concept. According to Article 21, the pupils had a right to an education, but they were not allowed to insist on wearing something differently from their uniform as a sign of their faith in a school that was not religious. The uniform is an equaliser of inequities, as Justice Gupta acknowledged. Many might adopt a certain dress code if students of one faith insisted on it. Secularism would be challenged if one religion was allowed to wear religious symbols. The option of whether or not to exercise the right to an education would still be up to the student. He said that the headscarf did not fall under the scope of Article (19)(a)freedom of speech. The rules helped to promote equality.at the end justice Hemant gupta focused on Students must adhere to the rule that the school uniform must be worn without any "addition, subtraction, or adjustment."

---

<sup>7</sup> Supreme Court Passes Split Verdict In Hijab Case; Justice Sudhanshu Dhulia Sets Aside Karnataka HC Judgment., <https://www.livelaw.in/top-stories/hijab-ban-supreme-court-split-verdict-karnataka-religion-fundamental-right-article-25-211510>, (last visited on January 5,2023)

## **Present situation**

The Karnataka government briefed the SC during the hearing that the incidents that occurred in the state prior to some college development committees prohibiting the hijab in their respective educational institutions were not "spontaneous" but rather "part of a larger conspiracy," pointing out that "women are revolting" against the hijab even in constitutionally Islamic nations like Iran.

