



Hijab-Ban, Right to Education and Question of Agency of Muslim Women

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| Fatima Juned



Discussion Paper

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ABSTRACT

Muslim women donning hijab, burqa, or the veil has been a contentious issue and a source of discrimination against them worldwide. In India, this issue resurfaced in December after the Udupi Women's PU College, a pre-university college in Karnataka, denied entry to several girls since they were wearing hijabs and 'disrupting' the college uniform. In response to a series of pleas and petitions against the ban, the Karnataka High Court upheld the college's hijab ban. In the context of these recent events, this paper highlights the need to understand the significance of Muslim women's agency and situates it within the larger debates surrounding their marginalisation. Further, this work explores how the current ban on hijab does more harm than good to Muslim women's right to education.

CONTEXT

On 31 December 2021, the Udupi Women's PU College in Karnataka prohibited six hijab-wearing girls from entering its premises (Wire Staff, 2022a) because they wore a hijab, despite the Indian Constitution safeguarding its citizens' rights to equality and religious freedom. This antagonism of the hijab spread to other educational institutions that also discriminated against hijab-wearing girls on religious grounds in different states and colleges. For instance, the Government Junior PU college in Kundapur, Karnataka made a few hijab-wearing girls sit in a separate classroom (Wire Staff, 2022b), effectively segregating the hijab-wearing students from their non-hijab wearing counterparts. Hindu students of colleges in Kundapur led the opposition against the hijab by wearing saffron scarves and chanting religious slogans (Wire Staff, 2022c). Kasturi Devi College in Chaksu near Jaipur stopped students from entering the premises if they wore burqas (Mukherjee, 2022). The series of events sparked widespread protests by hijab-wearing girls as they fought to avail their right to personal liberty, religion, and education. However, the proceedings on the subject have revolved around the essentiality of hijab as a religious practice rather than the pursued discrimination and denial of education based on religion.

On 5 February 2022, a little over a month later after the uproar in Udupi Women's PU College, the state government issued directives for government institutions under Section 133(2) of the Karnataka Education Act, 1983. The order specified that students must compulsorily adhere to a 'uniform' style of clothes. The private school administration can choose a uniform of their choice. In this directive, the hijab was deemed as not an essential part of the uniform and religious practice (Parashar & Vishwanath, 2022). However, the students point out that the school manual clearly stated that hijabs were part of the uniform as long as they matched the colour of the uniform. More importantly, hijab-wearing girls had attended their classes without obstacles before the hijab ban (Wire Staff, 2022b). Prior to the uproar, their head coverings had not been contentious to their uniform.

On 15 March 2022, the Karnataka High Court upheld the hijab ban deeming it as not an essential religious practice. The petitions by the Muslim girls and women were dismissed, thereby ruling that Muslim women cannot wear hijabs in educational institutions. The verdict quoted that the "Mughals or the British did not bring uniform, but it was there since the ancient gurukul days. Several Indian scriptures mention Samavastra or Shubhravesh in Sanskrit, the English near equivalent for uniform." (Dutta, 2022).

Conversely, articles from other religions were not prohibited with such severity. The directive only considers hijabs and no other religious symbols like the sindoor, ghoonghat, and bangles worn by Hindus, crucifixes worn by Christians, and turbans worn by Sikhs. The Karnataka Education minister B. Nagesh warned that "strict action will be taken against those educational institutions that stop students with tilak, kumkum, bindi, sindoor etc., from entering the school or colleges. Kumkum, sindoor, and bindi are our cultural identities, and they are used as ornaments. Hence it can't be compared with the hijab, which is purely a religious outfit." (OpIndia Staff, 2022).

This is not the first time a discriminatory incident against the Muslim community has occurred in Karnataka. In the last decade, educational institutes in Mangalore, Bantwal, Moodbidri, and other districts, barred or raised objections to several female Muslim students wearing the burqa or hijab (Sharma, 2009; Special Correspondent, 2012; Pinto, 2014). The resentment of the majority has been caused by the political polarisation which then manifested as an assertion that a ban on the

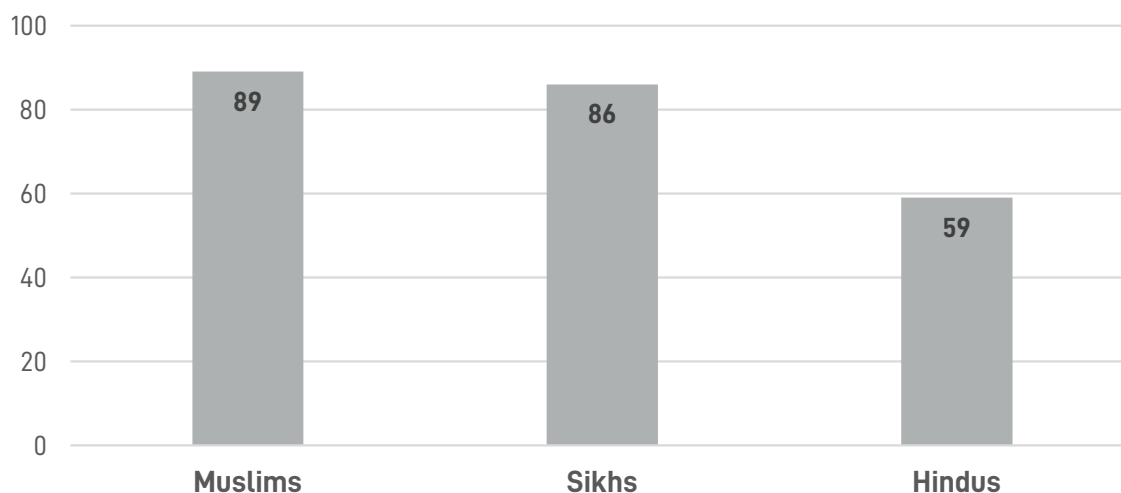
hijab or burqa is essential to ensure uniformity among students. Consequently, such institutional violence has coerced Muslim girls to either unwillingly drop out of their respective colleges or unwillingly adhere to the hijab ban just to access education. In both instances, their agency is being denied. The Karnataka government directive presents Muslim women with a dilemma: access education or embrace religious identity.

The petitioners have escalated the matter to the Supreme Court but still await the hearing date. However, in the interim, a significant number of Muslim women will be deprived of education until the matter is resolved. In this context, there is a need to situate the issue in the policy challenges of Muslim women's education, the growing communalism in the country, the discriminatory impact of such ad-hoc State directives, and the agency of Muslim women in India at large.

COMMUNALISM, FEMINIST DISCOURSE, AND AGENCY OF MUSLIM WOMEN IN INDIA

According to a survey by Pew Research Center (2021), in India, covering the head outside the home is not a practice specific to Muslims but is also common among Sikhs and Hindus.

Image 1: Percentage women cover their head



Source: Pew Research Center (2021)

The hijab, the veil, or the burqa are Islamic symbols and practices among Muslim women that have garnered much attention worldwide. In part this is because the wearing of the hijab wrongly creates the perception of women being sympathisers of terrorism and suspicious 'foreign others'. In this framework, the niqab or hijab are looked at through the lens of terrorism, gender oppression, and segregation. This view triggers criminal law 'reforms' used to justify state restrictions on the wearing of the hijab or the niqab in public (Fredette, 2015 as cited in Zempi, 2016).

For many Muslim women worldwide, the hijab constitutes a critical aspect of their identity as a symbol of faith, resistance, empowerment, protection, and agency. However, the hijab has often been perceived as oppressive by the west and now increasingly in India, thus positioning Muslim women as passive victims, devoid of any voice and agency or those who need to be ‘rescued’ (Mahmood, 2005). This has cast Muslim women as victims of male domination, brutality, and oppressive religious practices. Over the years, terminologies like ‘talaq’, ‘hijab’, or ‘burqa’ have often been used to stereotype the Muslim woman as fragile and passive, waiting to be rescued. Contrarily, such typology only increases the challenges Muslim women face in their everyday lives (Sur, 2014).

The Sachar Committee Report 2006 highlighted the varied dimensions of such marginality (ibid.). In India, the Muslim community has faced immense and deep-rooted marginalisation and socio-economic backwardness. This marginalisation can be understood as a constant state or series of situations between social exclusion and social integration (Lovell, 2004 as cited in Sur, 2014). The popular discourses that exist about the backwardness of Muslim women hardly consider the lack of education, opportunity, accessibility, poverty, and unemployment. Rather, it focuses solely on oppression within the Muslim society. This representation of the Muslim woman as demure within the social structures further paints them incapable of thinking independently (Sarkar, 2008).

As Sehlikoglu (2017) notes, feminist scholars like Saba Mahmood, in their earlier works, have failed to recognise the agency of Muslim women. The practice of the hijab or the niqab is an agentive investment into one’s ethical self-formation. The reason Mahmood gives for the failure to recognise this agency is due to a particular (liberal) understanding of agency that could only be recognised in the presence of resistance (ibid.). Abu-Lughod (2002) the American anthropologist, has written extensively about Afghan women and poses a critical question: ‘Do Muslim Women Need Saving?’. Abu-Lughod points out that while white western society/feminists have tried to ‘save’ the Afghan woman from the veil, many women did not give up the veil or the burqa after being liberated from the Taliban. In this context, Abu-Lughod raises two critical concerns. Firstly, what the white westerners need to accept is that the Afghan women cannot be liberated only when they become like their white counterparts — thus asserting the need to accept the possibility of difference. Secondly, she highlights the need to be vigilant about the rhetoric of saving people that reinforces the attitudes of white colonialists. This saving of the Muslim women reinforces a sense of superiority among the Westerners (Abu-Lughod, 2002).

The Indian government has adopted similar saviour-complex rhetoric which seeks to ‘liberate’ Muslim women. However, such systematic segregation and saviour narratives rob Muslim women of choice and the ability to voice their own opinions on matters pertaining to themselves. The calculated and targeted step of banning the hijab in educational institutions in Karnataka is an example of structural discrimination and depriving Muslim women of education based on their religious practices.

IMPACT ON EDUCATIONAL ACCESSIBILITY

The Indian Constitution outlines provisions to provide education to all its citizens. In 2021, the Supreme Court observed that despite the right to higher or professional education not being a fundamental right, the state government must facilitate access to education at all levels (Telangana Today, 2021). The State’s responsibility is to provide access to education, irrespective of caste, creed, religion, disability, gender, and other socio-political obstacles.

According to the All India Survey on Higher Education [AISHE], the Gross Enrolment Ratio of women in Karnataka between 18-23 years in higher education is 32.7% as compared to men's 31.2% in 2019-20. The female Muslim students' estimated enrolment number is 69,313 as against 7,74,134 total female students (under-graduate) in Karnataka (AISHE, 2020). In the pre-pandemic years, the Gross Attendance Ratio for female Muslim students in Karnataka increased from 10.3% in 2014 to 15.8% in 2017-18 (Barman, 2022). However, the state directives are likely to hinder this educational progress.

Moreover, as students, particularly girls, have lost two years of proper instruction to the pandemic, state-backed discrimination would further increase the learning gap between female Muslim students and their classmates. Following the Karnataka government's directive, the discrimination is only likely to aggravate as schools coerced all hijab-wearing girls to take off their hijab to access education.

On March 21, the Karnataka Government ruled that the students, who boycotted the examinations for class 12, would not be given a chance to appear for their practical exams. This would essentially mean that mostly hijab-wearing girls would lose out on the practical marks for the board examinations (The Times of India, 2022). The segregation of Muslim students within educational institutions based on their attire is in stark contradiction to Article 15 of the Indian Constitution which asserts that the state shall not discriminate against any citizen based on religion, race, caste, sex, or place of birth, as guaranteed by the Constitution. The Karnataka Government order violates the prohibition of direct discrimination on religious grounds and of religion intersecting with sex under Article 15(1). While the judgement of the Karnataka High Court recognises the argument on the hijab as freedom of expression under Article 19(1)(a), it does not identify the specific ground/s in Article 19(2) under which the prohibition on the hijab is justified. Article 21 delineates 'No person shall be deprived of his life or personal liberty except according to a procedure established by law'. The government order also violates Article 25, which protects religious freedom (Live Law, 2022).

As questions regarding the essentiality of a hijab or a burqa arise, a glance at a previous judgement is critical. In 2016, in the *Amnah Bint Basheer vs Central Board of Secondary* case, the Kerala High Court noted that women's choice to dress based on religious injunctions is a fundamental right protected under Article 25(1), especially when it is an essential part of the religion. It added that the interest of the Board can be safeguarded by allowing the invigilator to frisk such candidates, including by removing the scarf (*Amnah Bint Basheer vs Central Board Of Secondary*, 2016).

THE QUESTION OF IDENTITY AND THE MISSING VOICES OF MUSLIM WOMEN

It must be noted that Muslim women are not a homogenous entity. Rather, everyone has a distinct identity, formed through their lived experiences, that adds to how they function and the opportunities they get. This lack of knowledge about Muslim women's identity puts them in the category of victimhood. In the global context, wearing the hijab has multiple meanings. The hijab is not seen as traditional clothing; instead, women choose to wear it as part of their Muslim identity. The hijab has not just been limited to an individual identity but has become an element to represent the larger community.

In all the narratives about Muslim women and their choice of dressing, what is missing is the representation of the Muslim woman. The perspectives of hijab-wearing women about why they wear the hijab or the niqab are absent. Further, the under-representation of Muslim women in the media or the stereotyped version of them in the films adds to this belief of them being oppressed. This automatic equation of the hijab or niqab with coercion and oppression is patronising to women who wear the hijab by choice and consider it empowering or liberating (Petzen, 2012).

Often, wearing the hijab, or not wearing it, is a choice that Muslim women make as a means to assert their identity in public spaces. However, most of the Indian society fails to recognise this agency practised by Muslim women and instead deem it as oppressive. The debate on it being an essential religious practice deprives these women of their choice and agency. What is missing from this debate is the question of choice and the various problems with why the hijab is seen as related to passivity.

CONCLUSION

The Hijab ban adds to the series of discriminations against Muslims, particularly Muslim women. The judgement of the High Court order adds to the agony of Muslim girls and women, who had to face continuous harassment, trauma, and discrimination on religious grounds and receive an education. Instances of Muslim teachers and students taking off their hijabs and burqas before entering their educational institutions provide a deep-rooted problem that requires consideration and neutrality. The verdict would not only have grave consequences for the Muslim community, specifically hijab-wearing women but would also leave a lasting mark on the Indian Constitution.

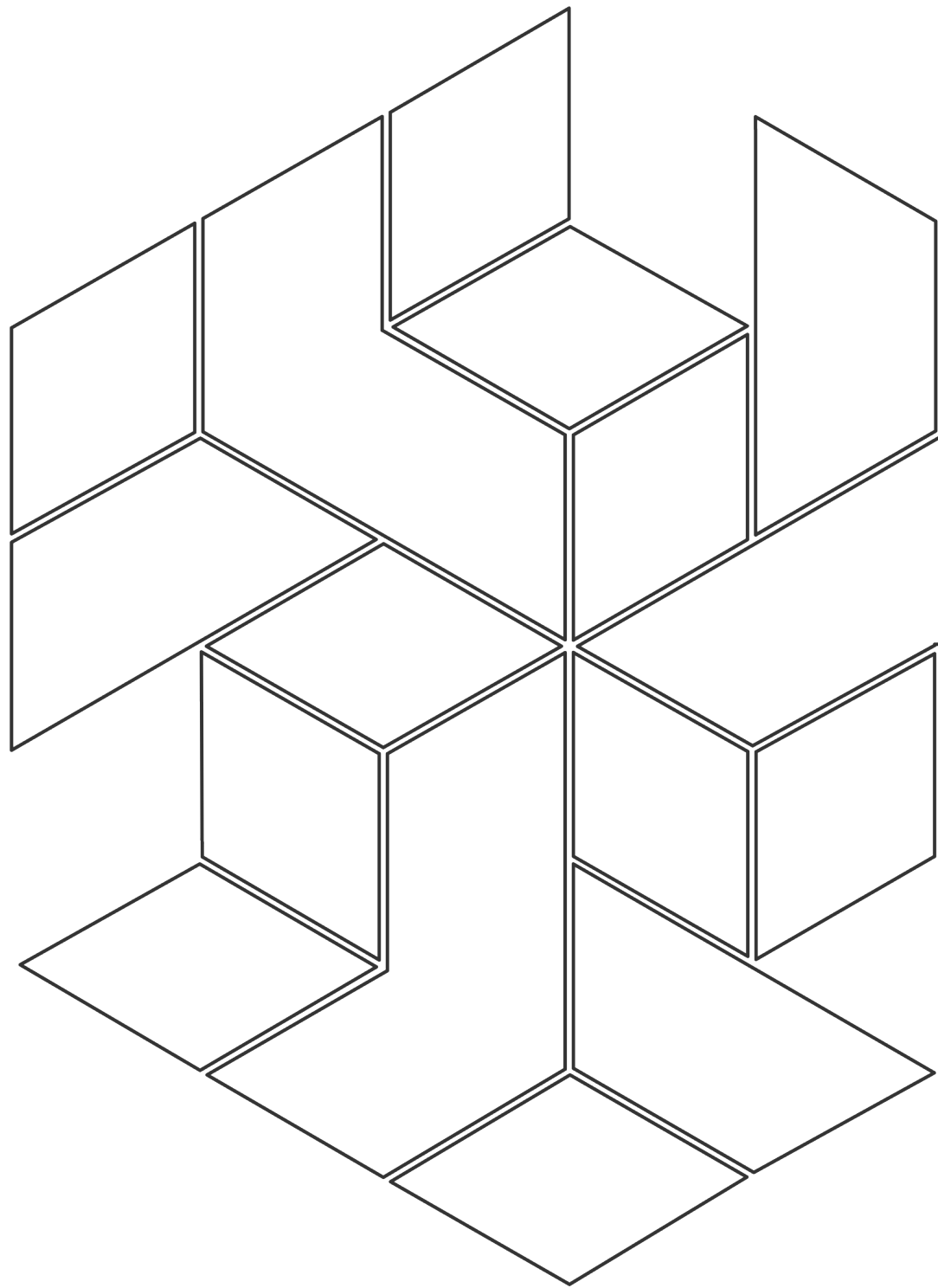
The ban on the practices of Muslim women, especially the hijab, and denying basic services like education is unconstitutional. In a secular and multicultural country like India, a uniform dress code would distress people of different religious communities since wearing religious symbols is a part of their identity. The segregation in schools and a blanket ban on hijab in states only further the deep-rooted communalism in Indian society and visualise state control. The State institutions must uphold the secular nature of the Constitution, and equality must be adopted in addressing such sensitive cases.

Sensitisation about religious practices and education about the Indian Constitution must be added to the curriculum. Systematic checks on the targeting of particular communities must be a continuous practice. Education is the right for every citizen of the country and measures to combat any restriction on the provision of education to children, especially women, must be dealt with swiftly and strictly.

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