

Does secularism mandate neutrality? – Comments on the Karnataka *hijabophobia*

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'What critics of Islam fail to understand is that when they see a young woman in a hijab she may have chosen the garment [...] as a way of regaining control over her body.' (Alibhai-Brown, 2000).

For the past few days, Muslim female students in [Karnataka educational institutions](#) have been facing distress, dejection, and exclusion – all of this because they wear *hijab*! *Hijab*, a scarf wrapped around the head and neck, is worn by Muslim women, as a part of their religious practice. It does not cover the face unlike the *niqab*, which seldom also covers the eyes. There are differing views among Muslim scholars on the practice being a mandatory obligation on all practicing women. However, all of them agree on the *hijab* being an article of modest clothing, thus encouraged in Islam. On a scrutiny of the verses of Quran and Hadith, the [Kerala High Court](#) had found *hijab* to be an “essential practice”. However, the court did not lift the restriction on *hijab* and long-sleeve dresses for candidates appearing in examinations. This was understandable because ensuring fairness in examinations classifies as a reasonable restriction to the freedom of religion. Contrastingly, the present situation is different. Students are not being allowed entry into educational institutions because of their *hijab* and this is a violation of their fundamental rights of freedom of religion and education. After days of protest, the university allowed them entry only to seat them in [separate rooms than their classmates](#). This evident discrimination is coupled with religious extremists [intimidating hijab-clad students](#), [hoisting saffron religious flags](#) *inter alia* display of [fundamentalist sentiments](#) in educational institutions. While the students are fighting their legal battle in the [High Court](#), their contact details have been allegedly [leaked](#) by the college, making them vulnerable to threats.

The problem with the “uniform clothing” argument

Institutions have justified their decision by citing a need to maintain the [secular environment](#) of classrooms. While it is correct that under Article 25 of the Indian Constitution, states can make laws to regulate activities associated with religious practices, the question which remains is what is so wrong in wearing *hijab*? Is it dangerous or immoral or against public health? Can the state justify how its rules qualify as “reasonable” restrictions on right to freedom of religion? Karnataka Home Minister’s statement that these rules disallow [not just hijabs but also saffron shawls](#) comes as a flimsy argument to back the ban. Unlike *hijab*, wearing a saffron shawl is not an essential religious practice, thus its ban does not violate freedom of religion either. What if a non-Hindu wears a saffron shawl? Will the same shawl be allowed because it is not being worn as a religious symbol in that case, rather being adorned as just another coloured clothing? Going by the same analogy, will a non-Muslim female student be allowed to sit in the class alongside other students if she wears a *ghoonghat* or just casually wraps her shawl over her head to beat the cold wind? How does the scenario change if the same student is a Muslim? What about the Sikh turban? The *rakhis* on the wrist during *Rakshabandhan*? The *mangal sutra* and *sindoor*? The *janeyu*? The *Kada*? To what extent can “neutral” and “uniform” clothing be practiced in a country full of diversity? The whole debate about bans on religious clothing demonstrates how the religious affiliation of the person wearing a garment can change the nature of the clothing.

Why a Turkish model of *hijab* ban would not work in India

Maintaining a secular environment and ensuring inclusivity is undoubtedly the duty of any educational institution. However, the institutions should note that the Indian model of secularism is built on equal freedom to practice one's religion. This is substantially distinct from the other model of secularism that mandates [neutrality and separation of religious practices from the state](#). For instance, Turkey follows the latter model. Turkish ban on the *hijab*, which started as a mandate for women working in the public sector, was extended to educational institutions. The enforcing authorities had started to refuse entry of teachers, students, and even parents of students wearing headscarves. The ban was challenged in the European Court of Human Rights ('ECtHR'). The famous cases of [Sahin](#) and [Kose](#) involved the issue of Muslim female students not being allowed to take classes in medical college and public secondary school respectively because they wore *hijabs*. Much similar to the Karnataka *hijab* row, the institutions cited maintenance of neutrality and secularism. The Court held a neutral secular image to be "necessary in a democratic society" for "maintaining the rights of others". However, for maintaining the rights of others, the Court undermined the rights of the excluded pupils and not just their right of freedom of religion but also the right to access to education. Such selective restriction on religious clothing would leave a number of students with limited choices of educational institutions. This is happening in Karnataka now, it can soon spread to the whole of India. Are we prepared for this? The Turkish *hijab* ban was [lifted in 2013](#) and it even allows [female military officers](#) to wear headscarves. With the same model of secularism still in place, if Turkey could adopt a progressive understanding of religious freedom, why is India taking a regressive route?

The problem with *hijab* ban in workplaces

Very recently, Turkey [condemned](#) a decision by the EU Court of Justice ('CJEU') on grounds of Islamophobia. The decision upheld a ban on [employees wearing hijab](#) on grounds of maintaining a neutral image before customers. Such decisions are often welcomed by corporate units. What I fail to understand is how would a "neutral" image be guaranteed by refusing employees their freedom of expression? If an employer mandates a certain dress code when such requirement is not one related to demands of public health, safety, or other reasonable restrictions, is such demand not biased? In my view, it is biased in the sense that the employer is keeping the customer's taste for neutrality higher than the employee's freedom of religion and expression. In this regard, two recent cases decided by the CJEU are worth noting. [Achbita](#) involved a claim from a receptionist who was fired for continuing to wear the headscarf which was a defiance to the newly revised rules of the company she worked in. [Bougnoui](#) involved a representative of a company who was fired when she refused to comply with the request of a client to not wear a veil the next time she had a meeting because they were concerned that it would upset the customers. The CJEU, while commenting on occupational requirements, noted that employees who wish to wear headscarves can be assigned roles that do not require interaction with customers and could be terminated only if inevitable. This has an impact on equality as well, at the social level. When employees who wear the headscarf are kept for the backroom work, this not just discriminates them against and makes them unequal to the employees who do not wear a headscarf, but, also restricts the inclusion of minorities. This not just applies to Muslim women wearing *hijab*, Sikh men wearing turbans face similar issues. This reduces the representation of minorities in society and the impact can very well be seen in economic disparity (Vickers, 2017).

What should India learn from the French veil ban?

The French ban on the veil was [upheld](#) by ECtHR to uphold the spirit of “living together”. If it is so important for people to be able to see each other’s faces for upholding this spirit, is the spirit not being defied with the [COVID-19 protocol of wearing masks](#)? Scholars noted the Court’s decision to be one that risks [majoritarian dictatorship over the minority](#). Instead of promoting tolerance, the Court’s decision celebrated ‘the fundamental unease of a large majority of people with the idea of an Islamic face veil, and the widespread feeling that this garment is undesirable in “our society”’ (Brems *et al.*, 2014). The Indian secular model should not tread on the French path. With the rise of Islamophobic sentiments, such a ban is and will continue to, only aggravate tensions between religious communities. Salmons argues that religion is a choice of an individual and has an “identity generative” impact on an individual (Salmons, 1995). A woman, therefore, who chooses to wear a veil in public owing to her religious beliefs is accepting it as a part of her identity (Trispiotis, 2016) and a restricting that would not serve the purpose of emancipation of achieving gender equality.

Conclusion

The rise in *hijabophobia* only reiterates the intersection between religion and gender when it comes to discrimination. Women face layers of discrimination and the struggle continues. Emancipation can come in many forms. If a woman chooses what parts of her body she would want to be visible, I cannot imagine a greater empowerment than this! Moreover, neutrality cannot be mandated when the cultural history of a nation boasts of its diversity with pride. Alarming situations like these call for us to refresh our understanding of secularism and rights.

References

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