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## HIJAAB: RIGHTEOUS OR RELIGIOUS TENDERNESS

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### EXECUTIVE SUMMARY

What is Hijab? It refers to the head covering worn by Muslim women. Islamic committees allow head coverings to take any form, but hijab specifically refers to a cloth wrapped around the head and neck, covering up the hairs but leaving the face visible. Hijaab is treated as a dress code of the Muslim women. In Qur'an hijab is referred as a curtain separating visitors to Prophet Muhammad's main house from his wives residing inside the house. Another interpretation can be **seclusion** (state of being private and away from the general public) of women from men. There has been a constant debate on this issue as some people think that the mandate of Qur'an was only applicable to the wives of Prophet. On the other hand some people think that this rule is applicable to all the girls and women belonging to Muslim community. If this rule is violated then these people consider it as the disrespect of Prophet's teachings or Qur'an.

### ORIGIN OF HIJAAB

The concept of Hijaab was introduced in Saudi Arabia before the entry of Prophet Muhammad. The Tradition of Hijaab wearing was started in 627 CE. It is said that this practise was first started by Nazma Khan. This practise was started so that women can be protected from harassment done by bad elements and unknown men in the society. Later on this culture started spreading in most of the Muslim nations like Iran and Afghanistan. Only the women who work in agriculture are free to either wear hijaab or not. In the historical times women who did not follow this rule of wearing hijaab were punished in front of the society. Nazma Khan wished to spread the awareness about hijaab in all the parts of the world. According to her if any women who wear hijaab will be respected in Islam, will be given freedom of choice and will be respected on the basis of moral grounds in the entire society. This is the entire history behind origin of hijaab.

## **ABSTRACT**

We are aware about the fact that India is a secular country where all the religions are treated equally. Being a citizen of this nation it is good to have knowledge about various religion and culture practised in this nation. From past 4 to 5 months we saw hijab became a debatable issue in the entire nation. Many political parties showed their support to Muslims. There was a huge discussion on wearing of hijab by Muslim women in various parts of the state. The main aim behind choosing this topic for research is to find out Are Muslim women really bound to wear hijab in the society? Is it right to give political angle to any religious issue happening in the society? Does Islam or Qur'an really make it compulsory for Muslim women to wear Hijab in the society? Comparing the situation with other Muslim nations like Iran , Saudi Arabia etc. These are some of the major aims and objectives behind writing on this issue.

## **SITUATION IN PRESENT TIME**

In this slide we will be discussing the present situation of this issue in context of India. In India we know that people are given **Right to Freedom of Religion** in Indian Constitution this right is given from Article 25 to Article 29 of the Indian Constitution which clearly states that people have the freedom to practise and propagate any of the religion of their choice and the state shall not interfere in any of the personal religious affairs of the society. In India Muslim women is wearing hijab from past so many years without any interference from the side of the society or the state. But in recent time this issue become a major hot topic for debate and discussion. In the up coming slides we shall be discussing the reasons for hijab being in controversy.

## **WHY HIJAB BECAME A CONTROVERSIAL ISSUE?**

The controversy on hijab saw a massive rise at the Udupi district in the state of Karnataka when some Muslim girls of PU Government college were caught entering the university campus after wearing hijab. They were stopped outside the college campus and were asked to remove the headscarf before entering into their classrooms. When these girls refused to remove the headscarf they were not allowed to enter inside the campus by university officials. The similar situation occurred for some days but later on these Muslim girls had been issued a warning from the side of the university stating if they do not follow the proper dress code of the university and did not stop wearing headscarf inside the university campus they will be debarred from attending the classes . Seeing the new rules of the university these girls along

with other Muslim girls started protesting against the university administration stating that it is their fundamental right to wear headscarf and the holy book of Qu'ran allow them to wear hijab in any public place. If they do not follow the rules and regulation of Qu'ran than it will hurt their religious belief and practise. The Karnataka government on this issue banned wearing of hijab inside the university campus and asked students to follow all the rules and regulations framed by the university and wear uniforms. Due to this decision a petition was filed in Karnataka High Court on this issue.

### **VIEW POINT OF KARNATAKA HIGH COURT ON THIS ISSUE**

As the hijab controversy grew further a petition was filed by some Muslim students in the Karnataka High Court on the entire issue. The advocates from Muslim side stated that wearing hijab is a fundamental right to freedom of practise of religion given in Article 25. On the other hand the advocate from the side of the university appealed that wearing uniforms in school and colleges are necessary so that a sense of uniformity can be spread among students and student will remain united without any discrimination on the basis of caste or religion. After listening to the arguments a bench comprising of **Chief Justice Ritu Raj Awasthi , Justice Krishna S Dixit and Justice JM. Khazi** held that the restrictions imposed on wearing of hijab in university campus is reasonable and constitutionally correct. It is essential for each and every student of a university or a school to wear uniform to showcase the sense of unity and to avoid discrimination on the grounda of caste or religion. The court further added that hijab is not an essential religious practise and it is Qur'an does not mandate anyone to wear hijab. At present time this judgement is criticised by various Muslim people and a petition has been filed in the Supreme Court against this judgement. <sup>1</sup>

### **VIEWPOINT OF DIFFERENT SCHOLARS ON HIJAB ISSUE AND JUDGEMENT BY HIGH COURT**

Various Islamic scholars and heads of different universities or any legal department have different opinions on high court's judgement and wearing of hijab. For example a law professor named **Akhtar-ul-wasey , former head of department of Islamic studies** said that mandating of uniform wearing in school or universities is a good decision but girls should be allowed to cover their heads. According to him if there is a clear instruction or guidelines written in Qu'ran than it should be considered as an essential religious practise. One of the

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<sup>1</sup> indianexpress.com

major scholar in the field of law and the **Vice Chancellor of NALSAR University of Law , Hyderabad Professor ( Dr ) Faizan Mustafa stated that** “ Religion has been at the centre of social human existence. Religion has been an indispensable part of our lives. The Karnataka High Court much awaited judgement on hijab upheld the circular of state government on wearing of hijab the three judge bench held that hijab is not a part of essential religious practise of Islam. He believed that the problem with this judgement is that it only focused on the religious aspect and the provision of Article 25 of the Constitution if this judgement would have been framed on the basis of **Article 21** of the Indian Constitution ( **Right to life and personal liberty** ) it would have become more effective and the controversy might have not arisen further. These are some of the view points of major scholars on Karnataka High Court Judgement.<sup>2</sup>

## **RESEARCH METHODOLOGY**

The primary sources of information for this project are article written in various newspapers like **The Hindu , Indian Express**. These newspapers were thoroughly analysed and understood to facilitate an objective understanding of the research topic. The project has also been done by consulting relevant secondary sources like **Bar and Bench and Live Law**. Articles or editorials published by major scholars of law for example article written on Karnataka High Court judgement on hijab by **Professor ( Dr ) Faizan Mustafa Vice Chancellor of NALSAR University of Law , Hyderabad**.

## **IS HIJAAB REALLY AN ESSENTIAL RELIGIOUS PRACTISE IN ISLAM?**

As hijab became a most controversial issue in the Indian society. It is very important to find out an answer to one of the most controversial question ( Is Hijab an essential religious practise in Islam ??? ) which acted as a route cause in spreading this issue in different states of India. On this issue Even the entire Muslim group of a society is divided in two different groups when this question appears. One group believes that it is clearly written in Qur'an that women should wear hijab to protect themselves from harrasment bu unwanted people of the society. These people furtherer believed that wearing hijab is even mandates by Qur'an the wives of Prophet wore hijab and women of every Muslim families should follow it. On the other hand some people of Muslim committee have totally different point of view they believed that wearing hijab is not mandatory in Islam and Qur'an does not make hijab wearing essential the wives

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<sup>2</sup> Faizan Mustafa : The Problem with The hijab Ruling , Indian Express , 2022

of Prophet used to wear it for their protection from unwanted people of the society. In Qur'an wearing of hijab was only compulsory for the wives of Prophet. on this important question major scholars of law like Dr Faizan Mustafa are of the view that **This issue should be left on the interest and discretion of the Muslim people as n a religious committee there may be differentiation of choice among different people of the society.**

## **HIJAAB BECOMING A SOCIO – POLITICAL ISSUE**

This topic will be analysed from two different angles the first one is the political angle and the second one is the social angle. These two issues are explained below :-

- **POLITICAL ISSUE ON HIJAAB :-**

As the number of Muslim women wearing hijab has increased globally. The politics on this issue has also been done up to great extent in different nations of the world. For example if we talk about India as the hijab controversy started growing from PU Government University at Udupi , Karnataka various political parties and opposition parties have given different views on government's decision and High Court's judgement. The Karnataka government supported the high court's judgement on this view point that it will try to bring equality among different religion in public places like university and school where all students must wear uniform to showcase unity. On the other hand opposition party criticised this judgement on the ground that the High Court has neglected the point of religious beliefs and faiths of Muslim women living in the society. In the Quran it is clearly written that women should wear hijab to save themselves from unwanted people of the society. Various countries have different view point on wearing of hijab which will be discussed in the upcoming slides. In my view point political parties should refrain themselves from doing politics on such sensitive religious issues of the society. As this may lead to spread conflicts and clashes between different religions of the society which may cause a great threat to our nation.

In the next pointy we shall be analysing social consequences.

- **HIJAAB TURNED INTO A SOCIAL ISSUE :-**

After analysing hijab from political angle let us know analyse it from social angle. As the wearing of hijab by Muslim women has increased rapidly in number. Many people thinks why hijab is worn by these women if it does not appears any where in Qur'an. We are aware about the Udupi incident where Muslim women come to the university

by wearing hijab and stated it their religious belief. Due to this reason students belonging to hindu community came wearing saffron coloured cloth in the college stating it to be their religious and cultural practise. In India this controversy played a key role in turning hijab into a social issue as the issue rapidly spread outside the college and the society was divided on religious basis.

### **IS WEARING OF HIJAB A CHOICE OR AN OBLIGATION ?**

The entire hijab issue revolves around two main questions. The first one is hijab an essential religious practise in Islam and the second question is Is wearing of hijab a choice or an obligation ? As per **Article 21** of the Indian Constitution **every citizen of Indian is given Right to life and personal liberty**. According to the Indian constitution the state shall not interfere in the religious affairs of an individual. It can be said that the constitution does not restrict Muslim women to wear hijab. However , in Qur'an as many people argue Muslim women are bound to wear hijab as this will help in protecting them and will they will be treated as respectable persons of the society. Many people believe that in Qur'an the wearing of hijab is not an obligation for Muslim women. Many scholars like Dr Faizan Mustafa believes that every person or individual have different beliefs or faith in their religious practises people should not be follow any religion as per the will of the others. In my opinion the question of wearing of hijab as an obligation or not should be left on the discretion or choice of the people they must be free to follow their own costumes or religious practise.

### **HIJAAB – AN ISSUE OF FEMINISM ?**

As hijab issue became more controversial or debateable on day to day basis , it reignite or brightens among different feminist can dooming of hijab lead to another feminist movement in the society. The banning of hijab from classroom lead to a face off between Muslim girls and the university. The girls emphasised on wearing of hijab in classroom on the other hand the university on the basis of **Article 133 ( 2 ) of the Karnataka Act of 1983 states that all students of the government controlled schools or colleges are bound to wear in school or university premises** . In my understanding if this provision is applicable to Muslim girls than why shouldn't Hindu boys belonging to Sikh community be prohibited to wear turban in schools or colleges. A video showing some boys of the university chanting Jai Shree Ram in the university campus got viral and one girl of Muslim community named Muskan in counter reply to their slogan said Allah u Akbar. This incident has started giving birth to new concept

of feminism. Whenever , the issue of protecting women rights in the society will arise these groups will fight for it irrespective of caste or religion. The judgement of Karnataka High Court on this issue clearly showcase the dominance of majority. It can be clearly said that the judgement is framed considering one side of angle. This incident clearly showed that if women wants to get education than they should follow the rules of the society. The minority groups should abide themselves with the rules and regulation of majority. A type of majoritarianism is being tried to established in the society. Now the time has come that feminist should widen their point of view and fight for the rights of the minority. <sup>3</sup>

### **IS WEARING HIJAAB LAWFUL IN OTHER COUNTRIES ?**

This question can be explained by comparing the situation of Islamic nations with that of secular nations. When we talk about Islamic nation we can take example of countries like Afghanistan , Saudi Arabia , Iran and Egypt and when we talk about other nations or secular nations we can take examples of countries like the USA ( united States of America ) , Great Britain and some other European nations. In this slide firstly we will talk about the situation in Islamic states

- **Hijaab in Iran :-**

In Iran the rules and regulation on wearing of hijaab are very strict. It is mandatory for all the Muslim women of Iran to wear hijaab without raising any objection. If any women is found without hijaab at the public places like schools , parks , mosques , movie theatres etc. Than they will be given harsh punishment. In Iran people feels that if any women does not wear hijaab than it means she has no faith in her religion and she is disrespecting Quran.

- **Hijaab in Saudi Arabia :-**

It is the first place where concept of hijaab wearing started long ago ( before the era of Prophet Mohammad ). In the historical time it is compulsory for every women to wear hijaab. The reason which was stated is to protect women from unwanted persons of the society. But at present time the Saudi Crown Prince urges women to wear hijaab but does not make it an obligation for them.

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<sup>3</sup> The Hindu , 25<sup>th</sup> Feburary 2022 15:481<sup>ST</sup>

- **Hijab in Pakistan :-**

It is a matter of great surprise that in Pakistan ( a place where Islam is followed in large scale and acts as a dominant religion ) wearing of hijaab is not compulsory in Pakistan. But at present time the country is dividing on whether to impose obligation of wearing hijaab or not.

- **Hijab in Afghanistan :-**

After the rise of Taliban in Afghanistan it is again made mandatory for every Muslim girl or woman to wear hijaab in their houses , public places like malls , parks , restaurants , schools etc. The Taliban government feels that it is an order of Prophet to make it mandatory for women to wear hijaab. Even in their houses women are not allowed to live without hijaab.

Now let us discuss the rules and regulations made by various governments of non – Islamic nations.

- **Hijab In The USA ( The United States Of America ) :-**

The first amendment of the United States Constitution gives freedom to it's citizens to practise and propogate any religion of their own choice. But due to current socio-political issue the United States government has imposed various restrictions on wearing of hijaab in public places. In USA if any one is forced to wear hijaab than the party is given right to approach the court.

- **Hijab In The United Kingdom ( UK) :-**

In UK hijaab is strictly banned in schools and college no one is allowed to enter the premises after wearing religious clothes. Generally Muslim people in UK also do not wear hijaab. But in United Kingdom since 2008 the politics on this issue is done on large scale basis The **UKIP ( United Kingdom Independent Party )** strongly emphasised on banning hijaab and full face covering whereas **BNP ( British National Party )** stated that it will cause threat to the freedom of religion of people. It should be banned only in schools and colleges.

- **Hijab In Germany :-**

On the matter of allowing hijaab the state of Germany is divided in two major groups.



There are total 16 states in Germany out of which half of the states have imposed restrictions on wearing hijab and the remaining half have left it to the choice or discretion of the people.

- **Hijab In Turkey :-**

The state of Turkey has taken decision of hijab on the basis of its constitutional principles. The government of Turkey believes that people should give priority to the constitution above their religion. The wearing of hijab is completely banned in Turkey if any woman is found in hijab than that woman will not be permitted to work in the government sectors and will not be allowed to work as a parliamentarian.

These are some of the examples of non – Islamic nations where we have come to know about the practise of hijab. The main aim of this comparison is to find out whether India is the only nation where debates on hijab is growing or there are other states too.

## **CONCLUSION**

From the above discussing we can conclude that the debate on hijab will grow further and further in the upcoming times. Government should try to find a mid way solution to this issue or else it is better to be left to the discretion of the people. Judiciary should look at each and every aspect while giving their judgements or opinions on such controversial issues. In nutshell , we can say instead of converting any religious issue into political issue provisions should be framed so that no one can interfere in other religious belief. Judiciary should try to abolish majoritarian rule in the society and should also look at other religious practises in educational places. last but not the least women should not be used as a medium of each and every religious practise. They should raise their voice against the wrong committed with them in the society on the name of religion.

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