



Karnataka Hijab Ban Case

For Prelims: Supreme Court, Hijab, Fundamental Rights, Cases Related to Freedom of Religion

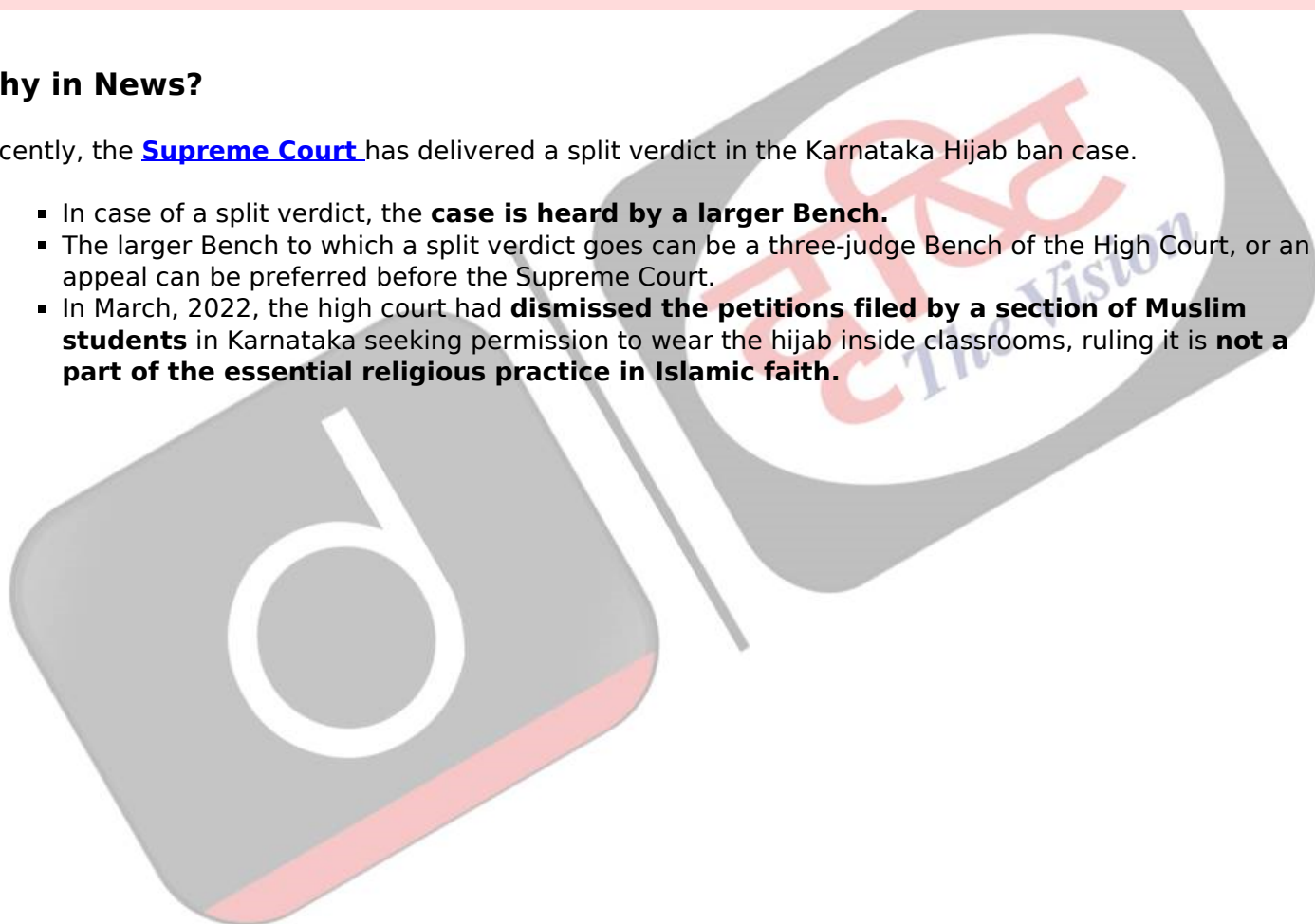
For mains: Fundamental Rights, Judiciary, Government Policies & Interventions, Women's Issues, Cases Related to Freedom of Religion

Why in News?

Recently, the [Supreme Court](#) has delivered a split verdict in the Karnataka Hijab ban case.

- In case of a split verdict, the **case is heard by a larger Bench**.
- The larger Bench to which a split verdict goes can be a three-judge Bench of the High Court, or an appeal can be preferred before the Supreme Court.
- In March, 2022, the high court had **dismissed the petitions filed by a section of Muslim students** in Karnataka seeking permission to wear the hijab inside classrooms, ruling it is **not a part of the essential religious practice in Islamic faith**.

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A timeline of the legal battle

The row, which erupted when a Udupi college barred hijab-clad students from entering classrooms, soon garnered national attention and reached the SC.

2021: Row begins

JULY 1: Govt Pre-University (PU) college in Udupi issues guidelines for the academic year, prescribes a uniform code

DEC 28: Six students claim that, since Sept, they are not being allowed entry into classrooms, citing hijabs

2022: Matter reaches Karnataka HC

JAN 31: Students move HC against college's guidelines

FEB 5: State issues an order allowing only prescribed uniforms in govt colleges

FEB 10: HC passes interim order, prohibiting students from wearing religious clothing till the matter is decided



OCT 13: SC delivers split verdict, directs placing appeals against HC order before CJI for constitution of larger bench

SEPT 22: SC reserves its order on the pleas

Students move Supreme Court

JAN 31: Students move HC against college's guidelines

MARCH 15: HC rules hijab is not an intrinsic part of Islam, upholds the state govt's order

FEB 17: Fresh plea in HC seeks nod to wear hijabs in educational institutes on Fridays and during Ramzan



WHAT THE BJP SAYS

At a time when there is a movement against hijab and burqa across the globe and the freedom of women is a talking point, the K'taka govt expected a better judgment...

— **BC NAGESH**, K'taka education minister

WHAT THE OPPN SAYS

After banning the hijab, around 17,000 first generation students were out of schools. The government has succeeded in its plans to not educate these girls.

— **BK HARIPRASAD**, Cong LoP in K'taka

What are the Highlights of the Verdict?

Divergent views

A look at what was emphasised by the two verdicts on the hijab ban

DELIVERED BY
JUSTICE HEMANT GUPTA

“Secularism is applicable to all citizens, therefore, permitting one ... community to wear their religious symbols would be antithesis to secularism.”

SCHOOL AND RELIGION: Religion has no meaning in a secular school run by the state. “Students are free to profess their religion and carry out religious activities other than when they’re attending a classroom.”

UNIFORM, EQUALITY:

“... Uniform fosters a sense of ‘equality’ amongst students- instills a sense of oneness, diminishes individual differences...”

DELIVERED BY
JUSTICE SUDHANSHU DHULIA

“Wearing hijab should be simply a matter of choice. It may or may not be a matter of essential religious practice, but it still is, a matter of conscience, belief, expression.”

CLASSROOM IS DIFFERENT: Though discipline is required in educational institutions, they can't be put on par with a jail or a military camp, as was cited by HC while describing schools as “qualified public spaces”

TICKET TO EDUCATION: “If it is worn as a matter of her choice, as it may be the only way her conservative family will permit her to go to school... her hijab is her ticket to education”

How have courts ruled so far on the issue of a hijab?

- In 2015, **at least two petitions were filed before the Kerala High Court** challenging the prescription of dress code for All India Pre-Medical Entrance which prescribed wearing “light clothes with half sleeves not having big buttons, brooch/badge, flower, etc. with Salwar/Trouser” and “slippers and not shoes”.
 - Admitting the argument of the **Central Board of School Education (CBSE)** that the rule was only to ensure that candidates would not use unfair methods by concealing objects within clothes, the Kerala HC directed the **CBSE to put in place additional measures for checking students** who “intend to wear a dress according to their religious custom, but contrary to the dress code”.
- **In *Amna Bint Basheer v CBSE (2016)***, the Kerala HC examined the issue more closely. The Court held that the **practice of wearing a hijab constitutes an essential religious practice** but did not quash the CBSE rule.
 - The court once again allowed for the “additional measures” and safeguards put in place in 2015.
- However, on the issue of a uniform prescribed by a school, another Bench ruled differently in ***Fathima Tasneem v State of Kerala (2018)***.
 - A single Bench of the Kerala HC held that **collective rights of an institution would be given primacy** over individual rights of the petitioner.

How is Religious Freedom Protected under the Constitution?

- Article 25 to 28 of Part-3 (Fundamental Rights) of the Constitution confers Right to freedom of religion.
- **Article 25(1) of the Constitution** guarantees the “freedom of conscience and the right freely to profess, practise and propagate religion”.
- It is a **right that guarantees a negative liberty** — which means that the state shall ensure that there is no interference or obstacle to exercise this freedom.
 - However, like all **fundamental rights**, the state can restrict the right for grounds of public order, decency, morality, health and other state interests.
- **Article 26** talks about the freedom to manage religious affairs subject to public order, morality

and health.

- **Article 27** states that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion.
- **Article 28** states that the freedom to attend religious instruction or religious worship in certain educational institutions.

Way Forward

- In the prevailing political climate, the **Karnataka government mandating either a prescribed uniform or any dress** that was “in the interest of unity, equality and public order” was seen as a **majoritarian assertion in the garb of enforcing secular norms**, equality and discipline in educational institutions.
- A verdict that **legitimises this non-inclusive approach to education and a policy** that may lead to denial of opportunity to Muslim women will not be in the country’s interest.
- **Reasonable accommodation should be the course** as long as the hijab or any wear, religious or otherwise, does not detract from the uniform.

[Source: TH](#)

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