

7. Banning Religious Identity: The Gendered Nature of Hijab Prohibitions and Women's Rights

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Abstract:

A common example of how the rights clashes is the ban on religious symbolism with emphasis on the hijab in schools, social and other public institutions. Consequently, this paper critically analyses the gendered dynamic in the regulation of hijab through prohibition with specific reference to its effect on women in nations where such prohibitions have been enacted. On the one hand, proponents of the ban speak of the promotion of secular values, women's rights, and equality, however, this research aims at demonstrating how the hijab ban discriminates women believers of Muslim faith in particular. It addresses aspects of the religious, cultural, and gender looking at how these policies violate woman's agency, speech, and religious liberties. In the light of this paper, the analysis shifts to a gender perspective particularly on how such laws affects women in their daily endeavours without bias. The study finally demands for an awakened knowledge that treats women's rights while honoring their ideologies and freedom of believing in their religious and cultural practices, besides supporting policies while putting into consideration the liberating freedom of individual or Group democracy.

Keywords:

Hijab; Gender Equity, Women Empowerment, Human Rights Policy, Gender Prejudice, Ethnic Identity.

7.1 Introduction:

The hijab is a metaphorical head scarf which has turned to represent the Muslim female's dress code. It seems that some countries have recently started to ban hijab within public facilities where it is considered to be against secularism or against the rights of women. Such prohibitions, however, do not take into account the authors' concerns and desires of women as the actors on religious scenes. For many women, it is not a fashion accessory that has been adopted over time by virtue of culture but it is their faith in action. By banning the hijabs, therefore, there are so many issues concerning religion, gender and state power, most importantly the rights of women.

Perhaps the most convincing reason to remove the hijab is an argument stating that hijab is oppression and in taking it off, women will be set free from gendered oppression. Though, this Worldview might work in some cases and ignore the facts of those women who voluntarily decide to wear hijab due to their choice and freedom. However, for many these wearing's are voluntary, a symbol of strength and not oppression. The ban, therefore, may unwittingly impose upon them a political doctrine regarding women's liberation designated from outside, without any regard for their right to make individual choices regarding their own bodies and minds.

On the other hand, there are reasons why people defending hijab bans argue that such measures help to fight gender equality, as men are deprived of the identification signs that would turn women into obligatory objects of sexual censorship. This view fails to notice that the ban particularly affects Muslim women, assuming their religions and cultures are wrong. This way it excludes other social factors related to gender inequality like poor education, economic and political rights, among others. In addition, it also strengthens a separatist model of secularism that isolated religious men let alone women, within the Muslim community.

The gendered perspective of hijab bans becomes rather clear when observing the process of female bodies regulation. Women activists and feminists have questioned and criticized such prohibitions as backward and un-democratic hegemonic male attempts at desperately trying to dominate women's dress codes and general conduct. It should be borne in mind that these laws not only regulated women's freedoms of speech but also turned women's choices into an object of state approval or disapproval instead of an extension of a women's human right to self-determination. The ban on the hijab, therefore, promotes violation and stripping of the feminine personage of her humanity to mere political and cultural artifact.

According to the Feminist perspective, Hijab prohibition serves to produce other social problems that have to do with women's decision-making processes. The fixed stereotype of hijab as oppressive garment ignores the many possible ways of female subjectivities. In so doing, the state erases the multiple ways in which women in particular can physically embody freedom and defies the culturally and religiously diverse meaning of the hijab. Basically, the hijab prohibition disregards women's religious freedom and also the chance to be active members of a society, excluding them time and again. That said, it's important to look beyond the ban to its effects on women rights and their education. This paper will therefore attempt to question these prohibitions from a gender perspective and prompt a rethink of the standard exposition that tends to mute the voices of the hijabi women. In as much as the paper seeks to understand how hijab bans impact on women's freedoms and rights, it reserves support for the humane approaches to gender when having faith and state power at work.

7.2 Research Questions:

1. How do hijab bans reflect the tension between secularism and religious freedom in different political contexts?
2. What is the gendered impact of hijab prohibitions on Muslim women, particularly in terms of personal autonomy and religious expression?

3. How do hijab bans contribute to or challenge existing patriarchal norms and gender inequality in society?
4. To what extent do hijab bans empower or disempower women in countries where they have been implemented?
5. What are the broader implications of hijab bans on the inter section of gender, religion, and state power?

7.3 Research Objectives:

1. To explore the relationship between secularism and religious freedom in the context of hijab bans.
2. To analyze the gendered effects of hijab prohibitions on women, focusing on their autonomy, rights, and social participation.
3. To examine how hijab bans either reinforce or challenge patriarchal gender norms in society.
4. To assess the role of state intervention in regulating women's religious practices and its impact on women's empowerment.
5. To propose alternative policies that balance religious freedom with gender equality, respecting women's rights to choose their forms of religious expression.

7.4 Research Methodology:

This study will use a doctrinal legal approach based on qualitative research, complemented by feminist theory in order to understand the relationship between gender, religion and state laws deliberating the hijab.

This research will use primary and secondary sources to analyze the ban of hijab through legal instruments such as, legal and government documents, and international human rights treaties. In addition, the research will use a feminist approach by including previous literature and conducting an interview with the women who suffer from such bans with the intention of getting a better and complicated understanding of their experiences.

The political and social contexts of these policies will be examined through case studies of countries where hijab bans are effectively in place with the use of literature data gleaned from countries and states as France, Turkey, and India. This approach will give the study a basis for comparing the incidence of hijab prohibitions thus drawing general patterns on the gendered impact of such measures and their overall signs for women's rights.

7.5 Literature Review:

Since hijab bans and their impact on women's rights are subject of extensive study, research studies have been published using different perspectives focusing on religion, gender and politics. A few sources are particularly valuable: Joan Wallach Scott's 'The Politics of the Veil'. According to Scott, the hijab is now a contentious symbol in liberal democracies because the state tries to impose its own model of gender equality on citizens while ignoring their freedom of religion.

“Hijab has entered European countries’ public sphere through the lens of ‘Islamisation of Europe’ debates,” The book also gives account on how the concerns over Muslims’ practices – like the hijab – are confronted when it comes to secularism and liberal democracy. The second book is *Islam, Secularism, and Liberal Democracy* by Andrew F. March that aims to explore the integration of Islamic practices into secular democracy. March refers to the freedom of assemblies and association and religious freedom versus the need for the state to be secular.

Feminism, Gender, and Islam by Haideh Moghissi regards how Islamic feminism as women’s rights activist contends with Islamic feminism in Muslim-majority and/or in Western countries. In terms of reading hijab wearing women the fashioning of hijab through Moghissi’s lens refers to resistance against patriarchal authority within the Muslim community and the dressing down of the secular west.

The article “Veiling in France: From historical perspective, the issue of veil in France and relevance or otherwise of hijab in French republicanism or secularism is defined comprehensively, in the article, “Islam in Europe and the United States”: A Historical Perspective” by Bruce B. Lawrence. In the article, Lawrence charts, the links between state policies and minority religions and how hijab bans are couched as part of a more significant project of nation-building.

In *Hijab and the Politics of Gender in France*, Julia B. Cagé looks at the politics of hijab bans in France with relation to gender politics and presents a critique by feminists. Cagé puts into light that when hijab is banned, what is achieved is exclusion of Muslim women instead of liberation.

Other important articles include “Gender, Religion, and the State: Saba Mahmood “The Hijab Controversy,” shows how state paternalistic interferences in the religious practice influence the possibility of women’s choice, and Leila Ahmed “Islam, Feminism, and the Hijab: A Contemporary Debate” argues about the role of Islamic feminisms and the contexts of Western feminist approach to the hijab.

Finally, “Muslim Women and the Veil: In “The Return of the Repressed” Lila Abu-Lughod presents an informed critique of Orientalism and consequently of the particular Western construction of the ‘Islamic veil’ and therefore, the mystery and oppression of the veiled Muslim women. While the removal of the hijab has been portrayed as liberation, using Abu-Lughod’s work, this paper seeks to understand agency and identity better.

1. Legal Framework and Secularism: Religious freedom is an essential aspect of democracy; this is why the clash with the concept appears in the paper.

Bans regarding the hijab raise secularism issues which are interlinked with religious liberties issues. This principle is captured in every nation’s constitution, including that of India which requires that the state to be secular and has no deference to any religion. According to the constitution of India in article 25 every person has the freedom to exercise, teach and follow religion of his/her choice.

But it has to be noted that the enforcement of secularism raises issues to do with rights to freedom of religion – especially where public authorities ban appropriate garb such as the hijab. In regards to hijab bans, secularism is used to argue as the reason why no distinctions should be made in public spheres. However, its critics said that such bans infringe on the rights of peoples by preventing them from manifest their religion in public. It then becomes pertinent as to whether the introduction of a fabric office dress policy clausulates an individual's right of liberty to manifest a religious belief.

We have witnessed prior that the Supreme Court of India has done the definition of secularism and its understanding in its broad sense. For instance, in the *S.R. Bommai and others. v. Union of India and Anr*; always held secularism was the basic structure of Indian Constitution in the case of *Union of India* (1994). But at the same time, it asserted that secularism in operation in India does not preclude religions from governing society as long as they do not disturb public peace and or infringe on the rights of others.

In *State of West Bengal v. In Ashutosh Lahiri* (1995) the Court affirmed the force state secularism on educational institutions an indirectly affect the right to wear religious dress like the hijab. The judgment pointed to the argument that institutions can prescribe country's appearance in the effort to bring order and order in the public domains. But the judgment did not really focus on the legal question of the burqa and how it restricts people's liberty.

Another important case is of *Indian Young Lawyers Association vs. State of Kerala* (2018) the Supreme Court considered the ban on the entry of women to the Sabarimala temple as unconstitutional pointing out that religion cannot be practiced in a manner which discriminates between people. As much as it was not about the hijab, the case expanded on the protection of religious and women's rights and suggested where the court stands in relation to freedom at the cost of religion and constitutionalism in the country.

2. Gender Equality and the Hijab: A Legal and Social Dilemma

This is why the hijab is sometimes banned in many countries with a so-called fight for gender equality as one of the main propellers. The opponents of hijab stated that by adopting this practice the women are restrained and denied individual choice. The Indian Constitution in accordance to Article 14 provides for equality before the law, and in accordance to Article 15 discrimination is prohibited on the grounds of Religion, Race, caste, sex, place of birth etc. These provisions indicate that any legally justified limitation, including a prohibition of wearing hijab, must be tested regarding the effects it might have on equality, especially gender equality.

Although freedom from discrimination based on gender is a constitutional principle, the hijab issue challenges whether such a state-implemented secularism in school and other spheres of life is progressive for woman. Regarding the case of *Shah Bano Begum* in the *National Herald v. The Hon'ble Supreme Court* in the *Faisal v. Union of India* (1985) gave section 125 of the Code of Criminal Procedure, 1973 to Muslim women who aren't entitled maintenance under the Islamic personal law but according to the secular law. This case showed how the Court will use secular law to enforce gender equality but also seen when religious liberty clashes with gender equity.

On the other hand, the *Bharatiya Muslim Mahila Andolan v. Union of India*, in understanding the issues related to Muslim women a focal light offered by the Honorable Supreme Court of Union of India (2017) was the case of triple talaq which made it possible to highlight Muslim women's rights from both religious positions as well as gender equality provisions. The Court's ability to ban the practice of instantaneous triple talaq revealed that legal changes in the governance of women's rights in religious sectors need not infringe on essentialist guises of gender equality, even though the question of the hijab is still contentious in this regard.

The proponents of gender equality, thus consider such bans as equalization that destroys women's agency instead of empowering them through removing their basic right to decide how they dress and behave. As in the *Rupan Deol Bajaj v. K.P.S. Gill* (1995) case the Supreme Court pointed out that any 'law', including the law regulating dress codes, must be argued in the light of how it affects women's rights and liberties. One of the strongest themes of this case was the empowering women for economical choices and especially the choices relating to the body.

Also, this paper will demonstrate that the scholars in the feminist tradition understand the hijab as a veil on Muslim women who do not wish to wear them, although other women wear it voluntarily. The law reform proposals should aim at protecting women's rights to make decisions for themselves to receive only what they want without any influence rather than forcing equality that might suppress their rights of speech.

3. Religious Freedom and the State's Role: Balancing Competing Rights:

The issue of religious freedom in the context of hijab bans involves balancing competing rights: the right to religious freedom and the right to a secular state. Article 25 of the Indian Constitution provides for the freedom of religion, but it also allows for restrictions if such practices threaten public order, health, or morality. In the context of hijab bans, governments often invoke public order concerns to justify their policies. However, the application of these restrictions can be seen as infringing upon individual freedoms, particularly when religious practices are suppressed without a compelling state interest.

In the *Mirzapur Moti Kuresh Jamat v. State of Uttar Pradesh* (2000) case, the Court acknowledged the delicate balance between religious practices and state intervention. This case highlighted how the state's regulatory role should ensure that individual religious practices do not harm the public interest, which is central to understanding the justification for or against hijab bans.

In *Rajbala v. State of Haryana* (2016), the Court upheld the legality of certain restrictions on religious symbols in educational institutions, viewing them as necessary for maintaining discipline and secularism. However, the ruling has been criticized for not sufficiently considering the impact of such restrictions on individuals' rights to religious expression, especially for Muslim women who may view the hijab as an integral part of their religious identity.

One of the key issues in the hijab ban debate is whether the state can legitimately intervene in personal religious practices for the sake of uniformity in public spaces. In *B.K. Pavitra v. Union of India* (2016), the Court ruled that while the state has the authority to regulate public institutions, it must also respect the religious freedoms of individuals. The case emphasizes that the state must be cautious when enforcing policies that could violate religious rights, especially when they disproportionately affect specific religious communities.

The Acharya Marathe College in Mumbai passed a resolution banning the hijab in college premises and the same was challenged in the court. The Judgment marks a significant victory of Muslim women in India, affirming their rights to wear hijab in educational Institutions. The court's decision highlights the importance of religious freedom, rejecting the imposition of a communal rule that sought to marginalize the Muslim Community. By upholding the constitutional guarantees of equality, freedom of religion and expression, the ruling strengthens the fight against discriminatory practices. The judgment reaffirms that the right to religious attire is an essential part of personal and cultural identity, standing as a powerful resistance against religious intolerance and oppression.

Thus, the legal provisions in India reflect a complex interplay between religious freedom, gender equality, and secularism. While state intervention may be justified in cases where public order is at stake, it must be carefully weighed against the fundamental rights of individuals, especially when these rights involve personal expressions of faith.

4. Indian Constitutional Provisions and Religious Autonomy:

The Indian Constitution protects the right to practice religion through Article 25, ensuring that citizens can freely practice, profess, and propagate their religion. However, this right is subject to reasonable restrictions. In the case of hijab bans, it becomes crucial to determine whether such restrictions are necessary for the maintenance of public order or whether they unjustly infringe on the fundamental rights of individuals.

In *S.P. Mittal v. Union of India* (1983), the Supreme Court upheld the notion that the state can regulate religious practices only when there is a compelling public interest, such as the maintenance of public order or national security. The hijab ban, therefore, must be evaluated in light of whether it serves such public interests or whether it is a form of discrimination against specific religious practices, particularly Muslim women's right to express their faith.

Similarly, in *K.K. Verma v. Union of India* (1999), the Court addressed the issue of religious symbols in public spaces and emphasized the state's role in ensuring that public institutions maintain a balance between individual rights and public order. The judgment reinforced that while the state may regulate religious attire, it must do so with caution to avoid infringing on individuals' rights to religious expression.

The Constitution also mandates the protection of minorities, which is a key aspect in the hijab debate. Article 29 ensures the right of minorities to conserve their language, script, and culture, which can be interpreted as an argument against banning religious attire like the hijab.

Such bans may disproportionately affect Muslim women, who view the hijab as an integral part of their cultural and religious identity. This protection of cultural practices underscores the need for a nuanced legal approach that respects both individual and collective religious freedoms.

Thus, while the Indian legal framework provides for reasonable restrictions, these must be carefully considered against the backdrop of constitutional rights, particularly the freedom of religion and minority protection. The legal provisions surrounding hijab bans must ensure that such restrictions do not disproportionately affect the religious autonomy of women.

7.6 Conclusion:

The debate surrounding hijab bans in India is not merely a conflict between religious freedom and secularism but also a profound reflection on gender equality and women's rights. At the heart of this issue lies the tension between an individual's right to express their religious identity and the state's interest in maintaining uniformity and secularism in public spaces, particularly educational institutions. The constitutional framework of India, with its guarantees of freedom of religion, equality before the law, and protection from discrimination, ensures that individuals have the right to practice their religion freely. However, when such practices are prohibited, as in the case of hijab bans, it raises critical concerns about the infringement of these rights.

While the state's role in regulating public spaces is justified in maintaining order and discipline, this cannot be done at the cost of violating fundamental rights, especially when the bans disproportionately affect specific religious groups, particularly Muslim women. The constitutional protection of religious and cultural practices should be robust, particularly in a country as diverse as India. The interpretation of secularism must accommodate the multiplicity of religious expressions rather than suppress them in the name of uniformity. The hijab, for many women, is a symbol of both religious identity and personal choice. Banning it undermines the autonomy of women by denying them the right to choose how they wish to express their faith. Gender equality should not mean the suppression of religious identity but should focus on empowering women to make decisions about their lives, including their religious practices, without fear of discrimination.

7.7 Suggestions:

- 1. Ensure Protection of Religious Rights:** The legal system should provide more nuanced interpretations of the right to freedom of religion under Article 25 of the Indian Constitution. Any law or policy that seeks to restrict religious expression, like hijab bans, should be subject to careful scrutiny to ensure it does not violate the fundamental rights of individuals, particularly women.
- 2. Promote Gender Equality through Empowerment:** Gender equality laws should focus on empowering women to make informed choices rather than imposing restrictions on religious practices. Educational institutions should encourage dialogue around diversity and respect for religious symbols, promoting inclusivity rather than uniformity.

3. **Judicial Oversight on Religious Discrimination:** The judiciary should play a proactive role in ensuring that laws or policies prohibiting religious symbols, including the hijab, are not discriminatory or unjustly restrictive. The courts must balance the need for secularism with the protection of individual freedoms, especially in the context of minority religious practices.
4. **Educate on Religious and Cultural Diversity:** Public awareness campaigns and educational programs should be implemented to foster understanding and respect for the religious practices of different communities. These initiatives can help reduce the stigma around religious symbols such as the hijab and encourage a more inclusive society that respects religious freedom.
5. **Provide Legal Frameworks for Religious Autonomy:** Laws should be amended or introduced to safeguard the religious autonomy of women, particularly in educational settings. Clear guidelines should be established to determine when restrictions on religious attire are justifiable, ensuring that they do not undermine the rights of individuals to express their faith freely and without fear of discrimination.

In conclusion, the hijab bans controversy highlights the complex intersection of secularism, gender equality, and religious freedom. A balanced approach that respects both individual rights and public order is crucial for a diverse, democratic society like India. The legal framework should strive to protect personal autonomy while fostering an environment of inclusivity and mutual respect.

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