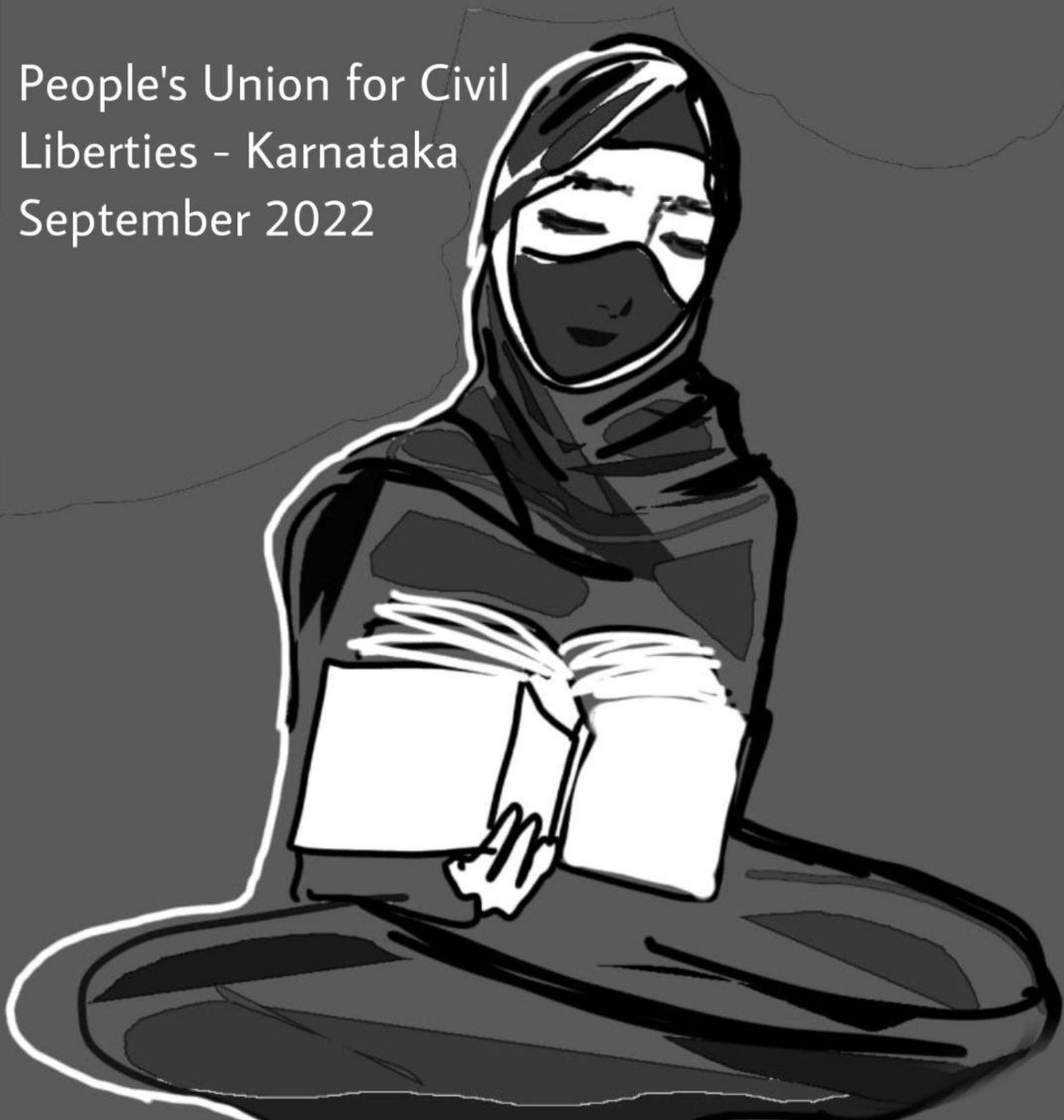


# Impact of Hijab Ban in Karnataka's Educational Institutions

## An Interim Study Report

People's Union for Civil Liberties - Karnataka  
September 2022



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**IMPACT OF HIJAB BAN IN KARNATAKA'S  
EDUCATIONAL INSTITUTIONS**

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*An Interim Study Report*

**People's Union for Civil Liberties – Karnataka**

**September 2022**

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## **Timeline:**

**31<sup>st</sup> December, 2021:** Government PU College, Udupi bars wearing of hijab inside classrooms in the absence of any rule/resolution/ guideline by the college authorities that prohibits the use of the coloured chudidhar as a headscarf (Blue Color Chudidhar is part of the described uniform). Six students protest the move by sitting outside classrooms demanding that they be allowed to wear hijab and attend classes, the protest continues for 3 days.

**3<sup>rd</sup> January, 2022:** Students in Kundapur Government Pre-University College attend class wearing saffron shawls marking the first reported instance of students employing saffron stoles as a means of protest against the hijab.<sup>1</sup>

**26<sup>th</sup> January, 2022:** Karnataka government sets up an expert committee to resolve the controversy at the government pre-university college in Udupi district. The government states that all the students at the college should adhere to the uniform rule till the committee decides on the issue and maintain 'status quo' till the issue is resolved by the expert committee.<sup>2</sup>

### **31<sup>st</sup> January, 2022:**

- i. President of the College Development and Management Committee (CDMC) and Udupi BJP MLA K Raghupati Bhat holds a meeting with parents of students and conveys to them that students will not be allowed to wear hijab inside the classroom<sup>3</sup>.
- ii. Writ Petition filed before the Karnataka High Court challenging the decision of the Government PU College in Udupi.

**2<sup>nd</sup> February, 2022:** Hijab-wearing students denied entry into Government Junior PU College, Kundapur Udupi district.

**3<sup>rd</sup> February, 2022:** Hijab-wearing students denied entry into Bhandarkar College of Arts and Science, Udupi district.

### **5<sup>th</sup> February, 2022:**

- i. Karnataka Pre-University Department issues order allowing only uniforms prescribed by the College Development Committees (CDC) of each educational institution.

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<sup>1</sup> Students come to class wearing saffron shawls in protest against girls wearing hijab, The Hindu, 03 January, 2022 <https://www.thehindu.com/news/cities/Mangalore/students-come-to-class-wearing-saffron-shawls-in-protest-against-girls-wearing-hijab/article38366959.ece>

<sup>2</sup> Hijab row: Karnataka govt sets up expert committee, The Hindustan Times, 27 January, 2022, <https://www.hindustantimes.com/india-news/hijab-row-karnataka-govt-sets-up-expert-committee-101643224367207.html>

<sup>3</sup> No end to hijab row in Udupi college despite meeting between officials and six students, The New Indian Express, 31 January, 2022 <https://www.newindianexpress.com/states/karnataka/2022/jan/31/no-end-to-hijab-row-in-udupi-college-despite-meeting-between-officials-and-six-students-2413505.html>

- ii. In a separate development, BJP MLA Basangouda Patil Yatnal<sup>4</sup> says that Muslim students wanting to wear hijab should go to Pakistan.
- iii. The Karnataka BJP state chief Nalin Kumar Kateel says the state government will not allow 'Talibanisation' of the education system<sup>5</sup>.

#### 7<sup>th</sup> February, 2022:

- i. Students wear blue shawls in IDGS College, Chikmagalur and raise Jai Bhim slogans expressing solidarity with Muslim girls demanding hijab rights. Educational institutions in other districts witness protests on the premises by saffron shawl wearing students, students wearing the hijab seen demonstrating outside the college gates.
- ii. Students wearing hijab were allowed entry into the campus of Government PU College Kundapura but seated in separate classrooms.

#### 8<sup>th</sup> February, 2022:

- i. A single bench of the Karnataka High Court slated to begin hearing in the petitions challenging the hijab restriction in colleges. The petitioners seek a declaration that the wearing of hijab is a fundamental right of Muslims.
- ii. Protests erupt in Mahatma Gandhi Memorial (MGM) College, Udupi after a group of students wearing saffron shawls and headgears raise slogans in the college campus as hijab clad Muslim girls stage a protest demanding permission to take their examinations with their hijabs. As tensions escalate, the police are compelled to intervene.<sup>6</sup> Protestors claiming to represent the Hindu community said that they were given the shawls and head gears by the Hindu Jagarana Vedike.<sup>7</sup>
- iii. Section 144 imposed in Shimoga district as incidents of stone-pelting reported. A saffron flag is hoisted on the college post in Government First Grade College in Bapuji Nagar, Shimoga allegedly by a student protesting against allowing the hijab on college campuses. Hundreds of students who gathered on the campus chant 'Jai Shree Ram'.<sup>8</sup>
- iv. The violence spreads to Bagalkot as stones are pelted and police resort to lathi-charge.<sup>9</sup> Stones thrown at two groups of students who are protesting at the gates of Government Pre-University College at Rabakavi Banahatti. Some boys reportedly come to college

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<sup>4</sup> Won't allow talibanisation, says Karnataka BJP Chief, The Print, 05 February, 2022

<https://theprint.in/india/wont-allow-talibanisation-says-ktaka-bjp-chief-on-hijab-row/822246/>

<sup>5</sup> Hijab Row: Won't allow talibanisation of education system, Indian Express, 05 February, 2022

<https://indianexpress.com/article/cities/bangalore/hijab-row-wont-allow-talibanisation-of-education-system-says-bjp-7758348/>

<sup>6</sup> Hijab controversy: Protest erupts outside MGM College in Karnataka, Economic Times, 08 February, 2022

<https://economictimes.indiatimes.com/news/india/hijab-controversy-protest-erupts-outside-mgm-college-in-karnataka/videshow/89427929.cms?from=mdr>

<sup>7</sup> Hijab row: Karnataka high schools, colleges shut for three days as unrest spreads in the state, Scroll, 08 February, 2022

<https://scroll.in/latest/1016881/karnataka-hijab-row-massive-protests-erupt-in-udupi-college-ahead-of-high-court-hearing>

<sup>8</sup> Saffron flag on college flagpost in Shivamogga, The Hindu, 08 February, 2022

<https://www.thehindu.com/news/national/karnataka/saffron-flag-on-college-flagpost-in-shivamogga/article38398881.ece>

<sup>9</sup> Karnataka hijab row: Student hoists saffron flag in Shimoga, sparks row, India Today, 08 February, 2022

<https://www.indiatoday.in/india/karnataka/story/karnataka-hijab-row-student-allegedly-replaces-tricolour-with-saffron-flag-in-shimoga-1910307-2022-02-08>

- wearing saffron shawls. One student is reported to have been injured.<sup>10</sup> A teacher is allegedly injured after being attacked with rods.<sup>11</sup>
- v. Saffron-shawl clad students heckle a Muslim student chanting 'Jai Shree Ram' in unison and approaching her as she was entering PES College in Mandya. The Muslim student, who was seen shouting "Allahu Akbar" in return, is escorted into the campus by college authorities.<sup>12</sup>
  - vi. Police resort to lathi-charge and fire tear gas in Davanagere following protests pro and against allowing the hijab in educational campuses. Prohibitory orders under section 144 were imposed.<sup>13</sup>
  - vii. Chief Minister of Karnataka, Basavaraj Bommai declares a three-day holiday for all institutions coming under the state department of higher education and primary and secondary education citing law and order concerns.<sup>14</sup> Educational institutions to remain shut between 9<sup>th</sup> and 11<sup>th</sup> February, 2022.

**9<sup>th</sup> February, 2022:**

- i. Document of scanned copies of college's admission ledger containing details like address, phone numbers, income of parents of the six protesting students leaked. Students started receiving abusive and threatening phone calls<sup>15</sup>.
- ii. The single bench of the Karnataka High Court in order dated 09.02.2022 refers the case to the Chief Justice of the Karnataka High Court to consider if the matter can be heard by a larger bench. A special bench consisting of three judges is immediately constituted.

**10<sup>th</sup> February, 2022:** The Karnataka HC passes an interim order in the matter restraining 'all students regardless of their faith from wearing saffron shawls, scarfs, hijab, religious flags or the like within the classroom, until further orders.'

**11<sup>th</sup> February, 2022:** Complaint filed against MLA Raghupathi Bhat, Yashpal Suvarna and Rudre Gowda, principal of Government PU College, Udupi by parents of the six protesting girls in the Office of the SP, Udupi for leaking of their documents.

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<sup>10</sup> Hijab controversy: Student hurt in stone-throwing in Bagalkot, The Hindu, 08 February, 2022

<https://www.thehindu.com/news/national/karnataka/hijab-controversy-student-hurt-in-stone-throwing-in-bagalkot/article38395922.ece>

<sup>11</sup> Hijab Controversy turns violent: Teacher attacked with rods in Bagalkot, Udayavani, 08 February, 2022

<https://www.udayavani.com/english-news/hijab-controversy-turns-violent-teacher-attacked-with-rods-in-bagalkot>

<sup>12</sup> Burqa clad student confronts saffron scarved mob in Karnataka, The Quint, 09 February, 2022

<https://www.thequint.com/news/education/burqa-clad-student-confronts-saffron-scarved-mob-in-karnataka-amid-hijab-row#read-more>

<sup>13</sup> Hijab row: Karnataka Police fires tear gas to disperse protesters in Davangere, India Today, 08 February, 2022 <https://www.indiatoday.in/india/story/karnataka-davangere-protest-hijab-saffron-row-bommai-colleges-closed-1910383-2022-02-08>

<sup>14</sup> As hijab row escalates, Bommai shuts all schools, colleges for 3 days, Deccan Herald, 08 February, 2022 <https://www.deccanherald.com/state/top-karnataka-stories/as-hijab-row-escalates-bommai-shuts-all-schools-colleges-for-3-days-1079333.html>

<sup>15</sup> Udupi Hijab Row: Girls' personal details leaked online: Parents complain to SP, Udayavani, 11 February, 2022 <https://www.udayavani.com/english-news/udupi-hijab-row-girls-personal-details-leaked-online-parents-complain-to-sp> and Karnataka Hijab Row: College Leaks Addresses, Numbers of Protesting Muslim Girls, The Quint, 09 February, 2022 <https://www.thequint.com/news/india/karnataka-udupi-college-leaks-home-addresses-of-muslim-girls-protesting-for-hijab>

**12<sup>th</sup> February, 2022:** Udupi MLA Raghupathi Bhat seeks NIA probe into hijab issue<sup>16</sup>, writes to the Chief Minister to transfer investigation to the NIA.

**18<sup>th</sup> February, 2022:** FIR filed against students by the principal of a private college in Tumkur for violating prohibitory orders imposed around college campuses to avert portests<sup>17</sup>. Similar instances reported in other parts of the state.

**20<sup>th</sup> February, 2022:** Bajrang Dal member Harsha murdered in Shimoga. On the same night of his murder, Hindu rightwing supporters allegedly vandalise and set fire to at least four vehicles belonging to Muslims. The next day, the funeral procession passes through Muslim majority localities, crowds allegedly attack Muslims' houses. Section 144 imposed on the same day<sup>18</sup> Situation remains extremely tense in Shimoga for the next few days.

**25<sup>th</sup> February, 2022:** 19-year-old Bajrang Dal worker gives open call for genocide, and says those who ask to wear the hijab will have their heads chopped.<sup>19</sup>

**25<sup>th</sup> February, 2022:** The High Court of Karnataka concludes the hearing in the case after 11 days of daily hearings; reserves verdict.

**15<sup>th</sup> March, 2022:**

- a. The High Court of Karnataka passes a final order upholding the Circular dated 05.02.2022 and thereby, allowing for restriction of the hijab in educational institutions.
- b. A Special Leave Petition filed in the Supreme Court of India challenging the Karnataka HC order dated 15.03.2022.

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<sup>16</sup> Udupi MLA Raghupathi Bhatt pitches for NIA probe into hijab row, The New Indian Express, 12 February, 2022 <https://www.newindianexpress.com/states/karnataka/2022/feb/12/udupi-mla-raghupathi-bhatt-pitches-for-nia-probe-into-hijab-row-2418427.html>

<sup>17</sup> Hijab row: Karnataka police register FIR against 10 girls for violating prohibitory orders, Live Mint, 19<sup>th</sup> February, 2022, <https://www.livemint.com/news/india/hijab-row-karnataka-police-register-fir-against-10-girls-for-violating-prohibitory-orders-11645248174386.html>

<sup>18</sup> 'Police Complicit': Shivamogga Muslims Recount Carnage After Bajrang Dal Man's Murder, The Wire, 24 February, 2022 <https://thewire.in/communalism/shivamogga-muslim-violence-bajrang-dal>

<sup>19</sup> Teenage Bajrang Dal worker in Karnataka calls for genocide of those who want hijab, The Wire, February, 2022, <https://thewire.in/communalism/teenage-bajrang-dal-worker-in-karnataka-calls-for-genocide-of-those-who-want-hijab>

## Introduction

As per reportage of the media, the Karnataka government was a mute spectator to scenes of college lecturers in a government college in Kundapura actively preventing Muslim girls from entering their colleges on the grounds that they were wearing a hijab on the 4<sup>th</sup> February 2022<sup>20</sup>. This followed the equally arbitrary action by college authorities in a government college in Udupi preventing girls in hijabs from entering a classroom.<sup>21</sup>

It should be noted that the ban on wearing the hijab was implemented by the college authorities hastily, arbitrarily and without providing any prior notice. The students are reported to have said, “We are students, we have been wearing the hijab to college for so long, but it has become an issue only now.”

The students had a legitimate expectation that they will not be suddenly and arbitrarily prevented from attending classes, that too just two months before the examination. Unfortunately, this expectation was belied by a state government which was duty bound under the Constitution to protect the right to education of all its students without discrimination of any kind.

The Karnataka State Government instead chose to ignore this unconstitutional and arbitrary action by its own employees and failed to safeguard the rights of Muslim women students not to be discriminated against.<sup>22</sup> Instead, it issued a Government Order (GO) on 5.02.2022 which stated that the ‘prohibition of a headscarf or a garment covering the head is not a violation of Article 25 of the constitution’<sup>23</sup>. The notification goes on to state that in the event of no uniform being prescribed by government colleges, clothes should be worn which are ‘in the interests of unity, equality, and public order.’ It also empowers the College Development Committees (CDCs) to decide what the uniform

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<sup>20</sup>‘We Have Lost Our Peace, Can’t Study’: Muslim Students Feel ‘Betrayed’ Over Hijab, The News Minute, 10 February, 2022, <https://thewire.in/rights/muslims-students-karnataka-hijab-ban-ground-report>

<sup>21</sup>A timeline of the hijab row in Karnataka, Deccan Herald, 15 March, 2022

<https://www.deccanherald.com/state/top-karnataka-stories/a-timeline-of-the-hijab-row-in-karnataka-1091637.html>

<sup>22</sup>People’s Union for Civil Liberties – Karnataka. (04 February, 2022). Condemn the Karnataka Government for abdicating its Constitutional responsibility to protect the right to education of Muslim girls.

[https://09334146800682476600.googlegroups.com/attach/55c1361a7d16f/Hijab%20Kundapura%20stmt%20final4.02.22%20copy.pdf?part=0.1&view=1&vt=ANaJVrHoXlwnUrWhtNXxOp7IT\\_hU0\\_A7Tg9aawHum1v\\_aGOpleUwx3sD8jR5pPICRJ1LuVZ6XFHROfEZgd3QEKdzTY7Qp-0q1q500EPZx7ik8VL5\\_yxTYYk](https://09334146800682476600.googlegroups.com/attach/55c1361a7d16f/Hijab%20Kundapura%20stmt%20final4.02.22%20copy.pdf?part=0.1&view=1&vt=ANaJVrHoXlwnUrWhtNXxOp7IT_hU0_A7Tg9aawHum1v_aGOpleUwx3sD8jR5pPICRJ1LuVZ6XFHROfEZgd3QEKdzTY7Qp-0q1q500EPZx7ik8VL5_yxTYYk)

<sup>23</sup>Follow dress code prescribed by College Development Committees, says Karnataka Government, The Hindu, 5 February, 2022, <https://www.thehindu.com/news/national/karnataka/hijab-row-follow-dress-code-prescribed-by-college-management-committees-says-karnataka-government/article38384670.ece> and <https://www.scoobserver.in/journal/karnataka-government-order-on-dress-code-for-students/>

should be.

This notification was akin to a dog whistle to vigilante elements and the CDCs, as it was notifying them, that as per the government, the wearing of the hijab is not protected under Article 25 and that they are free to go ahead and prohibit the wearing of the hijab. Following this dog whistle, on 8<sup>th</sup> February, youth wearing saffron shawls and shouting slogans such as 'Jai Shree Ram' went on to harangue, bully and intimidate young Muslim women who were going to their college<sup>24</sup>. The Karnataka Government continued being a mute spectator even as Muslim women around the state from Dakshina Kannada, Udupi, Mandya<sup>25</sup>, Bagalkot<sup>26</sup>, Bidar<sup>27</sup>, Mysuru<sup>28</sup>, Shimoga<sup>29</sup> were prevented from accessing their right to education.

Following this notification, in many instances, the college managements have prevented the girl students from entering the class rooms and college campuses, thereby violating their right to access learning without discrimination<sup>30</sup>. College managements have allowed the Sangh Parivar activists from

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<sup>24</sup> Hijab controversy: Protest erupts outside MGM College in Karnataka, Economic Times, 08 February, 2022 <https://economictimes.indiatimes.com/news/india/hijab-controversy-protest-erupts-outside-mgm-college-in-karnataka/videoshow/89427929.cms?from=mdr>

<sup>25</sup> See for instance, Burqa clad student confronts saffron scarved mob in Karnataka, The Quint, 09 February, 2022 <https://www.thequint.com/news/education/burqa-clad-student-confronts-saffron-scarved-mob-in-karnataka-amid-hijab-row#read-more>, Students with hijab denied entry into Mandya school , 14 February, 2022, <https://www.deccanherald.com/state/top-karnataka-stories/students-with-hijab-denied-entry-into-mandya-school-1081332.html>

<sup>26</sup> See for instance, Karnataka SSLC exams: Hijab clad invigilator suspended, Siasat Daily, 28 March, 2022, <https://www.siasat.com/karnataka-sslc-exams-hijab-clad-invigilator-suspended-2298263/> and Bagalkot student refuses to remove hijab, skips SSLC exam, The Hindu, 29 March 2022, <https://www.thehindu.com/news/cities/bangalore/bagalkot-student-refuses-to-remove-hijab-skips-sslc-exam/article65268446.ece>

<sup>27</sup> See for instance, More girls remove hijab for classes; stirs go on in parts of Karnataka, 22 February, 2022 <https://www.deccanherald.com/state/top-karnataka-stories/more-girls-remove-hijab-for-classes-stirs-go-on-in-parts-of-karnataka-1084222.html>, Hijab-clad girls not allowed for nursing exam in Bidar, The Hindu, 11 February, 2022, <https://www.thehindu.com/news/national/karnataka/hijab-clad-girls-not-allowed-for-nursing-exam-in-bidar/article38412477.ece>

<sup>28</sup> More girls remove hijab for classes; stirs go on in parts of Karnataka, 22 February, 2022 <https://www.deccanherald.com/state/top-karnataka-stories/more-girls-remove-hijab-for-classes-stirs-go-on-in-parts-of-karnataka-1084222.html>

<sup>29</sup> See for instance, Karnataka Hijab Row: 58 Students in Shivamogga School Suspended for Protests, The Quint, 19 February, 2022, <https://www.thequint.com/news/education/hijab-row-students-in-karnatakas-shivamogga-school-suspended-for-protests> and Hijab row: Violence breaks out in Karnataka's Shivamogga, section 144 imposed for 2 days, 08 February, 2022 [http://timesofindia.indiatimes.com/articleshow/89430574.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/89430574.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>30</sup> See for instance, Hijab row: Students with headscarves given separate classroom at college in Kundapur, The New Indian Express, 07 February, 2022,

outside to enter the college premises and cause widespread disruption in the functioning of the college<sup>31</sup>. There have also been incidents during which a Muslim student's hijab was forcibly removed by the college teaching staff as well as by the police, under the glare of the media<sup>32</sup>; and another incident in which a Muslim woman student was sexually harassed during the exam<sup>33</sup>. Police presence on the campus during the period of the High Court hearings also had an intimidating effect on the Muslim students.<sup>34</sup> All these developments have forced these students to seek to transfer to Muslim-managed institutions<sup>35</sup>, thereby (as they revealed in their conversations with us) limiting their interactions with students of other communities and creating and widening the social divide among student communities which could potentially lead to ghettoization of education.

The Government of Karnataka by issuing this notification abdicated its obligation to protect the right to education of Muslim girls. The girls affected by the notification challenged it before the High Court of Karnataka<sup>36</sup>. Some of the petitioners before the High Court included the young girls from the Government Pre-University College in Kundapura, who had the gates shut on their faces, when they were attempting to enter their college, by their own teachers.

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<https://www.newindianexpress.com/states/karnataka/2022/feb/07/hijab-row-students-with-headscarves-given-separate-classroom-at-college-in-kundapur-2416462.html>, Burqa clad student confronts saffron scarved mob in Karnataka, The Quint, 09 February, 2022  
<https://www.thequint.com/news/education/burqa-clad-student-confronts-saffron-scarved-mob-in-karnataka-amid-hijab-row#read-more>, Karnataka Students With Hijab Turned Away, Court's Interim Order Cited, NDTV India, <https://www.ndtv.com/india-news/chaos-at-karnataka-college-as-hijab-clad-women-denied-entry-citing-high-court-order-2771069> and Karnataka: 58 girls suspended from college for wearing hijab, holding protest, The Indian Express, <https://indianexpress.com/article/cities/bangalore/58-girls-suspended-from-college-in-ktaka-for-wearing-hijab-holding-protest-7781580/>

<sup>31</sup> Several of the Muslim women students interviewed by team articulated this. Also refer, Hijab row: Arrested protesters are outsiders, not students, says Karnataka Home Minister, India Today, 9 February 2022, <https://www.indiatoday.in/india/story/hijab-row-news-arrested-protesters-outsiders-not-students-karnataka-home-minister-1910664-2022-02-09> and Outrage after hijab-wearing woman heckled by Hindu mob in India, Aljazeera, 08 February, 2022, <https://www.aljazeera.com/news/2022/2/8/schools-ordered-shut-in-india-as-hijab-ban-protests-intensify>

<sup>32</sup> Revealed to the team by several students during personal interviews and also refer, Karnataka: Students asked to 'remove that (Hijab)' as schools reopen. Watch here, Live Mint, 14 February, 2022, <https://www.livemint.com/news/india/karnataka-students-asked-to-remove-that-hijab-as-schools-reopen-watch-here-11644829264361.html>

<sup>33</sup> Revealed to the team by a student during personal interview

<sup>34</sup> Revealed to the team by several students during personal interviews

<sup>35</sup> Revealed to the team by several students during personal interviews

<sup>36</sup> Hijab row: A timeline of the case, OneIndia, 15 March, 2022, <https://www.oneindia.com/india/hijab-case-judgement-will-hijab-banned-in-karnataka-schools-and-colleges-here-s-the-timeline-3383290.html?story=3>

The High Court on 10 February, 2022 in *Resham v State of Karnataka*, delivered a judgment in which it upheld the constitutionality of the notification by the Government of Karnataka which allowed for the ban on the hijab in colleges that have a uniform prescribed by a CDC, ruling that the hijab is not an essential part of Islam.<sup>37</sup>

After concluding that hijab is not a part of the essential practice of Islam and the right to wear it is not protected under Article 25, the Court concluded that the right to wear a hijab was at best a 'derivative right' which can be circumscribed 'consistent with...discipline & decorum' in what it calls 'qualified public places like, like schools, courts, war rooms, defence camps, etc.'

### **The legal critiques of the judgment in *Resham v State of Karnataka***

An incorrect focus on Hijab as Essential Religious Practices (ERP)

The judgment focused on whether the right to wear the hijab was an essential religious practice, instead of concentrating on the key issue thrown up by some of the petitioners, namely the imperilment of their right to education.

The ERP test has come under severe criticism by legal thinkers and scholars. Judges themselves have expressed their discomfort with the doctrine for it compels them to adjudicate in the realm of theology as opposed to law. In this regard, framing of the *hijab* issue as a matter of religion and essential practice was limiting in that it gave the court all but two ways to proceed in: (i) to accept the argument and allow the *hijab* on the basis of a highly dated and expressly misogynistic and patriarchal logic, and create a legal fiction where women have no agency in the matter; or (ii) to reject the argument, and in the process, deny the elements of *actual* agency that are involved here.<sup>38</sup> In the instant case, the court in ruling that the hijab is not an essential religious practice denies the women's right to frame the hijab as a matter of choice and agency for themselves. The constraint of approaching the issue through the ERP test, therefore, leaves us with little room to recognise and make constitutional room for the complex reasons that influence women's choices to wear or not wear the hijab. It divests Muslim

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<sup>37</sup> Restore peace, Karnataka High Court says in hijab case, The Hindu, 10 February, 2022, <https://www.thehindu.com/news/national/karnataka/hijab-issue-hc-to-pass-interim-order-to-be-abided-by-all-students-and-stake-holders/article38408371.ece>

<sup>38</sup> Bhatia, Gautam, The Essential Religious Practices Test and the Inversion of Agency: Notes from the Hijab Hearing, February 9, 2022, available at: <https://indconlawphil.wordpress.com/2022/02/09/the-essential-religiouspractices-test-and-the-inversion-of-agency-notes-from-the-hijab-hearing/>

women of their agency and also negatively impacts their freedom to practice their religion in a manner that they deem fit.

#### Failure to focus on the principle of non-discrimination as per Article 15 of the Indian Constitution

While the GO in discussion does not explicitly restrict the wearing of the hijab, its dubious phrasing makes a strong case for indirect discrimination that most certainly *disproportionately impacts* women from the Muslim community. A closer reading of the order would establish that it fails the test of non-discrimination both on grounds of sex and religion. The GO says that *students are following practises as per their religion, which is adversely affecting equality in such schools and colleges* and relies upon several court orders to reason that *restricting students from coming to school wearing head scarfs or head covering is not in violation of Article 25 of the Constitution*. Therefore, the notification was meant to specifically target the practice of covering one's head as mandated by religion and although framed in the language of facially neutral criteria, it disproportionately infringed upon the rights of hijab-wearing girls and women. However, the court deals only preliminarily with this fundamental constitutional wrong of discrimination alleged by the petitioners by saying: *“By no stretch of imagination, it can be gainfully argued that prescription of dress code offends students. In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination inter alia under Articles 14 & 15, when the dress code is equally applicable to all the students, regardless of religion, language, gender or the like. It is nobody's case that the dress code is sectarian.*

#### Failure to address the Right to privacy and Freedom of Expression

The petitioners had further contended that the women's right to autonomy and privacy would be gravely infringed upon if the restrictions on the hijab were not revoked. While dismissing the contention, the High Court stated that the right to freedom of expression, speech and privacy were only 'derivative rights' (a category carved out by the court which enjoys no constitutional sanction) and could not be claimed in 'qualified public spaces' (a category that once again has no constitutional basis) such as schools as they were inferior to 'substantive rights.' Shockingly, the court goes on to compare schools to prisons and war rooms and reasons that rights protections in 'qualified public places' such as these are significantly weaker. The HC says: *Such 'qualified spaces' by their very nature repel the assertion of individual rights to the detriment of their general discipline & decorum.* This interpretation is a serious affront to the ruling of the Supreme Court in *Puttaswamy* where it has held that the right to

privacy is a core fundamental right and includes an individual's decisional autonomy. The Supreme Court has clearly stated that an individual's right to make choices that do not conform with societal norms or calls for 'homogeneity' are an integral component of the right to privacy. Moreover, an individual's right to make sartorial choices, which may also include expressing their faith in public through their choice of attire, will be protected by the right to privacy.

The court's repeated insistence on establishing homogeneity through uniforms strikes at heart of fraternity and fraternal ways of living. It compels the petitioners and others alike to surrender their individual, religious and cultural rights to college managements to be able to access another fundamental right i.e., the right to education.

The crucial error the Court makes is that it sanctifies the *uniform* instead of sanctifying *education*; instead of looking at the uniform as *instrumental* to achieving the goal of an inclusive and egalitarian right to education (and which would, therefore, require accommodation where accommodation would better serve that goal), it treats the uniform (and its associated values of sameness, homogeneity etc.) as the goal itself.<sup>39</sup> Curiously enough, the court goes on to trace out the origins of uniforms in great detail, emphasizing on their significance only to conclude, '*No reasonable mind can imagine a school without a uniform.*' Nonetheless, neither party to the case had approached the court challenging the need for uniforms or its constitutionality nor was it anybody's case that they do not want to wear uniforms as prescribed by the institution.

#### Failure to apply the principle of reasonable accommodation

The Court dismissed any via media solution between the interest of the state to prescribe a uniform and the interests of the individual to manifest their faith or to express their identity via their dress. A via media would have been based upon the 'principle of reasonable accommodation' and allowed for students to in addition to the uniform also wear a hijab of the colour of 'prescribed dress code'. However, the Court argues that any such accommodation 'would establish a sense of 'social-separateness' and would 'offend the feel of uniformity which the dress-code is designed to bring about

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<sup>39</sup> Bhatia, Gautam, *Between Agency and Compulsion: On the Karnataka High Court's Hijab Judgment*, March 15, 2022, available at: <https://indconlawphil.wordpress.com/2022/03/15/between-agency-and-compulsion-on-the-karnataka-high-courts-hijab-judgment>

amongst all the students regardless of their religion & faiths.’ The Karnataka High Court cites examples of balancing rights such as the uniforms prescribed in Kendriya Vidyalayas which allows for scarf and turban in a prescribed colour, only to dismiss it as militating against the very concept of the school uniform.

Failure to protect the fundamental right to education to be guaranteed by the state without discrimination

As a direct consequence of the restriction on hijab by colleges, the government notification and the interim order of the High Court, thousands of Muslim girls across the state were robbed of their access to education and a sizeable number of women were even unable to appear for their examinations. Appalling scenes of girl students being physically pushed out of educational campuses have emerged since the issue broke out. This constitutes an unconscionable violation of the right to education under Article 21A and Article 21. The right to equal opportunity in the Preamble to the Constitution of India would also mean right to access opportunities (such as education, employment etc.) without arbitrary barriers. It is apparent that Muslim women in this instance are gravely disadvantaged by the unreasonable barriers to their education that have been placed by the state. Despite the alarming nature of the violation of Muslim women’s right to education and elaborate contentions on this question of law by the petitioners’ counsels, the court barely engages with this issue while only saying that ‘*school dress code to the exclusion of hijab, bhagwa, or any other apparel symbolic of religion ... does not rob off the autonomy of women or their right to education*’

The decision of the High Court of Karnataka to uphold a de facto prohibition on Muslim women students wearing the hijab while attending classes in *Resham v. State of Karnataka* has imperilled the right to education as well as other associated constitutional rights of Muslim women students.

### **Purpose and Methodology:**

The PUCL Karnataka decided to undertake a study to understand more fully the impact of the High Court judgment in *Resham v State of Karnataka* at the grassroot level.

A team for undertaking the study was formed consisting of the following members:

1. Aishwarya Ravikumar
2. Kishor Govinda
3. Poorna Ravishankar
4. Ramdas Rao
5. Shashank S.R.
6. Swathi Shukla

The team visited Hassan town, a village in rural Hassan district, Mangalore city, Ullal, Hoode, Udupi town, and Raichur town and met women students who revealed to us their experiences and concerns.

The team also met with members of the local college administration, officials of relevant government departments, the local police and members of Muslim civil society groups. Care was taken to visit different parts of the state and meet with students of both rural and urban localities. The identity of the people the team had spoken to was kept anonymous in this report to protect their privacy and ensure their security.

### **Role of the media:**

It is also necessary to look at the role of the media which is an essential part of the eco-system which ended up depriving Muslim girls of their constitutional rights. By its sensational and partisan coverage, the Kannada TV media has played a major role in weaponizing the interim order of the Karnataka High Court and enforcing an effective ban on the hijab in all college campuses.<sup>40</sup> Its reportage about Muslim students during the hijab controversy was riddled with gender stereotypes.<sup>41</sup> In all this, it has

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<sup>40</sup> Refer for instance, The dangerous twists and turns of Kannada TV media's coverage of the hijab row, The News Minute, 21 February, 2022, <https://www.thenewsminute.com/article/dangerous-twists-and-turns-kannada-tv-media-s-coverage-hijab-row-161204>, Backstory: The Media Contributed to Hijab Face-off Spiraling Out of Control, The Wire, 12 February 2022, <https://thewire.in/media/backstory-the-media-contributed-to-hijab-face-off-spiraling-out-of-control>, Regional Media Turn India's Hijab Ban Into a Nationalist Issue While Excluding Women, Media Diversity Institute, 10 March, 2022, <https://www.media-diversity.org/regional-media-turn-indias-hijab-ban-into-a-nationalist-issue-while-excluding-women%E2%82%AC/>, How Media Coverage Has Shifted From The Core Issue In Hijab Row To Sensationalism, Shethepeople, 22 February 2022, <https://www.shethepeople.tv/top-stories/opinion/media-coverage-on-hijab-row-karnataka/> and Unethical Media Coverage Of Karnataka Hijab Row By Kannada Channels Increasing Harassment Of Muslim Students, Women, The Cognate, 21 February, 2022, <https://thecognate.com/unethical-media-coverage-of-karnataka-hijab-row-by-kannada-channels-increasing-harassment-of-muslim-students-women/>

<sup>41</sup>The dangerous twists and turns of Kannada TV media's coverage of the hijab row, The News Minute, 21 February, 2022, <https://www.thenewsminute.com/article/dangerous-twists-and-turns-kannada-tv-media-s->

stepped outside its role of reporting on developments, and has become an important actor in the entire debate around the hijab. It has invaded college campuses, even classrooms, and has been intimidating school and college managements into enforcing a ban on the hijab; worse still, it has proactively and aggressively carried out targeting of the hijab-wearing girls, pursuing them inside the college campuses, and even in private, domestic spaces, thereby endangering their safety, and in the process, inhibiting Muslim students and their parents from accessing educational institutions. In one notorious video, a Dighvijaya TV reporter with camera is seen chasing a young hijab-wearing child in the school campus, even as the teacher vainly implores the reporter not to harass the child.<sup>42</sup>

The news anchors have often portrayed the hijab-wearing students as backward and stubborn, and have framed the issue as Muslim women choosing the hijab over education. They have often been one-sided in their presentations, giving undue coverage to Hindutva hate groups identified with recorded history of mass violence; even while glossing over the aggressive role of students who wore a saffron shawl in so called opposition to the hijab. Nor was there any mention of the adverse effect of the government's hijab ban on the education of young Muslim girls. In these and other reports and discussions, the media has made no pretense of even adhering to codes of conduct for media professionals wherein issues are presented objectively and without prejudice<sup>43</sup>. The girls told us that it is for this reason that during the controversy, they didn't speak to the media since they felt the media might manipulate their statements and make their situation even more precarious.

There is a growing consensus among media professionals and civil society that unprofessional reporting by KanandaTV media channels is one of the primary reasons for the breakdown of the social order that we're witnessing today in Karnataka<sup>44</sup>. By its violation of the constitutional rights to privacy, dignity, life and liberty, the media has in fact put the safety of minor children and Muslim women at risk. In this context, some of the Kannada media's reportage of the hijab issue fits the key criteria of hate speech: its potential to incite violence and discrimination as well as the use of demeaning stereotypes about Muslim women which incites the ostracisation, dehumanization and the isolation of the Muslim community. The media's deployment of hate speech towards a minority

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[coverage-hijab-row-161204](#)

<sup>42</sup> Watch: 'Reporter' chases student wearing hijab in Karnataka school (newslaundry.com), by News Laundry team 16 February 2022, last accessed on 5 September 2022 on <https://www.newslaundry.com/2022/02/16/watch-reporter-chases-student-wearing-hijab-in-karnataka-school>

<sup>43</sup> The dangerous twists and turns of Kannada TV media's coverage of the hijab row, The News Minute, 21 February, 2022, <https://www.thenewsminute.com/article/dangerous-twists-and-turns-kannada-tv-media-s-coverage-hijab-row-161204>

<sup>44</sup> The report The Wages of Hate: Journalism in Dark Times documents extensively the new low that public discourses reached during Covid-19 crisis and the role of Kannada TV media therein. <https://hatespeechbeda.files.wordpress.com/2020/10/finalhatespeechreport.pdf>

community and women from a minority background constitutes a threat to the very idea of inclusiveness, pluralism, diversity as well as the Premabular ideal of fraternity all of which form part of the warp and weft of the Indian Constitution.

### **Responses by the bureaucracy:**

Since the hijab issue and its implications lie at the intersection of the multiple governance structures of the state-the education machinery, the law-and-order machinery, and the district administration as well as the hierarchies therein, our team made attempts to understand if and how the various concerned governmental actors had discharged their duties and the efforts made in this regard by them.

Our conversations with the Department of Pre-University Education (DPUE), the Department of Public Instruction (DPI), the police, District Collectors (DCs), and the district administration, alongside our meetings with students, teachers, administrators of colleges, and other community organizations aided in unpacking the role played by the concerned governmental actors. These interactions brought to the fore a pattern, clearly visible and vividly discernable. Our interactions with these various actors revealed that the concerned departments and administrative structures had not only failed to address the issues and uphold the rights of the Muslim girl students, but also denied them justice.

Many members of Muslims community organizations, parents of students and students themselves in the Dakshina Kannada and Udupi districts said that when they approached the public officials on this matter, they were directed to speak with the CDCs. However, the process of the formation of these committees was itself undemocratic and lacked representation from the Muslim community. This was not a major problem in the past, as the CDCs did not have any statutory powers but from the passing of the interim order, the CDCs were given statutory powers, without proper systems of accountability. They were not responsible for the consequences of their order, and members of the Muslim community had no form of internal redressal against adverse orders and decisions of the CDC.

The DDPU in different districts all seemed to have been acting from directions from above, and provided no form of protection for the students affected by the judgment. The rules were being implemented forcibly without any concern for the affected party. Instructions were either given orally

or through WhatsApp, making it hard for students to contest or appeal decisions made regarding their education.

The police in different districts were concerned only about maintaining the public order without any concern for the needs and rights of the Muslim girls affected by the ban. In the various districts visited by the team, the team was told that the law and order of the region was being duly taken care of. With regard to this issue, the law-and-order situation was always described by the police authorities exclusively in terms of the presence or absence of protest, especially by the Muslim community, without any regard for the security for the girls affected by the ban or implementation of existing laws that protect the rights of the victims.

The lack of clarity regarding the new rules framed by the government following the High Court judgment led to chaos in terms of implementation. College authorities often turned quite draconian and threatening towards the women students, and, in some cases, towards parents as well. Most administrators the team spoke to felt that their role was limited to implementing the new rules. In some cases, they felt it was important to punish or reprimand the students for what was commonly understood as “breaking the law.” In some cases, they felt that their role was to “convince” students and parents to accept the new rules. This led to situations where the students were treated like criminals.

Police presence on college campuses was a disturbing development, as it effectively militarized educational spaces and created a hostile environment for the women students. The presence of the police or, for that matter, of any government official appeared to be to focus on implementation of the ban on hijabs without any regard for ensuring the safety and security of these students who were facing harassment and other forms of hostility.

What the team observed consistently across the districts was that the government actors, be they from the police, the bureaucracy, or the court, were more concerned about the implementation of what they understood as the hijab ban in the strictest possible manner, and all forms of recourse, be they through pleas or through protests, had to be curtailed. Human rights violations, be they harassment of students by the media on campuses, curtailing the right to dissent, harassment of women students by other students and outsiders, creation of a hostile environment by saffron shawl wearing protesters,

educational losses suffered by the women students, and hate speech (in public fashion or through electronic media) were mostly left unattended. Despite persistent and direct efforts by members of the Muslim community, these violations of the women's rights were completely ignored.

Summing it up, despite some overlaps, two different phases could be discerned in the approaches adopted by the concerned government departments to respond to the issues of the day in relation to upholding the rights of the Muslim girl students. They are detailed as under:

The first phase (prior to Feb 10, 2022 when Karnataka High Court passed the Interim Order): This phase was marked by silences and administrative lapses on part of concerned departments and their officials, which ensured that the Muslim girl students were deprived of their rights. These included the failure on part of the education department to take immediate cognizance of, and intervene to halt, the infringement of the right of girls to wear the hijab when the college authorities also failed to do so (as was the case at Ullal and Udupi), failure to ensure the prevalence of a non-discriminatory educational environment in colleges (as was the case at Raichur), failure on the part of concerned departments to initiate disciplinary actions against those who had violated the rights of the students (In case of both Raichur and Udupi), and refusal to act on the pleas and representations made by the Muslim girl students (at Ullal and Udupi).

During this phase, the Muslim girls were progressively denied their rights and subjected to communal vilification in one educational institution after another. The authorities failed to contain the spread of the communal vilification accompanying the hijab issue that erupted in one of the colleges at Udupi to other regions of the state. The spread of this communal campaign to other regions can only be attributed to the silence adopted by government departments. The government and its departments did not attempt to provide clarity regarding the scope of the existing rules and regulations in place. This provided ample space for the ABVP and other Sangh Parivar outfits to take up the communal campaign in the name of hijab, and allow it to flourish across the state. The government's calculated silence opened up the hijab issue for vilification and public trials of the Muslim girls in the media and social media, instead of the issue being governed through laws and policies adhering to the constitutional ideals.

The abysmal failure on part of the administration on many fronts (as detailed above), holds a mirror to the complete breakdown of the then existing fragile educational administration apparatus, in the face of the vehement communalization of the issue at large, a process that was nurtured by the right-wing elements and the media.

The second phase (post Feb 10, 2022 when Karnataka High Court passed the Interim Order): This phase was marked not just by an active denial of the rights of Muslim girl students by the concerned departments but also by use of government machinery to target and vilify the Muslim girl students in particular, and their community in general.

While the orders of the High Court were limited to prohibiting students from wearing the hijab inside classes of PU colleges only where there was a uniform policy in place, the government departments ensured that the limits on the same were exceeded. The mostly defunct CDCs of both PU and non-PU colleges sprang to life (as was the case in Udupi and Mangalore) to enforce a No-Hijab policy. The CDCs which were headed by the respective MLAs (with other members nominated to the CDCs by the MLA) are in their very nature prone to political influence. Instead of keeping such political influence at bay, the education administrative apparatus in the state attempted to institutionalize such influence, thereby actively targeting the Muslim girl students. Such actions included coercing the students and their parents to let go of the girls' right to wear Hijab under the garb of counselling (as was the case in Mangalore and Hoode), pushing them to seek 'forced transfers' (as was the case in Mangalore), issuing threats and dismissal of teachers (as was the cases in Hassan), not entertaining pleas of the Muslim girls (as was the case in Mangalore), students being forced to remove the hijab during exams (as was the case in Raichur and Hoode), surveilling the acts and movements of Muslim girls (as was the case in Mangalore), police surveillance of campus activities, and tacit-approval for 'vulture journalism' (as was the case in Hassan).

However, underlying both the phases was the prejudiced and discriminatory idea that any claims made by the Muslim girl students and the Muslim community in general to secure their constitutionally guaranteed rights were acts of 'trouble-making' which were antithetical to the ideals of societal peace and public order, and which hence had to be quelled at the earliest.

The breakdown of educational apparatus and the resulting communalization of education needs to be understood both as a result and as an indication of the corrosion of the ideals of equality in the sphere in education over the decades, thanks to communalism that runs across levels and tiers of education system in the state. In this instance, the concerned government departments and administrative structures were also exploited by the ABVP and other Sangh Parivar outfits (as was the case in Mangalore) to vilify and target the Muslim girl students through institutional measures.

### **The impact of the verdict on the affected students--educational, social, and psychological**

The following are the concerns, issues, and expectations of affected Muslim students, parents, and supportive college administrations that they shared with us about the High Court judgment. (See testimonies for details)

#### **a. Educational concerns:**

For most of the hijab-wearing students who missed writing their exams this year, the High Court judgment came as a rude interruption to their studies and further plans. Their immediate concern is about appearing in the exams, resuming their education, and making plans for further studies. Given the communal targeting of the Muslim students both within the campus and outside, they are facing constant harassment, insult, and humiliation in and outside the classroom. There is increasing hostility from the college administration as well, in matters such as withholding the issuance of certificates and other important documents like practical exam records. The students shared with us their fear that their college managements are determined to impose more and more rigid restrictions on them in the college campus. There are also safety issues in the classroom that they are increasingly experiencing that the college administrations are refusing to take cognizance of and deal with. This amounts to a dereliction of their duty to ensure a peaceful atmosphere in the college campus.

By their actions, the courts and the government have sidelined educational concerns of the students and brought to the fore the hijab, which, the students feel, after all is a side-issue and a distraction.

#### **b. Social concerns:**

In their discussions with us, the Muslim women students showed a high degree of motivation to excel

in education by opting for professional fields and promising careers (Civil services etc.). They are seeking the freedom to access new fields of professional education such as medicine, engineering, management etc. For many of them, education is a step towards social mobility, employment and empowerment. They are also determined to access values of the Constitution through the educational process (studying and fraternizing with other students in inter-communal and co-educational spaces). In the process, they are also seeking avenues for self-development as well as a social climate that is conducive for studies that is free from fear, conflict and tension.

It is in the same spirit that they are seeking recognition of their right to wear the hijab and resume their education as a mark of their identity and as normal practice. Thereby, they are asserting their freedom of choice regarding what to wear and who to fraternize with.

The verdict in *Resham v. State of Karnataka* (as well as the ensuing harassment) has, at a stroke, shattered their dreams and plans of further education. The verdict is closing avenues that modern education has opened up for these young women from the leading minority community. Going further, the Muslim women students are being driven to make a cruel choice—between the hijab and education. Making either choice is difficult especially because of the sensationalism that surrounds the whole issue whereby choosing both is not even perceived as an option.

In the aftermath of the hijab verdict, the Muslim women students are facing social boycotts, threats (including of rape) and other prohibitions as well as intrusive surveillance and are being ‘outed’ in social media. For the Muslim women students, the loss of contact and friendships with fellow students from other communities has engendered a deep sense of isolation and depression. It has also caused a setback to their social advancement. Being forced by the hijab restriction into studying only in Muslim institutions is leading to a feeling of ghettoization. It also restricts their choices of accessing a wider range of educational opportunities and fields of employment. The hijab ban is affecting the Muslim community in general too by intensifying the animosity and hatred that the community is facing from communal forces in Karnataka with the implicit sanction of the state government. Government surveys have repeatedly demonstrated how the percentage of Muslim women attending school and college has seen a steady uptick over the years<sup>45</sup> Nonetheless, experts have warned how

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<sup>45</sup> Steady uptick in Muslim girls going to schools and colleges, *The New Indian Express*, 13 February, 2022 <https://indianexpress.com/article/india/steady-uptick-in-muslim-girls-going-to-schools-colleges-7769897/>

the current restrictions on the hijab will likely harm the cause of Muslim women's education<sup>46</sup> and that it will lead to undoing the little progress that has been made post the Sachar Committee report.

c. Psychological consequences:

Having to constantly cope with the conflict and tension generated by the hijab issue has bred in the students a pervasive feeling of isolation and estrangement, wherein they are being targeted for wearing the hijab are forced to live under a constant state of fear and coercion. Besides, the psychological anguish suffered by students following the recent controversy will affect their future. In fact, post-verdict, the entire Muslim community is living in a state of panic and fear, unable to understand what this situation will lead to, how the court verdict on hijab will aggravate the climate of hostility and hatred that the community has been facing for quite some time in Karnataka.

Expectations/demands of the Muslim students regarding the government, the court, and society

While the immediate concern of the Muslim students we spoke to was to seek reversal of the court verdict, thereby undoing of the damage caused by the verdict and its aftermath, they also asserted that wearing the hijab into the classroom is a fundamental right guaranteed by the Constitution, which implies the right to wear the hijab and get a modern education as well. They want this choice to be recognized and accepted as such. For them, the wearing of the hijab is a matter of active choice, and a matter of justice, and not simply as sanctioned by their religion/culture. They ask: 'Why does society see hijab as a violation of homogeneity? Uniformity has nothing to do with the uniform.' The Muslim students see their right to wear the hijab as connected with their decision-making power related to exploring one's conscience on deeply personal matters, even when it is often guided by cultural teachings.

Violations of the Muslim womens' students fundamental rights guaranteed under the Constitution

The hijab judgment by the Karnataka High Court as well as the disastrous consequences that followed

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<sup>46</sup> Niranjan Aradhya, noted educationalist speaks of how the hijab row threatens to undo whatever little progress has been made on the front of the Sachar Committee of 2006, that brought out the alarming state of education of Muslims in general and girls in particular, "Hijab row likely to hit education of women in particular", *The Hindu*, 19<sup>th</sup> February, 2022, <https://www.thehindu.com/news/national/karnataka/hijab-row-likely-to-hit-education-of-muslim-women-experts-fear/article65059979.ece>

the judgment amount to a comprehensive and egregious violation of the fundamental rights guaranteed by the constitution, including the Right to Education as well as the Right to Liberty, Dignity, Equality, and the preambular principle of Fraternity. The Muslim women students we spoke to all voiced their assertion of these fundamental rights and expect the court to provide constitutional remedies for the denial of the same.

### **The violation of constitutional rights: An analysis of Student testimonies**

As noted earlier, the judgment in *Resham v State of Karnataka* failed to take cognisance of the violation of a range of constitutional rights. The following section will analyze the rights of students which have been violated and which the judgment has put its imprimatur on.

#### Right to Education without discrimination

The Constitution under Article 21-A, mandates that, ‘The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.’ Pursuant to this constitutional mandate the state enacted the Right of Children to Free and Compulsory Education, 2009. The right to primary education has also been read to be a part of the right to life under Article 21 as per the Supreme Court in *Unnikrishnan v State of Andhra Pradesh*<sup>47</sup>. While it may be an arguable proposition that persons have the right to free education beyond the age of 14, there is no doubt that everyone has the right to access education without being discriminated against. This proposition emerges from a combined reading of the right to education embodied in Articles 21 and 21-A and Art 15 (the mandate on the state not to discriminate on grounds such as sex and religion). It is clearly this right to access education without discrimination is guaranteed by Article 21-A and 21 and Art 15. (Freedom from discrimination)

Of all the rights of Muslim women students which were violated by the prohibition of the wearing of the hijab, the starting point of the violation is of the right to education.

The students emphasized that the choices they had to make after the interim order created situations

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<sup>47</sup> AIR 1993 SC 217

where they were not able to access their right to education.

In Raichur, the students told us that they knew of woman students were made to stand outside the gate for the whole day soon after the interim order came. One student, who was doing her B.Ed. said that as part of her course, she was expected to teach classes to tenth grade students enrolled in Government schools. Her internal marks were based on practice teaching. Her college had told her that she could go ahead and give these classes and that a lecturer from the college would accompany her to evaluate her performance. However, after the judgment, her lecturers said that a headscarf was not allowed as it affects the student in the class. As a result, she could not teach the classes. Her internal marks were left in the air. The student continued that because she lost her marks in internals, she would not get any experience in her Bed. She said she does not understand the priorities of those who have pushed for the ban. The B.Ed. student said that she was asked to take leave and promised that her attendance would not be harmed. Regardless, she lost on valuable experience and proper evaluation.

Other students in Raichur told us that they felt that the hostility that has been carefully cultivated in educational institutions by right wing forces has deeply affected Muslim students and Muslim women students in particular. Muslim women are horrified by the space called a classroom. Our respondents told us that they now call each other before going to college and enter in groups alone as they it is 'very frightening' to enter campus alone.

In Hassan, a student said that, "Our main fear was that our attendance would get affected. The Principal started telling Muslim girls who wore the hijab to go home and give up on their studies. They spoke in threatening tones, "Wait and watch what will happen if you don't remove the hijab." Facing this hostility day-in and day-out has made many students consider other options, but for many students, the choice is very limited. Family income, availability of affordable options, and difficulties in pursuing transfer limit what a student can do. In a village in Hassan district, one student said "I am repeating my 2nd year, because I will not give up. Transferring is not an option for me because I am not changing my stream. So, I am not allowed. And private and minority institutions are so costly, that families like ours cannot consider such options."

Some students tried faced hostility when seeking reasonable accommodations. In Mangalore city, three students told the team that they could not attend their viva due to the issue. One student asked if she

could write with only a cap covering her head, but this caused a commotion, leaving all of the students left feeling disturbed. The students missed a total of 4-5 subjects in the ninth semester. They told us that 5 Muslim women students in their college did not attend the exams, and had to transfer. Overall, the students were of the opinion that this incident affected their performance and the experience was stressful and put a strain to their overall health. They also talked about the limited options available to the students, considering that not all students can afford the transfer and are then, forced to remove their hijab. One student said, “We need to finish, or else the 4 years have been wasted. We have good marks, and seek support outside.” She continued, “On coming back to campus after the pandemic. Pandemic was difficult. We did not like online classes. Coming to campus felt good. We just want to finish now so we can move on with our lives.”

Students mentioned how they had new hurdles outside of the campus affecting their education. When speaking to law students in Dakshina Kannada, students said that during their Practical Court Visits, they were not allowed into the court premises with their hijab on. The security of the court asked them to come back with a written permission from their university, even though other students from the university were allowed into the courts. When the students asked the professor about this, they were told to go back to the university. The next week when they returned, they were only allowed into the court premises because of a lawyer who helped them.

The team found that when different groups began agitating against the hijab, Muslims would receive blame and women who wore headscarves would be punished in the college. In rural Dakshina Kanara, one student described how in her campus, there were protests against hijabs by Hindu students and as a result, everyone was sent home. After the students came back to college, 6 Muslim women were suspended. She asked, “Why suspend us? Why are these (saffron) shawls allowed, but not hijab. The principal made a decision based on the boy’s bad behavior, why are the girls being punished?” This environment made any support impossible. Their classmates will not even share their notes with them now, even non-Muslim girls. Even clerks refuse to help them. They would not give scholarship, claiming there was a notice from the CDC, leaving the students with no way to contest it. Another student, who was very upset, said, “They have taken fees for education and exams, but they won't allow us to sit now.” Some students did not attend their practical exam (science) and almost 20 students did approach the college development community stating that the judgment was not applicable to them.

While many female Muslim students have tried to get support from within the community, not all of them have access to that support in the educational space. In rural Dakshina Kannada, a student said that there was heavy right wing politics present on her campus, and pointed out that there was no minority college nearby, and only one degree college in that region which would probably result in her dropping out of the course. She also said that her parents would rather that she dropout than move far away for her degree. She also said that the few Muslim professors on her campus did not support the students, which can also be due to the risk that it might pose to their job.

Security measures taken in the aftermath of the case had made going to college a scary place for many students, and offered little protection to the students. In a college in rural Udupi district, police were posted inside the college campus throughout the period from the interim order to the final verdict. Hindu boys were posting threatening messages on WhatsApp groups. One student recounted, “They said that they wanted to punish us and kill us, and other similar threats...They said that before, they had good friends, but lost all of their old friends because of this”. In another college in rural Udupi, a student told the team that the principal refused to certify one of her practical records. Another student said, “After writing the exam, I didn’t want to face the others, I waited for others to leave.”

In rural Udupi, reflecting on the judgment, a group of students said that the government needs to step up. They said that their appeal to society is to please give education top priority. The government sidelined education and brought the issue of hijab to the fore. The students told the team that they felt that the problems facing Muslim women could have been faced in a better way if the hijab verdict hadn’t caused a setback.

In another college, students said that police would take videos of students entering or leaving the college premises. This scared them, “made us feel threatened their own college.” One student said that she feels safer among Muslims as nobody else comes to help when they are in need. If the Supreme Court verdict comes positively, she would definitely try to pursue her course again.

One student said that after leaving college, she has gone around looking for colleges that allow the hijab. Another student said that because of this, she was now searching for other institutions. “Government College was free education, but in my new college, I have large travel expenses. I wanted to do my M.Sc., but now I can’t. I felt shattered. I do not want to think about my shattered dreams.” The language in many areas turned violent. In a college in Dakshina Kanara, one student said that on

her campus, boys had asked the girls to carry weapons, so they wouldn't be unsafe. She also reported that a few students by then had started to pick fights with girls on the college premises. She and some other girls wrote a plea to the principal asking for some intervention. However, the principal refuses to even accept the plea. Hence the students approach their respective Head Of Departments (HOD). At this stage, the principal asks the HODs to not entertain any such pleas and send in the security guard to push the girls off the campus. After that they received the messages and could see statuses being shared on WhatsApp that the those taunts were only a teaser. They received “warnings” of what was to come.

Some students stated that they are not being given attendance. One student said that even when she was on her campus and was not allowed inside, she would shout her attendance call from outside the class. She said that the whole process that they had gone through was exhausting their mental health and that it was also a punishment in itself which could also affect education of a student. She said that many Muslim girls enter the college with a dream and a vision about their higher education. When these kinds of incidents take place, they might also develop hatred towards the idea of education. The students might struggle to even understand how do they understand the discrimination meted out to them when principal, teachers and others treat them so. She said that there is no conducive environment for the Muslim girls to enter the colleges. “We should not allow that to happen. We do not want to go back to the earlier India where people were uneducated. All the girls must get education and this must happen through governmental apparatus. Now that the issue has been brought up suddenly, it is not just affecting our immediate education concerns, but also in the long run, our educational aspiration. It seems like they have placed a barrier to not allow us to move forward.”

#### Right to Dignity:

In the Indian Constitution, dignity is mentioned as a Preambular value. During the Constitutional Assembly Debates, there was a suggestion that the phrasing ‘unity of the nation’ should precede the word dignity. However, the framers held strong to the view that ‘dignity of the individual’ should precede ‘unity of the nation.’ The thinking of the framers of the Indian Constitution was that dignity was an end in itself and the lexical priority of dignity indicated the centering of the human being as the subject of rights.

The Supreme Court has over the decades interpreted dignity as being part of Article 21 of the Indian Constitution. In *Francis Corallie Mullin vs. Administrator, Union Territory of Delhi*<sup>48</sup>, the Supreme Court held that:

We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings.[..] it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.

In *Navej Singh Johar v Union of India*<sup>49</sup> the Court held that:

When biological expression, be it an orientation or optional expression of choice, is faced with impediment, albeit through any imposition of law, the individual 's natural and constitutional right is dented. Such a situation urges the conscience of the final constitutional arbiter to demolish the obstruction and remove the impediment so as to allow the full blossoming of the natural and constitutional rights of individuals. This is the essence of dignity and we say, without any inhibition, that it is our constitutional duty to allow the individual to behave and conduct himself/herself as he/she desires and allow him/her to express himself/ herself, of course, with the consent of the other. That is the right to choose without fear.

In the interpretation of the Supreme Court, the right to dignity is about the right to expression and about the right to choose without fear. It is only when you allow for the full blossoming of individual choice that is integral to personhood that the right to dignity is safeguarded. In the context of the

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<sup>48</sup><https://indiankanoon.org/doc/78536/>

<sup>49</sup><https://indiankanoon.org/doc/168671544/>

testimonies by the Muslim students, both these dimensions of dignity, be it choice or expression are sought to be controlled with their very existence demeaned.

In a college in Raichur district, a student narrated how the judgment affected her class environment. She said that in her college, “they made girls sit separately in a room where our names and signatures were taken down in order to keep track of their attendance records. This made women students feel like they were being deliberately separated and segregated for being Muslims. Some principals and lecturers even told us that we must either take off their hijab or stay back in the room and ‘think about it’.”

Another student explained how the judgment forced Muslim students to make compromises in their attire. Given the widespread resistance within their colleges to hijabs, “women students are now wearing hoodies to classes. Women students have shifted to wearing the hoodie as their lecturers were extremely rude and insensitive to them after the restriction on the hijab was imposed. Lecturers reportedly told the students, ‘Tum soch badlogi toh zamaana badlega’, ‘Zamaane ka saath chalo’, ‘Tum bold bano’ and other such variations. This was to suggest that the women, in asserting their right to wear hijabs were making a regressive choice. Students told the team that some teachers even asked them, “Show chal raha hai kya” upon seeing them in hoodies. They were even told to ‘hide themselves in the last bench’. In Hassan district, students described ways in which hijab-wearing girls in their college were constantly targeted by lecturers, and even harassed by boys who sent vulgar messages on the phone. Boys even began teasing them in public spaces and they could not walk alone anymore. They began calling in public “O Hijab! O Burkha!” They said that even a teacher called out to students this way. Rather than protecting students from this harassment, the colleges would aid in perpetuating it. One student told the team that she had become afraid of the principal. “When the principal sees us, he admonishes us, asks me why we continue to study here. Why we continue to wear the hijab, and other such taunting questions. We also have been getting random messages making lewd remarks.”

Another student explained the toll this has taken on her sense of independence in public spaces. “I don’t feel confident to go to the college, and I take my brothers along. Outside the college, I face harassment from other boys, who are not from our college. Earlier, I was the class representative, and I would go to the principal about issues facing the students. Nowadays, I’ve fallen silent, and don’t interact with other students. I want to change this college where I don’t feel free. Lecturers are alright,

but college principal and the management detest me so much that whenever I see them, I turn away from them. “She continued to say that her confidence got affected immediately. She was scoring good marks before, but they also went down, along with attendance. Another student said that while she passed her exams, she was not satisfied with her marks. Other students said that they wanted to change colleges after this.

In Mangalore city, students described the hostile environment at the university following the judgment, they stated that students looked at them in a different way and would stare at them. As a result, they are made more conscious of their attire in that environment. They also have to confront stereotypes surrounding students who wear headscarves and emphasized the indignity in being forced to choose between their religious expression and their education.

In Udupi district, students explained how the hostility follows them even to their neighborhoods. While their neighbors were friendly earlier, after the judgment their attitudes changed completely. Neighbors have told the students that because of them, others girls are feeling the effect, and suffering. The constant hostility has been overwhelming for them. As one student told the team, “We want a comfortable life, we want to be treated as normal people. I don’t want to be stared at. “The hostility has made many women look into the community for support. In rural Udupi district, one student said that she now only travels in buses which are owned by Muslims for safety. In other buses and public spaces, she experiences harassment.

### Right to Privacy

The right to privacy has been recognized as a fundamental right by nine judges of the Supreme Court in *Puttaswamy v Union of India*<sup>50</sup>.

Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to

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<sup>50</sup>[https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_judgement\\_24-Aug-2017.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_judgement_24-Aug-2017.pdf)

control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture.

While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

The Supreme Court has recognized that individuals are entitled to an expanded notion of privacy. Privacy is not about the protection of the right to be who you are in the home alone but is also about a person's right to make decisions about their personal life. It is not just about zonal privacy but also about decision privacy. As the Court puts it, 'personal choices governing a way of life are intrinsic to privacy'. Further the Court holds that the guarantee of privacy as the protection of personal choices leads to a diverse country founded on plurality and heterogeneity. Privacy does not cease to exist, merely because you are in a public place. It is this expansive notion of privacy as being at the heart of the fundamental rights and a core dimension of dignity which has been violated in attempts to control the dress which Muslim women wear.

The students testified to this deep violation of personhood, autonomy and the right to be free of humiliation which constitutes the essence of the right to dignity.

The experience of being forced to uncover their head was a humiliating experience for many students. In Raichur, for example, one young woman who spoke to us told us how they found this experience to humiliating and how it was "equal to being naked". The case also led to an increased presence of police and media on many campuses. In Raichur, students, while recounting the experience of seeing a policeman on campus, told us how they rushed into their classroom to hide as soon as they were spotted. Even as they were trying to escape the police personnel, they could feel the invasive gaze of their other lecturers following them all along.

In Hassan, one student told the team how on the day after the judgment, a camera person from a

prominent TV station came to her campus. “He asked me, “Why are you here? Where is your ID card? “He asked me about the interim order, and a lecturer from the college stood with this journalist and continued asking me, “Where is your uniform!” They took my video to put on the news channel. I got scared and went home. The media crossed the bamboo boundary and came into the college.” She later learned that the video had been distributed among her classmates. “This video also went very viral and all my friends saw it. “She faced harassment because of this video for a week. In her college, her juniors were being harassed by the principal and management.

In rural Dakshina Kannada, a video by a TV news channel got many Muslim students (boys and girls) into trouble, for standing up to Hindu students protesting hijabs. On the same campus, the atmosphere became increasingly hostile to Muslim students due to the heavy police presence on campus.

In many campuses, viral videos on social media were used to shame and harass students. In rural Udupi district, one student told the team, “One of my friends had shared her photo without the hijab with her best friend and who posted it on the social media. My friend was so upset that she went into depression and was admitted to the hospital. Rape threats are appearing on social media.”

In another college in rural Udupi district, students told the team that when the interim order came, class groups on WhatsApp sent a message about it. The next day, teachers told them that the atmosphere was very negative and scary, with police forces stationed outside to stop them from entering the college wearing the hijab.”

In another college a student described how when she was outside the principal’s office, the police were there. It made her feel scared. Police would take videos of the students entering and leaving the college. Another student said that a media person entered her house and took pictures of her. The students said that the interim order affected them at their college. It was scary for them to see police forces outside the college. It made them feel like criminals. One student said that she gets panic attacks. They all said that they desire independence, but the law is against them now. They felt their dreams have been shattered.

In Mangalore, some of the women complained that their photos were clicked by students identifying with the ABVP without their consent and that they would provoke and threaten the women both in the corridors of the college and also right outside the college gate.

## Right to Expression

The right to expression is an integral dimension of human freedom. As the Supreme Court observed in *Navej Singh Johar v Union of India*<sup>51</sup>:

The emphasis on the unique being of an individual is the salt of his/her life. Denial of self-expression is inviting death. Irreplaceability of individuality and identity is grant of respect to self. This realization is one's signature and self-determined design. One defines oneself. That is the glorious form of individuality.

In *NALSA v Union of India*<sup>52</sup>, the Supreme court read the right of the dress of one's choice within the meaning of the freedom of expression in Article 19(1)(a).

Article 19(1) (a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Self-identified gender can be expressed through dress, words, action or behavior or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.

It is the idea of expression as including the freedom of dress and attire as encompassing a core dimension of individuality which is under threat post the judgment of the Karnataka High Court in *Resham*.

To many of the students, wearing a hijab had become routine long before the judgment. The suddenness caused a shock to them, leaving them disoriented. In Raichur, one student said "After wearing the hijab for so long, it is hard to suddenly stop doing it. We started wearing it from a very young age. "At the same time, the students insisted that she was active in making a choice in wearing hijabs. One student said, when talking about reactions she gets from others, "They always think hijab is a form of suppression, which it is not. It is our choice."

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<sup>51</sup><https://indiankanoon.org/doc/168671544/>

<sup>52</sup><https://indiankanoon.org/doc/193543132/>

The students pointed out in many ways, how they would be shamed for expressing themselves with a headscarf, even in public places. In Hassan a student mentioned how, when traveling by bus, the conductor told her, “Your people are going to face bad repercussions of this hijab very soon. “Many of the students called the experience torture. They have been through so much emotional torture. For them, both hijab and education are both essential. They wonder why they are asked choose? One student in rural Hassan district said “I can’t give up studies, and I can’t give up the hijab. I want to study further; I want to enter the medical field.” Some Muslim students who chose to remove the hijab and continue education go through immense guilt of betraying their religious convictions, but this issue has stigmatized this form of expression. In rural Hassan, one student said that “The current faculty look at us as if we are terrorists. “Other students expressed similar feelings. One student pointed out that for her, her headscarf was a way to express her values, which overlapped with her religious values. She said “For us, wearing the hijab is not a matter of custom, but a matter of justice.”

Some students told the team that the stigma against the hijab has been there for a long time. In Dakshina Kannada, one student said, “5 years ago, I’d faced the same issue when the principal took objection to our wearing the hijab in the college, and had targeted a few students. But this time it took place on a much larger scale. “Many students felt that they had to choose between their rights to expression and rights to education. They would have to compromise somewhere. Several girls stopped attending classes, and did not get to attend their semester exams. Some are in the process of getting a transfer certificate and moving universities. Some students forced to remove their hijab and attend the exams due to their circumstances.

In Dakshina Kannada, one student mentioned a classmate did not wear a hijab because her marriage ceremony was coming up immediately after graduation, and therefore, needed to finish her education soon. The stress of making such choices took a toll on many students. Many saw this as a betrayal of their rights. In rural Udupi district, students said they have been wearing hijab from a very early age, and insisted that they should be allowed to continue this practice. One said that she wanted to ask those who oppose her wearing a hijab, “What is your objection to my wearing hijab? How can you do this in violation of the Constitution?” The support she got from the college was nominal and did not protect her right to express herself. Another student said that she could not remove her hijab, she’d been wearing it since 5<sup>th</sup> standard, and she can’t be forced to discard it now. She wanted to be educated and independent and lead a life of her choice. “It’s law that was against me —this is what hurt me the most.”

While her decision to start covering her head was based in religion, the experience of wearing a headscarf has become an extension of her sense of self. “The Quran says clearly, you shouldn’t expose your body to outsiders. We’ve got used to wearing hijab everywhere and always.” She said, “This is our identity, how can we separate ourselves from it? We keep wondering what wrong we’d committed. Mentally, I’ve suffered a great deal.”

### Right to Non-Discrimination

A key dimension of constitutional rights is the right not to be discriminated against. In particular the Constitution under Article 15 prohibits discrimination by the state on grounds of sex and religion. Under Article 15(2), even citizens are prohibited from discriminating against their fellow citizens on the above-mentioned grounds. It is this freedom to be free from discrimination on constitutionally protected grounds which has been violated as far as the Muslim students in Karnataka are concerned.

In a college in Raichur district, a student narrated how the order affected her class environment. She said that in her college, “they made girls sit separately in a room where our names and signatures were taken down in order to keep track of their attendance records. This made women students feel like they were being deliberately separated and segregated for being Muslims. Some principals and lecturers even told us that we must either take off their hijab or stay back in the room and ‘think about it’.”

In Hassan district, students said that they were harassed in public spaces. In public, people would cry out, “O Hijab! O Burqa!” They said that even a teacher in their college would refer to them this way.

In Dakshina Kannada, students said that after the judgment, students looked at them differently. They would have to confront stereotypes surrounding students who wear headscarves as being regressive and backward.

The hostility has made many women look into the community for support. In rural Udupi district, one student said that she now only travels in buses which are owned by Muslims for safety. In other buses and public spaces, she experiences harassment.

### Freedom from arbitrary state action:

The Indian Constitution under Article 14 guarantees every person both the right to equality as well as the equal protection of the laws. The Supreme Court has interpreted this provision to also include the right to be free from arbitrary state action. The Supreme Court in *Shyara Bano v. Union of India*<sup>53</sup> held:

Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.

The notification issued by the Karnataka Government de facto prohibiting the hijab was manifestly arbitrary. Going beyond the question of the legality of the notification itself, the implementation of the notification suffered from the vice of arbitrariness.

The suddenness of the order meant that across the regions visited by the team, there was a lot of confusion and arbitrariness in implementation. Each college tried to implement what they thought was the letter of the law, leading to situations where the rules were either unclear, steps for redress were denied and responses were taken suddenly, often around the times of exams.

In Hassan, teachers and parents of students told the team that all Muslim students were asked to remove their hijabs for the first time in their lives in public during their tenth standard exams. Policemen would stand outside the examination centres, while exam officials and faculty spoke to Muslim students in a harsh and disrespectful manner. They said that while police presence is usually normal in exam centres, this time it was about security not about exam malpractices. The police were quite rude and humiliated the girls. To avoid any trouble, they visited the Block Educational Officer beforehand, and asked them if the students would face any issue. The BEO and other officers spoke to them rudely and intimidated them with a warning - “Don’t create a scene in such tough times. Keep quiet or else”. After they repeatedly requested to at least grant the students a separate room in which

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<sup>53</sup><https://indiankanoon.org/doc/115701246/>

they can remove their hijab, the BEO agreed. Students in Hassan said that before the judgment, there was always a mix of hijab-wearing and non-hijab students in the college. Choice of wearing the hijab was not an issue.

In Raichur, students told us that before the Interim Order, they did not expect the issue to reach them, but after it was passed, they experienced the implementation in a confusing way. Students from a PU College said that midway through their first day of college after the Interim Order was announced, they were told to remove their headscarves or go home. This was just before their practical exams, where they had to interact with boys and girls. They had problems in the exam centre. PUC students who sat for their CET examinations said that although only the examination rules prescribed that only the hijab must be removed, Muslim women students were made to remove their burqas as well and they were not allowed to cover themselves with even their dupatta. In two aided colleges in Raichur, students reported that a Police Sub-Inspector (PSI) was found going on rounds to look for Muslim women students with hijab soon after the final verdict of the Karnataka High Court.

In the degree colleges, a lecturer told the Muslim women in class who were wearing in the hijab that they will not deliver the lecture if the Muslim women students continued to sit in class with the hijab and that all students in class would be affected by it. An Engineering student in Raichur said that she had to sit in a different room and remain hidden. She could not go home. When she wrote she records, but the teachers would refuse to sign.

In Dakshina Kannada, student described the confusion after the judgment as follows. The new uniform implemented after the judgment did not explicitly call for the removal of hijab, rather Muslim women students were asked to meet at the auditorium and were indirectly asked to remove their hijabs. For Saturdays, when students were usually allowed to wear colour uniforms, the college removed that option because the students could wear hijab that day. The administration referred the new uniform as the 'proper uniform' in which the absence of hijab was implied. They did state that there was an issue with hijab even before the judgment as some students had allegedly misused it. Their parents came to the college asking if the students could just finish their exams while wearing hijabs as they are almost finished, but to no avail.

Later, the hijab was banned even in classrooms. When the students went to the principal to plead for permission to write their exams, the principal had a letter ready. The principal told the students that if they wanted to write the exams, they have to sign the letter, and agree to these terms:

- Take admission in a different college.
- They will not complain about the college to the press, the police or any authority.
- They will not disclose the contents of the letter to anyone.

Twenty parents of over 40 students tried to request the college management to allow the girls to continue their education in the same college. The Principal and VC told parents they'd make accommodations. The special arrangement designed by the administration was to merely allocate them the back benches of the exam hall, as opposed to a separate room for these students. They had the boys sit in the front and girls from the fourth bench back for the internals. Five Muslim students had to sign a letter and agreed to leave as soon as the examinations ended. Later, they were not even allowed to attend class.

In another college, the students tried meeting with the principal to seek clarity regarding the same the next day and the reason for such an order to be passed. The principal stated that the order was based on the High Court order and when the students questioned how the rules can be changed overnight in the middle of the academic year that too without consulting any students. The principal asked them to provide their grievances in writing. The students demanded the official notice regarding the same so that they can lodge their grievances in writing. It was then that the principal informed the students that the decision was made by the Syndicate of the university and provided the copy of the same.

Then the students wrote a plea to the principal stating that the Karnataka HC Order doesn't apply to degree colleges and to maintain the status-quo that was in practice earlier. The principal did not have any response when the students questioned where in the Karnataka High Court was it mentioned that the order is applicable to degree colleges. Then, the principal informed the students that she was helpless and that it would be better to communicate with the VC and that he was not available that day as he was attending the Syndicate meeting in Bengaluru and that it would be better for students to meet him the next day. Hence, the next day students attempted to attend the classes the next day where the lecturers informed the students that they did not have any issues with the students attending the classes with their Hijab provided that they adhere to all rules laid down by the college. Then, the

students meet the VC with the same plea and the VC responded stating that it was not his intent to force the students remove their Hijab but that it was the order of the High Court and the same has to be adhered. When questioned about the applicability of the HC order to degree colleges, the VC asked the students to meet the DC and get a letter clarifying that the HC order isn't applicable to their college. The VC also added that if the students get the letter from the DC, he would initiate meetings and oblige their plea and ensure that justice is served to the students.

In rural Dakshina Kannada, students said that Muslim women students who were wearing hijabs were suspended after a group of Hindu students caused a ruckus against hijabs on campus. When asked why, the principal told them that the girls were always wearing hijabs in class. The students found the comment was odd since the principal had not attended the class. The principal said that the CDC called and complained. Their parents came, but the principal cited a notice from the CDC. The students couldn't go back. The College administration stopped giving them scholarship, claiming there was a notice from the CDC, leaving the students with no way to contest it.

### **Conclusion:**

The testimonies indicate that a range of rights which are guaranteed to all Indian citizens have been comprehensively violated post the judgment of the High Court of Karnataka. These rights which have been violated include Right to Education without Discrimination, Right to Equality, Right to Dignity, Right to Privacy, Right to Expression, Right to Non-Discrimination and Freedom from Arbitrary State Action.

It's important to note in particular the violation of the right to education without discrimination. It is not just a fundamental right but also an obligation of the state under the Directive Principles of State Policy. Under Article 41, the state shall within the limit of its economic capacity and development, make effective provision for securing the right to education among other rights.

In the case of the hijab issue, it was disconcerting to see that the State of Karnataka completely ignored its constitutional obligation in its single-minded focus on ensuring that the hijab was prohibited in colleges. This begs the question as to whether the government was indeed ignoring its constitutional obligation.

The study also threw up disturbing narratives which indicated drop-out of students affected by the hijab issue. It is important to do a deeper study to understand the learning loss impacted by the hijab issue on the students. Overall, a whole generation of young Muslim students right to education has been imperiled by the hijab ban.

When the state strenuously argued that the hijab was not an essential practice of Islam, and therefore the students right to profess their faith under Article 25 was not imperilled, it was wilfully ignoring a whole series of other rights which were imperilled. The right to wear a hijab is not just a right to religious expression but post the judgment in *Puttaswamy* an integral part of the right to privacy, dignity, autonomy and expression.

By ignoring the series of constitutional rights which were violated by the prohibition, there was a disregard for what Babasaheb Ambedkar called constitutional morality.

As he put it in the Constituent Assembly:

The question is, can we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic.<sup>54</sup>

In this situation of a complete failure of the state government to fulfil its obligation to protect constitutional morality, it falls on citizens to then do so. Nobody has done so with more grace, dignity and courage than young Muslim women who have asserted their right to education. The case in point in this regard is the world witnessing Muskan, a young Muslim woman B. Com student, who drove a bike up to her college campus and walked fearlessly past a baying crowd of saffron shawl-wearing bullies on her campus before entering her college. Her courage, her spirit, and her fearless and dignified assertion of her right to freedom of expression, right to education and right not to be discriminated against was an embodiment of what the constitutional principles of Liberty, Equality

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<sup>54</sup>Constitutional Assembly Debates, Vol.VII, November 4, 1948, p.38

and Fraternity. We, at PUCL Karnataka, salute her courage and know that her courage will be an inspiration to millions more.

**Recommendations:**

1. The CM must decisively rescind the notification authorizing the prohibition of the wearing of the hijab
2. The court should conduct an inquiry into why the state government took such a sudden arbitrary and unconstitutional action
3. The Karnataka government must take adequate measures to strengthen a secular and non-discriminatory learning environment within colleges, allowing the students to express their faith and identity fully and ensuring that such shocking violations do not recur.
4. The human rights commission and minority commission should register suo moto complaints against the principals and CDCs of colleges for violating the fundamental rights of the concerned students and initiate actions at the earliest.
5. The Legal Services Authority at all levels must intervene in this matter and provide all legal assistance to the students to protect their constitutional rights.
6. The court must issue a directive to the government to conduct a comprehensive inquiry into lost years and expenses incurred as a result of this order and ensure that compensation to the women and their families is paid.
6. The government must allow the students to enter the classrooms immediately, and in consultation with students, arrange special classes for them.
7. The court must issue a directive to hold CDCs accountable, by both:
  - a. Making the CDCs truly representative, to be accountable to all of the different stakeholders, including members of all communities, students, non-teaching staff, teaching staff, members of civil society, and women.
  - b. Conducting an inquiry into cases where the CDC had overstepped its mandate and not provided appropriate forms of redress, in writing, to students and parents who have raised concerns and initiate actions against them.