

SC delivers split verdict on Karnataka hijab ban

The two judges on the Bench had divergent opinions on the ideas of secularity, freedom of expression and effect of the ban on education of girls; case will now be heard by a larger Bench

Krishnadas Rajagopal

NEW DELHI

The Supreme Court on Thursday delivered a split verdict on whether Muslim students should shed their hijabs at their school gates.

Justice Hemant Gupta upheld Karnataka's prohibitive government order of February 5, saying "apparent symbols of religious belief cannot be worn to secular schools maintained from State funds".

Justice Gupta said 'secularity' meant uniformity, manifested by parity among students in terms of uniform.

Justice Gupta held that adherence to uniform was a reasonable restriction to free expression. The discipline reinforced equality. The State had never forced students out of State schools by restricting hijab. The decision to stay out was a "voluntary act" of the student.

Differing views



●● The right to express herself by wearing a hijab, stops at the school gate... Freedom of expression guaranteed under Article 19(1)(a) does not extend to the wearing of headscarf

JUSTICE HEMANT GUPTA

In his divergent opinion, Justice Sudhanshu Dhulia said secularity meant tolerance to "diversity". Wearing or not wearing a hijab to school was "ultimately a matter of choice". For girls



●● Wearing a hijab should be simply a matter of choice. It may be the only way her conservative family will permit her to go to school, and in those cases, her hijab is her ticket to education

JUSTICE SUDHANSHU DHULIA

from conservative families, "her hijab is her ticket to education".

"Asking the girls to take off their hijab before they enter the school gates, is first, an invasion of their

privacy, then it is an attack on their dignity, and then ultimately it is a denial to them of secular education... There shall be no restriction on the wearing of hijab anywhere in schools and colleges in Karnataka," Justice Dhulia held.

He further remarked that one of the best sights in India was a girl going to school like her brother.

"Are we making the life of a girl child any better by denying her education, merely because she wears a hijab! All the petitioners (students) want is to wear a hijab! Is it too much to ask in a democracy? How is it against public order, morality or health or even decency?" Justice Dhulia asked.

The case would now be re-heard by a larger Bench.

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Justice Gupta, in his opinion, said students need to follow the discipline of wearing the school uniform without any “addition, subtraction or modification”. A student cannot claim the right to wear a headscarf to a secular school as a matter of right. “A girl’s right to express herself by wearing a hijab stopped at the school gate”.

But Justice Dhulia countered that school was a public place. It was not correct to draw a parallel between a school and a jail or a military camp.

“It is necessary to have discipline in schools. But discipline not at the cost of freedom or dignity... She carries her dignity and privacy in her person, even inside her school gate or classroom,” Justice Dhulia observed.

He said the fallout of the hijab ban had been that some girl students were not able to appear for their Board exams and others were forced to seek transfer, most likely to *madrasas*, where they may not get the same standard of education.

“This is for a girl child, for whom it was never easy, in the first place, to reach her school gate,” Justice Dhulia underscored.

Justice Gupta, agreed with the government that the “ethic of fraternity is best served by complete erasure of all differences”, especially religious. Wearing hijabs in secular schools “would stand out and overtly appear differently.

But Justice Dhulia disagreed with the idea of forced homogeneity. He said schools and pre-university colleges were the “perfect institutions” for children to learn the rich diversity of India and imbibe values of tolerance and accommodation.