

Hijab Report

Two Supreme Court judges delivered a split verdict today on whether Karnataka's ban on the hijab in classrooms should stay or go and called for a larger bench to take it up. While Justice Hemant Gupta backed the hijab ban, Justice Sudhanshu Dhulia said he "respectfully disagreed" with him as he considered the education of girls most important.

Both judges made very strong remarks as they pronounced their orders.

Justice Dhulia stressed on secularism, constitutional freedoms, and enabling girls' education. "Amongst many facets of our Constitution, one is Trust. Our Constitution is also a document of Trust. It is the trust the minorities have reposed upon the majority," Justice Dhulia said.

"It is necessary to have discipline in schools. But discipline not at the cost of freedom, not at the cost of dignity. Asking a pre-university schoolgirl to take off her hijab at her school gate, is an invasion on her privacy and dignity," the judge said.

"One of the best sights in India today is that of a girl child leaving for her school in the morning, with her school bag on her back. She is our hope, our future. But it is also a fact, that it is much more difficult for a girl child to get education, as compared to her brother," Justice Dhulia observed.

But in many parts of India, he noted, a girl child had to do household chores before going to school. "Are we making her life any better by doing this (hijab ban)?"

He said: "It is ultimately a matter of choice, nothing more, nothing else."

"All the petitioners 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?"

Presenting the counterview, Justice Hemant Gupta said secularism is applicable to all citizens, so allowing one community to wear religious symbols would be an "antithesis to secularism". The constitutional goal of fraternity would be defeated if students were allowed to carry religious symbols to the classroom, he asserted.

"Schools run by the state are open for admission irrespective of any religion, race, caste, language... Even the Act mandates that the students would be admitted without any restriction on such grounds. However, students are required to follow the discipline of the school in the matter of uniform," said the judge.

"The religious belief cannot be carried to a secular school maintained out of state funds. It is open to the students to carry their faith in a school which permits them to wear hijab or any other mark, may be tilak, which can be identified to a person holding a particular religious belief but the state is within its jurisdiction to direct that the apparent symbols of religious beliefs cannot be carried to schools maintained by the state from state funds.