Tajikistan's Hijab Ban

Why in news?

After years of unofficial curbs on religious clothing, the Tajikistan government has recently moved to formally ban the wearing of the hijab in the country.

What does the new law say about hijab ban?

- **Hijab** – It is the head covering worn by Muslim women, as well as other garments associated with Islam.
- **Ban** – It forbids the "*import, sale, promotion and wearing* of clothing deemed foreign to the national culture".
- It is done by amending the existing law on Regulation of Holidays and Ceremonies.
- **Fine for violations** – It may attract fines ranging from 7,920 somonis ($747) for individual offenders to 39,500 somonis.

Somonis is the currency of Tajikistan.

What are the arguments in favor of hijab ban?

- **Secularism and Neutrality** – A ban on hijabs in public institutions can help maintain a secular and neutral environment, ensuring that no religious symbols are promoted or given preference over others.
- **Gender Equality** – Some argue that the hijab is a symbol of female oppression, and banning it can promote gender equality and empower women.
- **Social Cohesion** – Proponents of the ban believe it can enhance social cohesion and integration, reducing visible differences between individuals and fostering a sense of unity.
- **Security Concerns** – In certain contexts, the hijab and other face-covering garments can pose security concerns by concealing identities, making it difficult to enforce safety measures.
- **Cultural Assimilation** – A ban may encourage cultural assimilation, helping immigrants and minority groups to integrate more fully into the host society.

What are arguments against a hijab ban?

- **Freedom of Religion** – Banning the hijab infringes on individuals' rights to freedom of religion and expression, as guaranteed by various human rights laws and constitutions.
- **Discrimination and Exclusion** – A ban can lead to the marginalization and discrimination of Muslim women, exacerbating social tensions and fostering an

environment of exclusion.

- **Personal Choice** – Many women choose to wear the hijab as a personal or religious expression.
- A ban undermines their autonomy and right to make personal decisions about their attire.
- **Cultural Diversity** – Allowing the hijab promotes cultural diversity and acceptance, enriching society by acknowledging and respecting different cultural practices.
- **Counterproductive** – Banning the hijab might have the opposite effect, strengthening religious identity and resistance among Muslim communities, leading to further alienation and division.

What is the status of hijab ban in India?

- **High Court** – In *2024, Bombay High Court* held Chembur college hijab ban was in 'larger academic interest'.
- In *2022, Karnataka High Court* stated that donning the hijab or niqab was "not an essential religious practice" for women professing Islam.
- **Supreme Court** – In 2022, it delivered a *split verdict* in the Karnataka hijab case.

The Essential Practices Doctrine

- The essential practices doctrine owes its existence to B.R. Ambedkar's speech in the Constituent Assembly.
- Ambedkar strived to distinguish "religious" from "secular" by arguing that the state should be allowed to intervene in matters that are connected to religion but are not intrinsically religious.
- In *Shirur Mutt case (1954)*, the Supreme Court held that the term "religion" will cover all rituals and practices integral to a religion.
- The test to determine what is integral is termed the "essential religious practices" test.

- **Support for hijab wearing** – One of the judges held that 'secularity' meant *'tolerance to diversity'*.
- He said that asking a pre university schoolgirl to take off her hijab at her school gate is an invasion on her *privacy and dignity*.
- It is *violative of Article 19(1)(a) and 21* of the Constitution of India.
- He referred to submissions that the hijab ban has l*ed to dropout or transfer of students* affecting their education.
- He also countered that although *school was a public place*, it was not correct to draw a parallel between a school and a jail or a military camp.
- **Support for hijab ban** – The other judge said 'secularity' meant '*uniformity*' and upheld the Karnataka HC ruling validating the ban on wearing hijab in classrooms.
- He views that hijab would *affect the creation of a homogenous group* of students and would create a segmented society.
- He held that *adherence to uniform was a reasonable restriction* to free expression that reinforced equality.

Freedom Of Religion Under Indian Constitution
• **Article 25 to 28** – Right to freedom of religion. • **Article 25(1) –** It guarantees the "freedom of conscience and the right freely to profess, practise and propagate religion". - It is a right that guarantees a negative liberty which means that the state shall ensure that there is no interference or obstacle to exercise this freedom. - However, like all fundamental rights, the state can restrict the right for grounds of public order, decency, morality, health and other state interests. • **Article 26 –** It talks about the freedom to *manage religious affairs* subject to public order, morality and health. • **Article 27** – It states that *no person shall be compelled to pay any taxes* for the promotion or maintenance of any particular religion. • **Article 28** – It states that the *freedom to attend religious instruction* or religious worship in certain educational institutions.

> *In **S R Bommai vs Union of India (1994),** the Supreme Court said that the state should free itself from religious affinity.*

What lies ahead?

- **Dialogue and Inclusivity** – Encourage open and respectful dialogue between different communities to understand the significance of the hijab and the concerns of those who support a ban.
- **Contextual Policies –** Develop policies that are sensitive to the specific context and needs of the community, avoiding one-size-fits-all solutions.
    - For example, distinguish between educational institutions, workplaces, and public spaces.
- **Education and Awareness** – Address misconceptions and stereotypes about the hijab through awareness campaigns and educational initiatives.
- **Legal Frameworks** – Ensure that any policies or laws regarding the hijab align with national and international human rights standards, protecting freedom of religion and expression.
- **Cultural Sensitivity Training** – Implement cultural sensitivity training for public servants, educators, and law enforcement to handle situations involving religious attire respectfully and appropriately.
- **Monitoring and Evaluation** – Regularly monitor the impact of any policies on the hijab and conduct evaluations to ensure they are achieving intended outcomes without unintended negative consequences.

References

1. The Indian Express| Tajikistan ban Hijab
2. The Indian Express| Bombay HC upheld Hijab Ban in Chembur College



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