



Hijab & Freedom of Religion

For Prelims: Supreme Court, Hijab, Fundamental Rights, Cases Related to Freedom of Religion.

For mains: Fundamental Rights, Judiciary, Government Policies & Interventions, Women's Issues, Cases Related to Freedom of Religion.

Why in News?

Recently, six students were **banned from entering a college** in Karnataka's Udupi district **for wearing a hijab** (a head covering worn in public by some Muslim women).

- The issue **throws up legal questions on reading the [freedom of religion](#)** and whether the right to wear a hijab is constitutionally protected.

How is Religious Freedom Protected under the Constitution?

- **Article 25(1)** of the Constitution 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**.
- The implications of this are:
 - **Freedom of conscience:** Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.
 - **Right to Profess:** Declaration of one's religious beliefs and faith openly and freely.
 - **Right to Practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
 - **Right to Propagate:** Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion.

What is the Essential Religious Practises Test?

- Over the years, the **Supreme Court (SC)** has evolved a practical test of sorts to determine what religious practises can be constitutionally protected and what can be ignored.
- In 1954, the **SC held in the Shirur Mutt case that the term “religion” will cover all rituals and practises “integral” to a religion**. The test to determine what is integral is termed the “essential religious practises” test.
- The test, a **judicial determination of religious practises**, has often been criticised by legal experts as it pushes the court to delve into theological spaces.
 - In criticism of the test, **scholars agree that it is better for the court to prohibit religious practices for public order rather than determine what is so essential to a religion** that it needs to be protected.
- In several instances, **the court has applied the test to keep certain practises out**.

- In a 2004 ruling, the SC held that the Ananda Marga sect had no fundamental right to perform Tandava dance in public streets, since it did not constitute an essential religious practice of the sect.
- While these issues are **largely understood to be community-based, there are instances in which the court has applied the test to individual freedoms as well.**
 - For example, in 2016, the SC **upheld the discharge of a Muslim airman from the Indian Air Force for keeping a beard.**
 - **Armed Force Regulations, 1964**, prohibits the growth of hair by Armed Forces personnel, except for “personnel whose religion prohibits the cutting of hair or shaving of face”.
 - The court essentially held that **keeping a beard was not an essential part of Islamic practices.**

How have courts ruled so far on the issue of a hijab?

- While this has been put to courts on several occasions, **two set of rulings of the Kerala High Court**, particularly on the right of Muslim women to dress according to the tenets of Islam, **throw up conflicting answers.**
- In 2015, at least **two petitions were filed before the Kerala High Court challenging the prescription of dress code for All India Pre-Medical Entrance** which prescribed wearing “light clothes with half sleeves not having big buttons, brooch/badge, flower, etc. with Salwar/Trouser” and “slippers and not shoes”.
 - Admitting the argument of the **Central Board of School Education (CBSE)** that the rule was only to ensure that candidates would not use unfair methods by concealing objects within clothes, **the Kerala HC directed the CBSE to put in place additional measures for checking students who “intend to wear a dress according to their religious custom, but contrary to the dress code”.**
- In ***Amna Bint Basheer v Central Board of Secondary Education (2016)***, the Kerala HC examined the issue more closely.
 - The Court held **that the practice of wearing a hijab constitutes an essential religious practice** but did not quash the CBSE rule.
 - The court once again **allowed for the “additional measures” and safeguards put in place in 2015.**
- However, on the issue of a uniform prescribed by a school, another Bench ruled differently in ***Fathima Tasneem v State of Kerala (2018)***.
 - A single Bench of the Kerala HC **held that collective rights of an institution would be given primacy over individual rights of the petitioner.**

[Source: IE](#)

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