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Freedom of Religion and Attire

What is the issue?

A Karnataka school's denial of entry to six girls in hijab throws the spotlight on freedom of religion.

How is religious freedom protected under the Constitution?

- The Preamble of the Constitution states that India is a secular country.
- **Article 25 to 28** of **Part-3** (Fundamental Rights) of the Constitution confers Right to freedom of religion.
- **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, the state can restrict the right for grounds of public order, decency, morality, health and other state interests.
- **Article 26** talks about the freedom to manage religious affairs subject to public order, morality and health.
- **Article 27** states that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion.
- **Article 28** talks about the freedom as to attendance at 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 is the view of judiciary regarding the religious freedom?

- In 1954, the Supreme Court held in the **Shirur Mutt case** 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.
- What constitutes the essential part of a religion is to be determined with reference to the doctrines of that religion itself.
- In *Sri Venkataramana Devaru vs State of Mysore*, the court held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Art. 26(b), must yield to the overriding right declared by Art. 25(2)(b) in favour of the public to enter into a temple for worship.

How has the court interpreted the essential religious practices test in the past?

- In a 2004 ruling, the Supreme Court 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.
- In 2016, the Supreme Court upheld the discharge of a Muslim airman from the Indian Air Force for **keeping a beard**, distinguishing the case from that of Sikhs who are allowed to keep a beard.
- The court held that keeping a beard was not an essential part of Islamic practices.

Regulation 425 of the 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".

- In *Bijoe Emmanuel vs State of Kerala* (1986), students belonging to the denomination of Jehovah's Witnesses were allowed to **abstain from singing the national anthem** that they claimed to contradict their religious faith.
- The Supreme Court of Canada in *Multani* case (2006) upheld the right of a **Sikh student to wear a Kirpan** while attending the class, without harming others.

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

- The 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.
- **2015 Kerala case-** At least two petitions were filed before the Kerala High Court challenging the prescription of dress code for All India Pre-Medical Entrance.
- The CBSE argued 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.
- If the invigilator requires the head scarf or the full sleeve garments to be removed and examined, then the petitioners shall subject themselves to that, by the authorised person.
- It also asked CBSE to issue general instructions to its Invigilators to ensure that religious sentiments be not hurt and at the same time discipline be not compromised.
- **Amna Bint Basheer v CBSE (2016)-** The Kerala HC 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.
- **Fathima Tasneem v State of Kerala (2018)-** The Kerala HC held that collective rights of an institution would be given primacy over individual rights of the petitioner.
- The court upheld the order of the school that refused to allow the headscarf among students.

In the case of the hijab, Muslim women are mandated to keep her head covered as per the verses from the Koran.

What questions were propping over the episode of uniforms?

- Administrators in the 1990s may have ordered uniforms to prevent competition amongst fashion-conscious teenagers.
- Today, there is no one uniform code which is mandated throughout the State.
- An unfortunate side-effect of the current controversy may well be a State administrative order decreeing uniforms for all college students throughout the State of Karnataka.
- It would be a killjoy response of an administration that prioritises uniformity over diversity.
- Also many questions pop up in the mind of people.
 - Would the same standards that banish a female hijab apply to a turban worn by a male Sikh student?
 - Can government colleges deny education to students who are seen to be violating a uniform code?
 - Is the hijab or even a full covering in any manner violative of the process of imparting education?
 - Can a government committed to female education deny education to those it deems improperly dressed?
 - Should implementation of a dress code be prioritised over imparting education to all that seek it?
- These questions will probably soon engage the attention of a constitutional court.

What does this incident throw light on?

- Religious freedom is the hallmark of pluralism and inclusiveness.
- It is meant to advance social harmony and diversity.
- While legitimate restrictions are to be accepted, irrational and motivated intrusion into religious notions should be prevented.
- A teacher might want to see the face of the students for effectively conducting the class.
- So, a head veil is certainly permissible, whereas a face veil might not be. We need to strike a balance, whenever possible.
- A society riddled with communal polarisation needs to cultivate a constitutional mindset while examining the issues of religious freedom.
- Religious fanaticism, whether by the majority or the minority, has only damaged the secular mosaic.

References

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