

Hijab row:

March 1, 2022

What is a hijab?

- The word hijab is derived from the Arabic word '**hajaba**,' meaning 'to conceal' or 'hide.'
- A hijab (pronounced HEE-job) is a head covering worn by women of the Muslim faith as a symbol of modesty and religious devotion.
- The typical and most familiar hijab is a scarf that covers most if not all of the hair and also covers the neck and falls below the level of the shoulders and upper back and flows down past the elbows.
- Women and young girls past puberty wear the hijab when in public or when among men who are not directly related to them (father, brothers, nephews being the exception).

What is the current issue?

- The action of some pre-university colleges in Karnataka refusing entry to Muslim girl students wearing hijabs, or head-scarves, has now become a national controversy.
- From the Muslim students' point of view, they have a fundamental right to wear a hijab as part of their right to practise their religion.

Constitutional provisions for protection of Freedom of religion

- The freedom of conscience and to profess, practise and propagate religion is guaranteed by **Article 25 of the Constitution**.
- This freedom is subject to 'public order, morality and health'.
- It also makes it clear that there can be a law by the state regulating any economic, financial, political, or

other secular activity which may be associated with religious practice or to provide for social welfare and reform.

What is an essential religious practice?

- The recent Karnataka state government directive states that wearing a headscarf is not an essential religious practice for Muslims that can be protected under the Constitution.
- The 'essential practice' doctrine can be traced to the decision of the Supreme Court in *Commissioner, Hindu Religious and Charitable Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, commonly known as the '***Shirur Mutt' case (1954)***.
- The mutt's contention was that the Government could not interfere in its ***right to manage its own affairs*** under **Article 26**.
- This led to the Bench noting that the presence of this clause indicates that there could be affairs that were not matters of religion and said that "***what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself.***"
- In 1983, the Supreme Court upheld the police decision to disallow 'Tandava', a ritual dance performed with a skull and a knife, in public places as part of a procession by Ananda Margis, holding that the 'Tandava' was not an essential religious practice among those in the sect.

Courts observations on Hijab

1. 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 ruled that “If the Invigilator requires the head scarf or the full sleeve garments to be removed and examined, then the petitioners shall also subject themselves to that, by the authorized person. It is also desirable that the CBSE issue general instructions to its invigilators to ensure that religious sentiments are not hurt and at the same time discipline be not compromised”.
1. In **Amna Bint Basheer v Central Board of Secondary Education (2016) case**, 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.
 2. In **Fathima Tasneem v State of Kerala (2018) case**, involved two girls, aged 12 and 8, represented by their father who wanted his daughters to wear the headscarf as well as a full-sleeved shirt to the school. The single Bench of the Kerala HC said that the court could not tell schools to allow Muslim girls to wear hijabs but also held that collective rights of an institution would be given primacy over individual rights of the petitioner.

The recent hijab row adds another feature in the rise of communalism across the nation. There is a duty on everyone to preserve India’s pluralism and democracy and need to curb such knee-jerk reactions in the coming days otherwise secularism and democracy will be the ultimate losers.