

2. Three-Judge Bench of Karnataka High Court to hear Hijab Petitions

Prelims Syllabus: Policies

Mains Syllabus: GS-II Government policies and Interventions for development in Various Sectors and Issues Arising out of their design and implementation.

Why in News?

- A three-judge Bench of the Karnataka High Court will hear the petitions questioning the ban on wearing of hijabs by students in colleges.

About the News:

- Recently, six students were banned from entering a college in Karnataka's Udupi district for wearing a Hijab. The issue throws up legal questions on reading the freedom of religion and whether the right to wear a Hijab is Constitutionally protected or not.

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 negative liberty – which means that the state shall ensure that there is no interference or obstacle to exercising this freedom.
- **Limitations:** Like all fundamental rights, the state can restrict the right for grounds of public order, decency, morality, health and other state interests.

Observations made by the Supreme Court in this Matter:

- People have a right under the Constitution to profess, practise and propagate religion (Article 25). Every person is the final judge of his/her choice of religion or who their life partner should be. Courts cannot sit in judgment of a person's choice of religion or life partner.

Religious Faith is a Part of the Fundamental Right to Privacy.

- **Shirur Mutt case in 1954:** The doctrine of “essentiality” was invented by the Supreme Court. The court held that the term “religion” will cover all rituals and practices “integral” to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.

What are the Court's Rulings on Hijab?

- In *Amna Bint Basheer v Central Board of Secondary Education* (2016), the Kerala High Court held that the practice of wearing a hijab constitutes an essential religious practise but did not quash the dress code prescribed by CBSE.

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- It rather provided additional safeguards, such as examining students wearing full sleeves when needed.
 - In *Fathima Tasneem v State of Kerala (2018)*, Kerala HC held that collective rights of an institution would be given primacy over the individual rights of the petitioner. The case involved two girls who wanted to wear the headscarf. The school refused to allow the headscarf. However, the court dismissed the appeal as students were no more in the rolls of the respondent-School.

