Karnataka High Court's Hijab Judgment

What is the issue?

The Karnataka High Court upheld the restriction on Muslim women wearing a hijab in educational institutions.

What is the hijab case about?

- A dispute pertaining to school uniforms erupted in Karnataka, when some Muslim students of a junior college who wanted to wear hijab to classes were denied entry on the grounds that it was a violation of the college's uniform policy.
- Over the following weeks, the dispute spread to other schools and colleges across the state, and the Karnataka government issued an order stating that uniforms must be worn compulsorily where policies exist and no exception can be made for the wearing of the *hijab*.
- Several educational institutions cited this order and denied entry to Muslim girls wearing the *hijab*.
- Petitions were filed in the Karnataka High Court on behalf of the aggrieved students.
- The High Court issued an interim order restraining all students from wearing any form of religious attire.
- After a hearing from the petitioners, the state and the colleges, the judgement was reserved.

To know more about the hijab case, click here

What is the court's verdict?

- The Karnataka High Court upheld the restriction on Muslim women wearing a hijab stating that right to wear a hijab is not constitutionally protected.
- The High Court said that it had formulated four broad questions, taking a holistic view of the matter.

1. **Whether wearing hijab is a part of 'essential religious practice' in Islamic Faith protected under Article 25 of the Constitution?**

   - The court held that wearing the hijab is not "religion-specific".
   - The court said that the petitioners did not present sufficient evidence to prove that wearing a hijab is an essential religious practice of Islam.

2. **Whether prescription of school uniform (by educational institutions) is not legally permissible, as being violative of Fundamental Rights guaranteed under Articles 19(1)(a) and 21 of the Constitution?**
   - The court stressed on the institution's right to prescribe a dress code.
   - The court held that on allowing hijab, the school uniform ceases to be uniform and would establish a sense of social-separateness.
   - It stated that the hijab offends the feel of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion & faiths.

3. **Whether the Government Order is arbitrary and violates Articles 14 & 15 of the Constitution?**
    - The Karnataka government order said that colleges can restrict students from wearing the hijab on grounds of unity and integrity.
    - The court held that the subject matter of the Government Order is the prescription of school uniform and the power to prescribe avails in the Karnataka Education Act, 1983 and the Rules.
4. **Whether any case is made out against the lecturers and principal of the college in Udupi where the hijab controversy first began?**
    - The petition sought action against the principal and teachers of the college for violating the departmental guidelines which prohibit prescription of any uniform, and for their hostile approach.
    - The court rejected the contention saying that the petition was apparently ill-drafted and the departmental guidelines as having no force of law.

What has the High Court failed to recognize?

- The manner in which it framed the questions arising from the controversy over Muslim girl students wearing the hijab undermines constitutional principles.
- The court failed to examine whether the wearing of the hijab, in addition to the prescribed uniform, but without any variation in colour, was a ground to refuse entry into a school or college.
- There is no reason to not accommodate the choice of an additional piece of clothing that does not interfere with the prescribed uniform.
- The judgment's emphasis on the uniform as an inviolable symbol of equality and homogeneity seems to have submerged contentions in favour of any sort of accommodation.
- Another question to raise is whether it was at all necessary to invoke the 'essential practice' test in this case.
- The essential religious practice test itself is a pointless exercise, as the Supreme Court has established a nearly unattainable standard to determine it.
- It would be far better if a claim for Article 25 protection is tested against constitutional values such as equality, dignity and privacy, subject to health and public order.
- Freedom of religion is important because freedoms are important, and not because religions are important.

References

1. https://indianexpress.com/article/explained/explained-four-questions-in-karnataka-hcs-hijab-judgment-and-why-the-court-upheld-govts-position-7820893/
2. https://www.thehindu.com/todays-paper/tp-opinion/essentially-flawed/article65232544.ece

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