The Essential Practices Doctrine

What is the issue?

The Karnataka High court's ban on the use of the hijab by students quoting the doctrine of essential practice needs a theological study beyond legal analysis.

What is the hijab case about?

- The dispute erupted in Karnataka, when some Muslim students who wanted to wear hijab to classes were denied entry on the grounds that it was a violation of the college's uniform policy.
- 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.

To know more about the case, click here

What is the High Court judgement?

- The Karnataka High Court made three primary findings in its judgment.
- **Essential practice**- It held that the use of a hijab is not essential to the practice of Islam.
- Thus, the right to freedom of religion was not violated.
- **Right to freedom**- It ruled that there exists no substantive right to freedom of expression or privacy inside a classroom and, therefore, these rights were not at stake here.
- In High Court's belief, classrooms are "qualified public spaces" where individual rights must give way to the interests of "general discipline and decorum".
- **State discrimination**- It held that the ban did not stem directly out of the government's order, which only called for a uniform dress code to be prescribed by the State or school management committees.
- Hence, the law did not discriminate, either directly or indirectly, against Muslim students.

What is the essential practices doctrine?

- The essential practices doctrine owes its existence to a speech made by B.R. Ambedkar in the Constituent Assembly.
- Ambedkar was striving to distinguish the religious from the secular, by arguing that the state should be allowed to intervene in matters that are connected to religion but

are not intrinsically religious.
- 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.

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

- In ***Bijoe Emmanuel vs State of Kerala (1986)***, students belonging to the denomination of Jehovah's Witnesses were allowed to abstain from **singing national anthem** that they claimed to contradict their religious faith.
- In 2004, 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.
- 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.
- 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.

What are the impeding effects of this test?

- **Reduction of safeguards**- The Court's jurisprudence has the scope to narrow the extent of safeguards available to religious customs.
- **Impingement on autonomy**- It directly impinges on the autonomy of groups to decide for themselves what they deem valuable, violating, in the process, their right to ethical independence.
- **Negation of laws**- It has nullified legislation that might enhance the cause of social justice.
- For example, in 1962, the Court struck down a Bombay law that prohibited excommunications made by the Dai of the Dawoodi Bohra community.

Excommunication refers to the act of refusing to allow someone to be involved in the Church, especially the Roman Catholic Church, and to take part in the ceremony of Communion.

What is the way forward?

- **Principle of anti-exclusion**- In the Sabarimala case, Justice D.Y. Chandrachud proposed an alternate doctrine - Principle of anti-exclusion.
- The anti-exclusion principle stipulates that the State and the Court must respect the integrity of religious groups (and thereby treat the internal point of view of religious adherents as determinative of the form and content of religious practices).
- At the same time, when a religious practice causes the exclusion of individuals impairing the dignity or hampering the access to basic goods, the freedom of religion must give way to the over-arching values of a liberal constitution.

References

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