

ESSENTIALLY FLAWED: THE HINDU EDITORIAL ON THE KARNATAKA HIGH COURT'S HIJAB VERDICT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The [Karnataka High Court verdict upholding the ban on the wearing of head scarves by students](#) in educational institutions is wrong on many levels. 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. The Bench examined verses from the Koran to disagree with the students' claim that wearing the hijab was an essential practice in Islam and that, therefore, it was entitled to constitutional protection as part of religious freedom under Article 25. But is that the real issue? The court rejected the argument in favour of 'reasonable accommodation', by which a pluralist society may allow the classroom to reflect social diversity without undermining the sense of equality among students. Apparel norms may be needed in "qualified public spaces" such as schools. But there is no reason to not accommodate the choice of an additional piece of clothing that does not interfere with the prescribed uniform.

In rejecting the argument based on 'freedom of conscience', the court cited the absence of elaboration in the pleadings. The judgment's emphasis on the uniform as an inviolable symbol of equality and homogeneity seems to have overwhelmed any contention 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. If something is egregiously religious, it is more likely to be kept out of the campus, if uniformity and eliminating any 'sense of separateness' are the hallowed goals. The matter could have been disposed of without entering the theological domain. The 'essential religious practice' test itself is a pointless exercise, as the Supreme Court has established a nearly unattainable standard to determine it. Something is an essential practice only if its absence or removal has the effect of destroying the religion itself. Save for a few fundamentals, no religious practice will actually survive such scrutiny. It would be far better if a claim for Article 25 protection is tested against constitutional values such as equality, dignity and privacy, subject, of course, to health and public order. In any case, the 'essentiality' test should be jettisoned forever if only because it theoretically allows some defining theological concepts to override all else. What is abhorrent to constitutional principles will remain so irrespective of what is considered essential to a religion. Freedom of religion is important because freedoms are important, and not because religions are important.

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