D. No. 9098/2022 filed on 24.03.2022

IN THE SUPREME COURT OF INDIA

[S.C.R. Order XXI Rule 3(1)(a)]

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) No. 15399 OF 2022

[Arising out of the Impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge of the Hon'ble High Court of Karnataka, Bengaluru Bench in W.P. No. 2347 of 2022]

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF:-

MUNISA BUSHRA ABEDI & ORS. ... PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

WITH

IA No. 45708 of 2022

Application Seeking Permission to file Special Leave Petition

WITH

IA No. 45710 of 2022

Application Seeking Exemption from filing Certified Copy of the Impugned Order

WITH

IA No. 45711 of 2022

Application Seeking Exemption from Filing Official Translation

WITH

IA No. 45712 of 2022

Application Seeking Permission to File Additional Documents

PAPER BOOK

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR THE PETITONERS: M.R. SHAMSHAD

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No. OF 2022

IN THE MATTER OF:-

MUNISA BUSHRA ABEDI & ORS. ... PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is / are within time. Yes

2. The Petition is barred by time and there is delay of _____days in filing the same Impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge of the Hon'ble High Court of Karnataka, Bengaluru Bench in W.P. No. 2347 of 2022.

3. There is delay of _____ days in refilling the petition and petition for Condonation of _____ days delay in refilling has been filed.

New Delhi

Dated : 24.03.2022

BRANCH OFFICER

PROFORMA FOR FIRST LISTING

SECTION -IV-A

THE CASE PERTAINS TO (please tick/check the correct box):

➢	CENTRAL ACT: (TITLE):	N/A.
➢	SECTION	N/A.
➢	CENTRAL RULE: (TITLE)	N/A.
➢	RULE NO.(S):	N/A.
➢	STATE ACT:(TITLE)	N/A.
➢	SECTION:	N/A.
➢	STATE RULE : (TITLE) RULE NO(S):	N/A.
➢	IMPUGNED INTERIM ORDER :(DATE)	N/A.
➢	IMPUGNED JUDGMENT &FINAL ORDER/DECREE: (DATE)	15.03.2022
➢	HIGH COURT : (NAME)	HIGH COURT OF KARNATAKA, BENGALURU BENCH
➢	TRIBUNAL/AUTHORITY : (NAME)	N/A
➢	NAME OF JUDGES:	THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT THE HON'BLE MS. JUSTICE J. M. KHAZI
1.	NATURE OF MATTER:	CIVIL
2.	(A) PETITIONER/APPELLANT NO. 1	MUNISA BUSHRA ABEDI & ORS.
	(B) E-MAIL ID	SHAMSHADMR@GMAIL.COM
	(C) MOBILE PHONE NUMBER	9811125843
3.	(A) RESPONDENT NO. 1	STATE OF KARNATAKA & ORS.
	(B) E-MAIL ID	N/A.
	(C) MOBILE PHONE NUMBER	N/A.
4.	(A) MAIN CATEGORY CLASSIFICATION	1800 Ordinary Civil Matters
	(B) SUB CLASSIFICATION	1807 Others
5.	NOT TO BE LISTED BEFORE	N/A.
6.	(A) SIMILAR DISPOSED OFF MATTER WITH CITATION, IF ANY & CASE DETAILS	NO ANY SIMILAR MATTER DISPOSED OF.
	(B) SIMILAR PENDING MATTER WITH CASE DETAILS.	NO ANY SIMILAR MATTER IS PENDING.

7.	**CRIMINAL MATTERS**	N/A.
	(A) WHETHER ACCUSED/CONVICT HAS SURRENDERED	N/A.
	(B) FIR NO./DATE	N/A.
	(C) POLICE STATION	N/A.
	(D) SENTENCE AWARDED	N/A.
	(D) SENTENCE UNDERGONE	N/A.
8.	**LAND ACQUISITION MATTERS**	N/A.
	(A) DATE OF SECTION 4 NOTIFICATION	N/A.
	(B) DATE OF SECTION 6 NOTIFICATION	N/A.
	(C) DATE OF SECTION 17 NOTIFICATION	N/A.
9.	TAX MATTERS: STATE THE TAX EFFEC	N/A.
10.	SPECIAL CATEGORY (FIRST PETITIONER/APPELLANT ONLY):SENIOR CITIZEN >65 YEARS SC/ST WOMAN/CHILD DISABLED LEGAL AID CASE IN CUSTODY	N/A.
11.	VEHICLE NUMBER (IN CASE OF MOTOR ACCIDENT CLAIM MATTER):	N/A.

DATE: 24.03.2022

M R SHAMSHAD
AOR FOR PETITIONER(S)/APPELLANT(S)
REGISTRATION NO.**1758**
mrshamshadoffice@gmail.com
PH-9811125843

SYNOPSIS

The present Petition, with an application seeking permission to file Special Leave Petition, is being filed to challenge final judgment and order dated 15.03.2022 passed by a full bench of the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 2347 of 2022 and other connected petitions dismissing the writ petitions wherein Government Order of Karnataka had been challenged in relation to the right of Muslim girls practicing *Hijab* (head scarf) along with the school uniform while attending school / colleges (in short "impugned judgment"). The Petitioners claimed their Fundamental Right of freedom of conscience under Article 25(1) and freedom of expression under Article 19(1)(A) of the Constitution.

A Full Bench of the Hon'ble High Court, by a unanimous judgment, has dismissed all the petitions after framing and deciding four erroneously framed questions. The entire arguments and submissions by all the parties before the Hon'ble High Court revolved around the legality and effect of the Government Order issued by the State of Karnataka on 05.02.2022 which came into public domain subsequent to heckling by religious groups of the Muslim girls practicing *Hijab* while attending schools / colleges. Certain sporadic groups started heckling Muslim girl students practicing *Hijab* in December 2021 and when the heckling escalated on to a larger scale, the Government of Karnataka, issued the impugned Government Order dated 05.02.2022, making an issue of *direct discrimination* of selectively chosen class of girls by directly referring to "*headscarf or a garment covering the head*" not being violative of Article 25. The G.O. dated 05.02.2022 Is on the face of it blatantly partisan and communal in colour appeasing to hecklers demand. Ironically, the impugned G.O. dated 05.02.2022 was upheld as being in consonance with "constitutional secularism" ignoring that the same leads to discrimination against Muslims in General and Muslim girls in particular whose right to education is denied.

The impugned judgment of the Hon'ble High Court, while dismissing the petitions, has proceeded with erroneous reasons to address the issue.

Firstly, after conclusion of the hearing, the four issues wrongly framed by the High Court do not address the core issue viz. whether or not it is necessary to consider the doctrine of essential religious practice where the Petitions have asserted their Fundamental Rights under Article 25(1) and 19(1)(a) of the Constitution and consequentially it resulted into the verdict which deprives the constitutional rights of Muslim girls to practice *Hijab* along with the school uniform.

Secondly, while deciding the said issues, the High Court has laid too much emphasis on propositions which results into discrimination, exclusion and overall deprivation of a class from the mainstream public education system apart from the fact it seriously encroaches upon an individual's sacrosanct religious belief.

Thirdly, in order to lay too much emphasis on making the outlook of students "*uniform*", it states that "*the object of prescribing uniform will be defeated if there is non-uniformity in the matter of uniforms*"[XIV (ix) of the impugned judgment]. The idea of bringing uniformity cannot be placed on such a high pedestal which amounts to negation of other constitutional and basic rights of different groups which run al through our Constitution vein. The correct positions of diversity and basis of reasonable accommodation is reflected in a 2002 eleven Judges Bench judgment of this Hon'ble Court which states that "*The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6400 castes and sub-castes; eighteen major languages and 1600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when*

pieced together it goes to form a depiction with the different geographical features of India…" **[(2002) 8 SCC 481]**. The impugned judgment totally ignores the doctrine of proportionality.

Fourthly, it is a case of direct discrimination against Muslim girls. The High Court has created distinction between the principles laid down in the case of *Bijoe Emmanuel* by giving different contextual meaning (as a case of discipline) and on the other hand the practice of *Hijab*, is reflected as if it was a case disturbing the entire uniform that too when this minor variation (of covering the head like the Sikh's do) can be reasonably accommodated within the constitutional norm being part religious practices. Hence laying too much emphasis on bringing "uniformity" in the uniform without accommodating a person of one religion 'to cover her hair with a piece of cloth' is travesty of justice. The impugned judgment also ignores the doctrine of reasonable accommodation.

Fifthly, the determination of essentials under the principles of essential religious practice (ERP) had started with the idea of determination of essential religious practice that fell within the complete autonomy of the religious denomination in the matters of deciding as to what rites and ceremonies are essential according to tenets of a religion. Over a period of time, it appears that the Courts have completely taken upon themselves the task to determine what are the essentials and integrals of any and every religion practiced in our country for the purpose of regulatory control over them by the State authorities. The seminal judgment of this Hon'ble Court (7 judges) while laying the doctrine of essential religious practice in the context of Article 26(b) of the Constitution held that it is within the province of judicial review to find out whether a religious practice forms part of 'essentials of religion' only.

Sixthly, while dealing with the issue of protection of the fundamental rights, the impugned judgment has given completely erroneous

interpretation to the concept of intelligible differentia by grouping all the students in uniformity without acknowledging that such interpretation is not only against the prevailing practices in different parts of the country but also such accommodations are generally available for differently grouped students. It is completely irrational and against the objective of maintaining diversity as contemplated in the Constitution of India.

Seventhly, the impugned judgment ignores that post 2017, in two judgments, namely *K.S.Puttaswamy,* 9 Judges (2017) and *Kantaru Rajeevaru* 5 Judges (*Sabarimala* Review, 2019), there has been a positive change in the legal regime for upholding individual rights against the State in relation to rights flowing from Article 21 as well as under Article 25 and Article 19(1)(a). As far as *Sabarimala* judgment is concerned, the first five judges' judgment has been relied upon, which essentially relate to the issue of two genders where one was excluded from public space, but this judgment is pending consideration for Review before a 9 Judges Bench and this Hon'ble Court will consider the correctness of the essential religious practice doctrine and its application. The Hon'ble High Court of Karnataka has failed to appreciate the legal impact of these developments.

Eightly, the distinction of positive and negative right flowing from the principle laid down in the case of *Bijoe Emmanuel* to reject the writ petitions [in para XI (2)(i-iii)] is vague in its content amounting to selective exclusion of religious practice of Muslims. The *Bijoe Emmanuel* principle, a Sikh's turban, etc., are all examples of reasonable accommodation and not the example of burdening with a "uniform" way of dealing with the situation leading to the imposition of supposed homogeneity in a country of "*one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6400 castes and sub-castes; eighteen major languages and 1600 minor languages and dialects*".

Ninthly, when the Petitioners have claimed Fundamental Rights under several articles under Part III of the Constitution, one Fundamental Right does not denude the other but complement each other.

It is the fundamental principle of judicial determination that the deciding authority should focus on the material questions involved in the controversy before it. The Hon'ble High Court has failed to appreciate and give specific emphasis to the first two obvious questions; the said questions being wrongly framed to not reflect the issue that is of vital importance to public interest. The Hon'ble High Court has completely misdirected itself by framing totally erroneous questions which has distracted itself from the real issues arising out of the record before the Court in the matter. The four questions framed by the Hon'ble High Court at Karnataka in the impugned judgment and the same is not being repeated herein in the interest of brevity.

In relation to question No 1 as framed in the impugned judgment, it is submitted that the core question raised before the Hon'ble High Court was while determining the claim of the Petitioners of asserting the fundamental right of conscience under Article 25(1) of the Constitution, it is not necessary for the Petitioners to justify the same on the ground that their assertion is part of essential religious practice. Furthermore, the Petitioners had also claimed their right to wear *Hijab* as part of freedom of expression guaranteed under Article 19(1)(a) of the Constitution. Therefore, question No 1, as framed completely ignores the central issue about proving essential religious practice. Without prejudice to the contention of the petitioners that the Court lacked institutional capacity to decide essentials of religion, correct articulation of the issue, in the present facts, would have had as follows:

i. *Whether it is necessary to investigate essential religious practice in the matter as the Petitioners have claimed the fundamental rights guaranteed under Articles 25(1) and 19(1)(a) of the Constitution?*

ii. *If the answer to the aforesaid issue is in the affirmative, then whether the Petitioners have justified the practice of wearing Hijab in Government Pre-university College / Educational Institution in Karnataka as essential part of Islam?*

Turning to the second issue, the Hon'ble High Court of Karnataka totally misdirected itself by assuming that the Petitioners had ever objected to wearing of the school uniform. From the records before the Hon'ble High Court, it clearly shows that the contention raised by the Petitioners before the Hon'ble High Court was that they should be allowed to w ear a Headscarf / *Hijab* of the same color of the uniform so that they may remain consistent with their fundamental right of conscience and expression. In other words, the issue was whether the Petitioners are entitled, on the doctrine of proportionality and as a matter reasonable accommodation to wear *Hijab*. As the Hon'ble High Court did not maintain clarity while framing questions, the discussions on diverse constitutional principles have resulted into conceptual overlapping leading to i ndirect discrimination. The ground reality is that the Petitioners are compelled to remove their Hijab to a vail the right of education, at the cost of self - respect and dignity. It is submitted that correct question should have been as to 'Whether the Petitioners are entitled to wear *Hijab* on the doctrine of proportionality as a matter of reasonable accommodation to prevent the breach of the Petitioners' rights under Articles 25(1) and 19(1)(a) of the Constitution?'

As far as interpretation of scriptures in the holy Quran are concerned there is a consensus amongst religious scholars of all schools of thought namely, Hanafi, Maliki, Shafai and Hambli that practice of *Hijab* is '*wajib*' (mandatory), a set of obligations, which if not followed, he/she will commit "*sin*" or become a "*sinner*". *Wajib* has been kept in the "*First Degree*" of obedience. A detailed affidavit to this effect shall be filed in due course.

LIST OF DATES WITH EVENTS

December, 2021	Six Muslim girl students were denied permission to enter classrooms after they refused to r emove their hijab at the Pre-University College (P.U College) for Girls, Udupi.
January, 2022	A state-run college in Balagadi village in Karnataka's Chikkamagaluru district decided to ban hijabs.
February, 2022	As a result of the impunity enjoyed by the hooligans attacking and threatening young Muslim girls, the situation became worse. Hijab-clad Muslim girls were heckled by mobs of men wearing saffron scarves and shouting "*Jai Shri Ram*" outside educational institutions with complete impunity. ***Resultantly, more and more educational institutions started banning hijab in educational institutions:*** ▪ Muslim girl students were denied entry in the P.U College, Udupi. ▪ Visvesvaraya Government College in Bhadravathi town, Shivamogga district, Karnataka told girl students who wear hijab to remove it in the waiting rooms and attend classes without it. ▪ Muslim girl students were barred entry in hijab

	in Bhandarkars' Arts and Science College, Kundapura, Udupi. ▪ Twelve students wearing hijab were barred from entering the classrooms of Government PU College, Byndoor. ▪ Muslim girl students were barred entry in hijab in B. B. Hegde College, Kundapura. ▪ Muslim girl students were barred from entering the college premises in RN Shetty Composite PU College in Kundapur in Udupi district. ▪ Government PU College, Naunda imposed hijab ban on Muslim girl students. Sarasvati Vidyalaya PU College, Gangolli imposed hijab ban on Muslim girl students.
05.02.2022	The State Government issued a Government Order in exercise of its powers under Section 133 of the Karnataka Education Act, 1983, inter-alia directing the College Development Committees (CDCs) to prescribe uniforms to be worn by students emphasizing that wearing of a headscarf does not form a part of Article 25 rights. A true & translated copy of the Govt. Order dt. 05.02.2022 issued by the Govt. of Karnataka is Annexed herewith as marked as **ANNEXURE P-1 [Kindly see pages ..173...to ..178..].**

07.02.2022	The constitutional validity of G.O. dated 05.02.2022 was challenged before the Hon'ble High Court of Karnataka at Bengaluru in a batch of writ petitions including W.P. No. 2347 of 2022. After elaborate hearing on 08.02.2022 and 09.02.2022, the Ld. Single Judge referred the matter to be heard by a Larger Bench.
07.02.2022	Some Muslim girls were allowed entry in the classroom PU College, Kundapur but were made to sit separately from their non-Muslim classmates in segregation.
08.02.2022	A teenage Muslim girl was heckled by a huge mob of men chanting *"Jai Shri Ram"*.
09.02.2022	The Chief Minister of Karnataka directed all educational institutions to be shut for three days purportedly to maintain peace and harmony in the State.
09.02.2022	In Government First Grade College, Bapuji Nagar, Shimoga a saffron flag was hoisted in its premises. Stones were pelted on Muslim girl students.
09.02.2022	A document, which has scanned copies of the college's admission ledger with details of the students, went viral subjecting these young Muslim girl students to abusive calls, messages and harassment.

14.02.2022	Muslim students, teachers and staff were forced to take off their hijabs before entering educational institutions in Karnataka.
15.03.2022	A Full Bench of the Hon'ble High Court of Karnataka at Bengaluru dismissed the Writ Petitions including W.P. No. 2347 of 2022 wherein Government Order of Karnataka dated 05.03.2022 had been challenged in relation to right of female Muslim students to practice hijab alongwith the school uniform in educational institutions of the State of Karnataka vide its Judgment and Final Order.
24.03.2022	Hence, this Special Leave to Appeal.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

THE HON'BLE MR. RITU RAJ AWASTHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

THE HON'BLE MS. JUSTICE J. M. KHAZI

WRIT PETITION NO. 2347/2022 (GM-RES) C/w
WRIT PETITION NO. 2146/2022 (GM-RES),
WRIT PETITION NO. 2880/2022 (GM-RES),
WRIT PETITION NO. 3038/2022 (GM-RES),
WRIT PETITION NO. 3424/2022 (GM-RES-PIL),
WRIT PETITION NO. 4309/2022 (GM-RES),
WRIT PETITION NO. 4338/2022 (GM-RES-PIL)

IN W.P. NO.2347 OF 2022

BETWEEN:

1 . SMT RESHAM,
D/O K FARUK,
AGED ABOUT 17 YEARS,
THROUGH NEXT FRIEND
SRI MUBARAK,
S/O F FARUK,
AGED ABOUT 21 YEARS,
BOTH RESIDING AT NO.9-138,
PERAMPALI ROAD,
SANTHEKATTE,
SANTHOSH NAGARA, MANIPAL ROAD,
KUNJIBETTU POST,
UDUPI, KARNATAKA-576105.

… PETITIONER

(BY PROF. RAVIVARMA KUMAR, SENIOR ADVOCATE FOR
SHRI ABHISHEK JANARDHAN, SHRI ARNAV. A. BAGALWADI &
SHRI SHATHABISH SHIVANNA, ADVOCATES)

AND:

1 . STATE OF KARNATAKA,
REPRESENTED BY THE PRINCIPAL SECRETARY,
DEPARTMENT OF PRIMARY AND
SECONDARY EDUCATION

2 . GOVERNMENT PU COLLEGE FOR GIRLS
BEHIND SYNDICATE BANK
NEAR HARSHA STORE
UDUPI
KARNATAKA-576101
REPRESENTED BY ITS PRINCIPAL

3 . DISTRICT COMMISSIONER
UDUPI DISTRICT
MANIPAL
AGUMBE - UDUPI HIGHWAY
ESHWAR NAGAR
MANIPAL, KARNATAKA-576104.

4 . THE DIRECTOR
KARNATAKA PRE-UNIVERSITY BOARD
DEPARTMENT OF PRE-UNIVERSITY EDUCATION
KARNATAKA, 18TH CROSS ROAD,
SAMPIGE ROAD,
MALESWARAM,
BENGALURU-560012.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
SHRI ANANYA RAI, ADVOCATES FOR
RESPONDENTS 1 TO 3
SHRI DEEPAK NARAJJI, ADVOCATE IN IA 2/2022
SHRI KALEESWARAM RAJ & RAJITHA T.O. ADVOCATES IN
IA 3/2022 & IA 7/2022
SMT. THULASI K. RAJ & RAJITHA T.O ADVOCATES IN
IA 4/2022 & IA 6/2022
SHRI SUSHAL TIWARI, ADVOCATE IN IA 5/2022
SHRI BASAVAPRASAD KUNALE &
SHRI MOHAMMED AFEEF, ADVOCATES IN IA 8/2022
SHRI AKASH V.T. ADVOCATE IN IA 9/2022
SHRI R. KIRAN, ADVOCATE, IN IA 10/2022
SHRI AMRUTHESH N.P., ADVOCATE IN IA 11/2022

SHRI MOHAMMAD SHAKEEB, ADVOCATE IN IA 12/2022
Ms. MAITREYI KRISHNAN, ADVOCATE IN IA 13/2022
SHRI ADISH C. AGGARWAL, SENIOR ADVOCATE IN IA 14/2022, IA 18/2022, IA 19/2022 & IA 21/2022
SHRI GIRISH KUMAR. R., ADVOCATE, IN IA 15/2022
Smt. SHUBHASHINI. S.P. PARTY-IN-PERSON IN IA 16/2022
SHRI ROHAN KOTHARI, ADVOCATE IN IA 17/2022
SHRI RANGANATHA P.M., PARTY-IN-PERSON IN IA 20/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENT No. 2 NOT TO INTERFERE WITH THE PETITIONERS FUNDAMENTAL RIGHT TO PRACTICE THE ESSENTIAL PRACTICES OF HER RELIGION, INCLUDING WEARING OF *HIJAB* TO THE RESPONDENT No. 2 UNIVERSITY WHILE ATTENDING CLASSES AND ETC.

IN W.P. NO.2146 OF 2022

BETWEEN:

1 . AYESHA HAJEERA ALMAS
AGED ABOUT 18 YEARS,
D/O MUPTHI MOHAMMED ABRURUL,
STUDENT,
REPRESENTED BY HER MOTHER KARANI,
SADIYA BANU
W/O MUPTHI MOHAMMED ABRURUL,
AGED ABOUT 40 YEARS,
R/AT NO 2-82 C KAVRADY,
OPP TO URDU SCHOOL,
KANDLUR VTC KAVRADY,
P O KAVRADI,
KUNDAPURA UDUPI 576211

2 . RESHMA
AGE ABOUT 17 YEARS
D/O K FARUK
STUDENT
REPRESENTED BY HER MOTHER
RAHMATH W/O K FARUK
AGED ABOUT 45 YEARS
R/AT NO 9-138 PERAMPALLI ROAD
AMBAGILU SANTOSH NAGAR
SANTHEKATTE UDUPI 576105

3 . ALIYA ASSADI
AGED ABOUT 17 YEARS,

D/O AYUB ASSADI
STUDENT
REPRESENTED BY HER FATHER
AYUB ASSADI
S/O ABDUL RAHIM
AGED ABOUT 49 YEARS,
R/AT NO 4-2-66 ABIDA MANZIL
NAYARKERE ROAD KIDIYOOR
AMBALAPADI UDUPI 576103

4 . SHAFA
AGED ABOUT 17 YEARS,
D/O MOHAMMED SHAMEEM
STUDENT
REPRESENTED BY HER MOTHER
SHAHINA
W/O MOHAMMED SHAMEEM
AGED ABOUT 42 YEARS,
R/AT NO 3-73 MALLAR
GUJJI HOUSE MALLAR VILLAGE
MAJOOR KAUP UDUPI 576106

5 . MUSKAAN ZAINAB
AGED ABOUT 17 YEARS
D/O ABDUL SHUKUR
STUDENT
REPRESENTED BY HER FATHER
ABDUL SHUKUR
S/O D ISMAIL SAHEB
AGED ABOUT 46 YEARS
R/AT NO 9-109 B,
VADABHANDESHWARA MALPE UDUPI 576108

... PETITIONERS

(BY SHRI. SANJAY HEGDE, SENIOR ADVOCATE FOR
SHRI MOHAMMED TAHIR & SMT.TANVEER AHMED MIR,
ADVOCATES FOR PETITIONERS 1, 3 TO 5)

(V/O DT. 15.02.2022, PETITION IN RESPECT OF PETITIONER No.2 STANDS DISMISSED AS WITHDRAWN)

AND:

1 . CHIEF SECRETARY
PRIMARY AND HIGHER EDUCATION EDUCATION
DEPARTMENT
KARNATAKA GOVERNMENT MINISTRY
MS BUILDING BANGALORE 560001

2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012

3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101

4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101

5 . GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101
REP BY ITS PRINCIPAL

6 . RUDRE GOWDA
S/O NOT KNOWN
AGE ABOUT 55 YEARS,
OCCUPATION PRINCIPAL
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

7 . GANGADHAR SHARMA
AGE ABOUT 51
S/O NOT KNOWN
VICE PRINCIPAL OF GOVT COLLEGE
R/AT NO 21/69 ANRGHYA
7TH CROSS MADVANAGAR
ADIUDUPI UDUPI 576102

8 . DR YADAV
AGE ABOUT 56
S/O NOT KNOWN
HISTORY LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

9 . PRAKASH SHETTY
AGE ABOUT 45
S/O NOT KNOWN
POLITICAL SCIENCE SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

10 . DAYANANDA D
AGE ABOUT 50 YEARS,
S/O NOW KNOWN
SOCIOLOGY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

11 . RUDRAPPA
AGE ABOUT 51 YEARS
S/O NOT KNOWN
CHEMISTRY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

12 . SHALINI NAYAK
AGE ABOUT 48 YEARS,
W/O NOT KNOWN
BIOLOGY SUB LECTURER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

13 . CHAYA SHETTY
AGE ABOUT 40 YEARS,
W/O NOT KNOWN
PHYSICS SUB LECTURER
R/AT KUTPADY UDYAVAR UDUPI 574118

14 . DR USHA NAVEEN CHANDRA
AGE ABOUT 50 YEARS
W/O NOT KNOWN TEACHER
OFFICE AT GOVT PU COLLEGE FOR GIRLS
UDUPI CITY UDUPI 576101

15 . RAGHUPATHI BHAT
S/O LATE SRINIVAS BHARITHYA
AGE ABOUT 53 YEARS
LOCAL MLA AND
UNAUTHIRIZED CHAIRMAN OF CDMC
D NO 8-32 AT SHIVALLY VILLAGE PO
SHIVALLY UDUPI 576102

16 . YASHPAL ANAND SURANA
AGE ABOUT 50 YEARS
S/O NOT KNOWN
AUTHORIZED VICE CHAIRMAN OF CDMC
R/AT AJJARAKADU UDUPI H O UDUPI 576101

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 4.
SHRI S.S. NAGANAND, SENIOR ADVOCATE FOR
SHRI RAKESH S.N. & SHRI S. VIVEKANANDA, ADVOCATES FOR R-5 & R6.
SHRI RAGHAVENDRA SRIVATSA, ADVOCATE FOR R-7
SHRI GURU KRISHNA KUMAR, SENIOR ADVOCATE FOR
SHRI K. MOHAN KUMAR, ADVOCATE FOR R-8 & IN IA 2/2022
SHRI VENKATARAMANI, SENIOR ADVOCATE FOR
SHRI KASHYAP N. NAIK, ADVOCATE FOR R-12
SHRI VENKATARAMANI, SENIOR ADVOCATE FOR
SHRI VIKRAM PHADKE, ADVOCATE FOR R-13
SHRI NISHAN G.K. ADVOCATE FOR R-14
SHRI SAJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI MANU KULKARNI & SHRI VISHWAS N., ADVOCATES
FOR R-15
SHRI SAJAN POOVAYYA, SENIOR ADVOCATE FOR
SHRI MRINAL SHANKAR & SHRI N.S. SRIRAJ GOWDA, ADVOCATES FOR R-16
SHRI SHIRAJ QUARAISHI & SHRI RUDRAPPA P., ADVOCATES IN IA 6/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE THE WRIT OF MANDMAUS AND ORDER TO RESPONDENT NOS. 1 AND 2 TO INITIATE ENQUIRY AGAINST THE RESPONDENT NO.5 COLLEGE AND RESPONDENT NO.6 i.e., PRINCIPLE FOR VIOLATING INSTRUCTION ENUMERATED UNDER CHAPTER 6 HEADING OF IMPORTANT INFORMATION OF GUIDELINES OF PU DEPARTMENT FOR ACADEMIC YEAR OF 2021-22 SAME AT ANNEXURE-J FOR MAINTAINING UNIFORM IN THE P U COLLEGE AND ETC.

IN W.P. NO.2880 OF 2022

BETWEEN:

1 . MISS AISHAT SHIFA
D/O ZULFIHUKAR
AGED ABOUT 17 YEARS
SANTOSH NAGAR
HEMMADY POST
KUNDAPUR TALUK

UDUPI DISTRICT-576230
REP BY HER NATURAL GUARDIAN AND
FATHER MR ZULFHUKAR

2 . MISS THAIRIN BEGAM
D/O MOHAMMAD HUSSAIN
AGED ABOUT 18 YEARS
KAMPA KAVRADY
KANDLUR POST
KUNDAPURA
UDUPI DISTRICT-576201.

... PETITIONERS

(BY SHRI DEVADUTT KAMAT, SENIOR ADVOCATE FOR
SHRI MOHAMMAD NIYAZ, ADVOCATE FOR PETITIONERS)

AND:

1 . THE STATE OF KARNATAKA
VIDHANA SOUDHA
DR AMBEDKAR ROAD
BANGALORE - 560001
REPRESENTED BY ITS PRINCIPAL SECRETARY

2 . THE UNDER SECRETARY TO GOVERNMENT
DEPARTMENT OF EDUCATION
VIKAS SOUDHA
BANGALORE-560001.

3 . THE DIRECTORATE
DEPARTMENT OF PRE UNIVERSITY EDUCATION
BANGALORE-560009.

4 . THE DEPUTY COMMISSIONER
UDUPI DISTRICT
SHIVALLI RAJATADRI
MANIPAL
UDUPI-576104.

5 . THE PRINCIPAL
GOVERNMENT PU COLLEGE
KUNDAPURA
UDUPI DISTRICT-576201.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE

SHRI SUSHAL TIWARI,
SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 5
SHRI AIYAPPA, K.G. ADVOCATE IN IA 2/2022.
SHRI S. VIVEKANANDA, ADVOCATE IN IA 3/2022
SMT. SHIVANI SHETTY, ADVOCATE IN IA 4/2022.
SHRI SHASHANK SHEKAR JHA, ADVOCATE IN IA 5/2022)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED DIRECTION DATED 05.02.2022 VIDE ORDER No.EP 14 SHH 2022 PASSED BY THE RESPONDENT NO. 2 VIDE ANNEXURE-A AND ETC.

IN W.P. NO.3038 OF 2022

BETWEEN:

1 . MISS SHAHEENA
D/O ABDUL RAHEEM
AGED ABOUT 19 YEARS
SANTOSH NAGAR
HEMMADI POST, KUNDAPUR TALUK
UDUPI DISTRICT-576230.

2 . MISS SHIFA MINAZ
D/O NAYAZ AHAMMAD
AGED ABOUT 18 YEARS
SANTOSH NAGAR
HEMMADI POST,
KUNDAPUR TALUK
UDUPI DISTRICT-576230.

... PETITIONERS

(BY SHRI YUSUF MUCHCHALA, SENIOR ADVOCATE FOR
SHRI NAVEED AHMED, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
VIDHANA SOUDHA
DR AMBEDKAR ROAD
BANGALORE-560001
REPRESENTED BY ITS PRINCIPAL SECRETARY

2 . THE UNDER SECRETARY TO GOVERNMENT
DEPARTMENT OF EDUCATION
VIKAS SOUDHA

BANGALORE-560001.

3 . THE DIRECTORATE
DEPARTMENT OF PRE UNIVERSITY EDUCATION
BANGALORE-560009

4 . THE DEPUTY COMMISSIONER
UDUPI DISTRICT
SHIVALLI RAJATADRI MANIPAL
UDUPI-576104.

5 . THE PRINCIPAL
GOVERNMENT PU COLLEGE
KUNDAPURA
UDUPI DISTRICT-576201.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED DIRECTION DATED 05.02.2022 VIDE ORDER No.EP 14 SHH 2022 PASSED BY THE RESPONDENT NO. 2 VIDE ANNEXURE-A AND ETC.

IN W.P. NO.3424 OF 2022

BETWEEN:

DR VINOD G KULKARNI
M.D. (BOM) (PSYCHIATRY) D P M (BOM)
FIPS LLB (KSLU)
AGED ABOUT 70 YEARS,
OCCUPATION CONSULTING
NEUROPSYCHIATRIST ADVOCATE AND
SOCIAL ACTIVIST
R/O MANAS PRABHAT COLONY,
VIDYANAGAR, HUBBALLI -580 021
DIST DHARWAD KARNATAKA
CELL NO.9844089068

... PETITIONER

(BY DR. VINOD G. KULKARNI, PETITIONER -IN-PERSON)

AND:

1 . THE UNION OF INDIA
NEW DELHI
REPRESENTED BY
THE PRINCIPAL SECRETARY TO
MINISTRY OF HOME AFFAIRS
NORTH BLOCK NEW DELHI-110011
PH NO.01123092989
01123093031
Email: ishso@nic.in

2 . THE UNION OF INDIA
NEW DELHI
REPRESENTED BY
THE PRINCIPAL SECRETARY TO
MINISTRY OF LAW AND JUSTICE
4TH FLOOR A-WING SHASHI BAHAR
NEW DELHI--110011
PH NO.01123384205
Email: secylaw-dla@nic.in

3 . THE STATE OF KARNATAKA
BY ITS CHIEF SECRETARY
VIDHANA SOUDHA
BANGALURU-560001
Email: cs@karnataka.gov.in

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENT No.3.

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING FOR APPROPRIATE WRIT OR ORDER OR DIRECTIONS IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTIONS BE ISSUED TO THE RESPONDENTS TO DECLARE THAT ALL THE STUDENTS OF VARIOUS SCHOOLS AND COLLEGES IN KARNATAKA AND IN THE COUNTRY SHALL ATTEND THEIR INSTITUTIONS BY SPORTING THE STIPULATED UNIFORM AND ETC.

IN W.P. NO.4309 OF 2022

BETWEEN:

1 . MS ASLEENA HANIYA
D/O LATE MR UBEDULLAH
AGED ABOUT 18 YEARS
R/AT NO.1560 13TH MAIN ROAD HAL 3RD STAGE
KODIHALLI BANGALORE-560008
STUDYING AT NEW HORIZON COLLEGE
ADDRESS 3RD A CROSS 2ND A MAIN ROAD
NGEF LAYOUT, KASTURI NAGAR
BANGALORE-560043.

2 . MS ZUNAIRA AMBER T
AGED ABOUT 16 YEARS
MINOR REPRESENTED BY HER FATHER
MR TAJ AHMED
R/A NO.674 9TH A MAIN 1ST STAGE 1ST CROSS
CMH ROAD OPPOSITE KFC SIGNAL
INDIRANAGAR
BANGALORE-560038

STUDYING AT SRI CHAITANYA TECHNO SCHOOL
ADDRESS-PLOT NO.84/1 GARDEN HOUSE 5TH MAIN
SRR KALYAN MANTAPA
OMBR LAYOUT, BANASWADI
KASTURI NAGAR
BENGALURU-560043.

... PETITIONERS

(BY SHRI A.M. DAR, SENIOR ADVOCATE FOR
SHRI MUNEER AHMED, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY THE PRINCIPAL SECRETARY
DEPARTMENT OF PRIMARY AND SECONDARY DEPARTMENT
2ND GATE 6TH FLOOR M S BUILDING
DR AMBEDKAR VEEDHI
BENGALURU-560001.

2 . THE UNDER SECRETARY TO GOVERNMENT
DEPARTMENT OF EDUCATION
VIKAS SOUDHA
BANGALORE-560001.

3 . THE DIRECTOR
KARNATAKA PRE-UNIVERSITY BOARD
DEPARTMENT OF PRE-UNIVERSITY EDUCATION
KARNATAKA
NO.18TH CROSS ROAD SAMPIGE ROAD
MALESWARAM
BENGALURU-560012.

4 . THE COMMISSIONER
EDUCATION DEPARTMENT
GOVT OF KARNATAKA
N T ROAD
BANGALORE-560001.

5 . DIRECTOR GENERAL OF POLICE
STATE OF KARNATAKA
STATE POLICE HEADQUARTERS NO.2
NRUPATHUNGA ROAD
BANGALORE-560001.

6 . THE PRINCIPAL
REPRESENTED BY COLLEGE MANAGEMENT
NEW HORIZON COLLEGE
ADDRESS 3RD A CROSS 2ND A MAIN ROAD
NGEF LAYOUT, KASTURI NAGAR
BANGALORE-560043.

7 . THE PRINCIPAL
REPRESENTED BY SCHOOL MANAGEMENT
SRI CHAITANYA TECHNO SCHOOL
ADDRESS PLOT NO.84/1 GARDEN HOUSE
5TH MAIN SRR KALYAAN MANTAPA
OMBR LAYOUT, BANASWADI KASTURI NAGAR
BENGALURU-560043.

8 . THE INSPECTOR OF POLICE
RAMAMURTHYNAGAR POLICE STATION
KEMPE GOWDA UNDER PASS ROAD
NGEF LAYOUT
DOORAVANI NAGAR, BENGALURU
KARNATAKA-560016.

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENTS 1 TO 5 & 8)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED GOVERNMENT ORDER NO. EP 14 SHH 2022 DATED 05.02.2022, PRODUCED AS ANNEXURE-A AND ETC.

IN W.P. NO.4338 OF 2022

BETWEEN:

GHANSHYAM UPADHYAY
AGED 51 YEARS,
INDIAN INHABITANT,
OCCUPATION,
ADVOCATE HAVING HIS OFFICE AT 506,
ARCADIA PREMISES,
195, NCPA ROAD,
NARIMAN POINT,
MUMBAI-400021

… PETITIONER

(BY SHRI SUBHASH JHA & AMRUTHESH. N.P., ADVOCATES FOR PETITIONER)

AND:

1 . UNION OF INDIA
THROUGH THE MINISTRY OF HOME AFFAIRS,
NEW DELHI
REPRESENTED BY ITS SECRETARY

2 . STATE OF KARNATAKA
THROUGH THE HOME MINISTRY
VIDHANA SOUDHA,
BENGALURU-560001
REPRESENTED BY CHIEF SECRETARY

3 . THE PRINCIPAL SECRETARY
DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION,
VIDHAN SOUDHA,
BENGALURU-560001

4 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

(BY SHRI PRABHULING K. NAVADGI, ADVOCATE GENERAL A/W
SHRI. ARUNA SHYAM, ADDITIONAL ADVOCATE GENERAL
SHRI VINOD KUMAR, ADDITIONAL GOVERNMENT ADVOCATE
SHRI SUSHAL TIWARI, SHRI SURYANSHU PRIYADARSHI &
Ms. ANANYA RAI, ADVOCATES FOR RESPONDENT NOS. 2 & 3.

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE CBI/NIA AND/OR SUCH OTHER INVESTIGATION AGENCY AS THIS HONBLE COURT MAY DEEM FIT AND PROPER TO MAKE A THOROUGH INVESTIGATION WITH REGARD TO THE MASSIVE AGITATION TAKING PLACE ALL OVER THE COUNTRY AND SPIRALLING EFFECT AND IMPACT BEYOND THE GEOGRAPHICAL LIMITS OF INDIA IN THE AFTERMATH OF ISSUANCE OF GOVERNEMNT ORDER DTD.5.2.2022 ISSUED UNDER KARNATAKA EDUCATION ACT 1983 BY THE STATE OF KARNATAKA AND TO FIND OUT AS TO WHETHER THERE IS INVOLVEMENT OF RADICAL ISLAMIST ORGANIZATIONS SUCH AS PFI, SIO (STUDENT ISLAMIC ORGANIZATION) CFI (CAMPUS FRONT OF INDIA) JAMAAT-E-ISLAMI WHICH IS FUNDED BY SAUDI ARABIAN UNIVERSITES TO ISLAMISE INDIA AND TO ADVANCE RADICAL ISLAM IN INDIA AND SUBMIT THE REPORT OF SUCH ENQUIRY/INVESTIGATION TO THIS HON'BLE COURT WITHIN SUCH MEASURABLE PERIOD OF TIME AS THIS HONBLE COURT MAY DEEM FIT AND PROPER AND ETC.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE **CHIEF JUSTICE** PRONOUNCED THE FOLLOWING:

ORDER

This judgment, we desire to begin with what Sara Slininger from Centralia, Illinois concluded her well

researched article "*VEILED WOMEN: HIJAB, RELIGION, AND CULTURAL PRACTICE-2013*":

> *"The hijab's history…is a complex one, influenced by the intersection of religion and culture over time. While some women no doubt veil themselves because of pressure put on them by society, others do so by choice for many reasons. The veil appears on the surface to be a simple thing. That simplicity is deceiving, as the hijab represents the beliefs and practices of those who wear it or choose not to, and the understandings and misunderstandings of those who observe it being worn. Its complexity lies behind the veil."*

Three of these cases namely W.P.No.2347/2022, W.P.No.2146/2022 & W.P.No.2880/2022, were referred by one of us (Krishna S Dixit J.) vide order dated 09.02.2022 to consider if a larger Bench could be constituted to hear them. The Reference Order *inter alia* observed:

> *"All these matters essentially relate to proscription of hijab (headscarf) while prescribing the uniform for students who profess Islamic faith…The recent Government Order dated 05.02.2022 which arguably facilitates enforcement of this rule is also put in challenge. Whether wearing of hijab is a part of essential religious practice in Islam, is the jugular vein of all these matters…The said question along with other needs to be answered in the light of constitutional guarantees availing to the religious minorities. This Court after hearing the matter for some time is of a considered opinion that regard being had to enormous public importance of the questions involved, the batch of these cases may be heard by a Larger Bench, if Hon'ble the Chief Justice so decides in discretion…In the above circumstances, the Registry is directed to place the papers immediately at the hands of Hon'ble the Chief Justice for consideration…"*

Accordingly, this Special Bench came to be constituted the very same day vide Notification dated 09.02.2022 to hear these petitions, to which other companion cases too joined.

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

(i) In Writ Petition No. 2347/2022, filed by a petitioner – girl student on 31.01.2022, the 1st, 3rd & 4th respondents happen to be the State Government & its officials, and the 2nd respondent happens to be the Government Pre–University College for Girls, Udupi. The prayer is for a direction to the respondents to permit the petitioner to wear *hijab* (head – scarf) in the class room, since wearing it is a part of *'essential religious practice'* of Islam.

(ii) In Writ Petition No. 2146/2022 filed by a petitioner–girl student on 29.01.2022, the 1st, 3rd & 4th respondents happen to be the State Government & its officials and the 2nd respondent happens to be the Government Pre – University College for Girls, Udupi. The prayer column has the following script:

> *"1. Issue the **WRIT OF MANDAMUS** and order to respondent no 1 and 2 to initiate enquiry against the Respondent 5 college and Respondent no 6 i.e. Principal for violating instruction enumerated under Chapter 6 heading of "Important information" of*

*Guidelines of PU Department for academic year of 2021-22 same at **ANNEXURE J** for maintaining uniform in the PU college.,*

*2. Issue **WRIT OF MANDAMUS** to Respondent no 3 conduct enquiry against the Respondent no 6 to 14 for their Hostile approach towards the petitioners students.,*

*3. Issue **WRIT OF QUO WARRANTO** against the Respondent no 15 and 16 under which authority and law they interfering in the administration of Respondent no 5 school and promoting their political agenda. And,*

*4. **DECLARE** that the status quo referred in the letter dated 25/01/2022 at **ANNEXURE H** is with the consonance to the Department guidelines for the academic year 2021-22 same at **ANNEXURE J**..."*

(iii) In Writ Petition Nos.2880/2022, 3038/2022 & 4309/2022, petitioner – girl students seek to lay a challenge to the Government Order dated 05.02.2022. This order purportedly issued under section 133 read with sections 7(2) & (5) of the Karnataka Education Act, 1983 (hereafter '1983 Act') provides that, the students should compulsorily adhere to the dress code/uniform as follows:

a. in government schools, as prescribed by the government;

b. in private schools, as prescribed by the school management;

c. in Pre–University colleges that come within the jurisdiction of the Department of the Pre–University Education, as prescribed by the

College Development Committee or *College Supervision Committee; and*

d. wherever no dress code is prescribed, such attire that would accord with '*equality & integrity*' and would not disrupt the '*public order*'.

(iv) In Writ Petition No.3424/2022 (GM-RES-PIL), filed on 14.02.2022 (when hearing of other cases was half way through), petitioner – Dr.Vinod Kulkarni happens to be a consulting neuro – psychiatrist, advocate & social activist. The 1st and 2nd respondents happen to be the Central Government and the 3rd respondent happens to be the State Government. The first prayer is for a direction to the respondents "*to declare that all the students of various schools and colleges in Karnataka and in the country shall attend their institutions by sporting the stipulated uniform*" (*sic*). Second prayer reads "*To permit Female Muslim students to sport Hijab provided they wear the stipulated school uniform also" (sic).*

(v) In Writ Petition No.4338/2022 (GM-RES-PIL), filed on 25.02.2022 (when hearing of other cases was half way through), one Mr. Ghanasham Upadhyay is the petitioner. The 1st respondent is the Central

Government, 2nd & 3rd respondents happen to be the State Government & its Principal Secretary, Department of Primary & Secondary Education; the 4th & 5th respondents happen to be the Central Bureau of Investigation and National Investigation Agency. The gist of the lengthy and inarticulate prayers are that the Central Bureau of Investigation/National Investigation Agency or such other investigating agency should make a thorough investigation in the nationwide agitation after the issuance of the Government Order dated 05.02.2022 to ascertain the involvement of radical organizations such as Popular Front of India, Students Islamic Organization of India, Campus Front of India and *Jamaat*-e-*Islami*; to hold and declare that wearing of *hijab*, *burqa* or such "*other costumes by male or female Muslims and that sporting beard is not an integral part of essential religious practice of Islam"* and therefore, prescription of dress code is permissible. There are other incoherent and inapplicable prayers that do not merit mentioning here.

(vi) The State and its officials are represented by the learned Advocate General. The respondent–Colleges

and other respondents are represented by their respective advocates. The State has filed the Statement of Objections (this is adopted in all other matters) on 10.02.2022; other respondents have filed their Statements of Objections, as well. Some petitioners have filed their Rejoinder to the Statement of Objections. The respondents resist the Writ Petitions making submission in justification of the impugned order.

II. BROAD CONTENTIONS OF PETITIONERS:

(i) Petitioner – students profess and practice Islamic faith. Wearing of *hijab* (head – scarf) is an 'essential religious practice' in Islam, the same being a *Quranic* injunction vide *AMNAH BINT BASHEER vs. CENTRAL BOARD OF SECONDARY EDUCATION*[1] and *AJMAL KHAN vs. ELECTION COMMISSION OF INDIA*[2]. Neither the State Government nor the Schools can prescribe a dress code/uniform that does not permit the students to wear *hijab*. The action of the respondent – schools in insisting upon the removal of *hijab* in the educational institutions is impermissible, as being violative of the fundamental right guaranteed under Article 25 of the

[1] (2016) SCC OnLine Ker 41117
[2] (2006) SCC OnLine Mad 794

Constitution vide *SRI VENKATARAMANA DEVARU vs. STATE OF MYSORE*[3] and *INDIAN YOUNG LAWYERS ASSOCIATION vs. STATE OF KERALA*[4]

(ii) The impugned Government Order dated 05.02.2022 is structured with a wrong narrative that wearing of *hijab* is not a part of '*essential religious practice'* of Islam and therefore, prescribing or authorizing the prescription of dress code/uniform to the students consistent with the said narrative, is violative of their fundamental right to freedom of conscience and the right to practice their religious faith constitutionally guaranteed under Article 25 vide *BIJOE EMMANUAL vs. STATE OF KERALA*[5].

(iii) One's personal appearance or choice of dressing is a protected zone within the *'freedom of expression'* vide *NATIONAL LEGAL SERVICES AUTHORITY vs. UNION OF INDIA*[6]; What one wears and how one dresses is a matter of individual choice protected under *'privacy jurisprudence'* vide *K.S PUTTASWAMY vs. UNION OF INDIA*[7]. The Government Order and the action of the schools to the extent that they do

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[3] 1958 SCR 895
[4] (2019) 11 SCC 1
[5] (1986) 3 SCC 615
[6] (2014) 5 SCC 438
[7] (2017) 10 SCC 1

not permit the students to wear *hijab* in the institutions are repugnant to these fundamental rights constitutionally availing under Articles 19(1)(a) & 21.

(iv) The action of the State and the schools suffers from the violation of *'doctrine of proportionality'* inasmuch as in taking the extreme step of banning the *hijab* within the campus, the possible alternatives that pass the *'least restrictive test'* have not been explored vide *MODERN DENTAL COLLEGE vs. STATE OF MADHYA PRADESH*[8] and *MOHD. FARUK V. STATE OF MADHYA PRADESH*[9].

(v) The impugned Government Order suffers from *'manifest arbitrariness'* in terms of *SHAYARA BANO VS. UNION OF INDIA*[10]. The impugned Government Order suffers from a gross non-application of mind and a misdirection in law since it is founded on a wrong legal premise that the Apex Court in *AHSA RENJAN vs. STATE OF BIHAR*[11], the High Courts in Writ Petition(C) No. 35293/2018, *FATHIMA HUSSAIN vs. BHARATH EDUCATION SOCIETY*[12], *V.KAMALAMMA vs. DR. M.G.R. MEDICAL UNIVERSITY and SIR*

[8] (2016) 7 SCC 353
[9] (1969) 1 SCC 853
[10] (2017) 9 SCC 1
[11] (2017) 4 SCC 397
[12] AIR 2003 Bom 75

M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL STAFF ASSOCIATION vs. SIR M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL[13] have held that the wearing of *hijab* is not a part of essential religious practice of Islam when contrary is their demonstrable ratio.

(vi) The impugned Government Order is the result of acting under dictation and therefore, is vitiated on this ground of Administrative Law, going by the admission of learned Advocate General that the draftsmen of this order has gone too far and the draftsman exceeded the brief vide *ORIENT PAPER MILLS LTD vs. UNION OF INDIA*[14] and *MANOHAR LAL vs. UGRASEN*[15]. Even otherwise, the grounds on which the said government order is structured being unsustainable, it has to go and that supportive grounds cannot be supplied *de hors* the order vide *MOHINDER SINGH GILL vs. CHIEF ELECTION COMMISSIONER.*[16]

(vii) The Government is yet to take a final decision with regard to prescription of uniform in the Pre-University

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[13] (2004) 2 MLJ 653
[14] (1970) 3 SCC 76
[15] (2010) 11 SCC 557
[16] AIR 1978 SC 851

Colleges and a High Level Committee has to be constituted for that purpose. The *Kendriya Vidyalayas* under the control of the Central Government too permit the wearing of *hijab* (head-scarf). There is no reason why similar practise should not be permitted in other institutions.

(viii) The Karnataka Education Act, 1983 or the Rules promulgated thereunder do not authorize prescription of any dress code/uniform at all. Prescribing dress code in a school is a matter of *'police power'* which does not avail either to the government or to the schools in the absence of statutory enablement. Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc) Rules, 1995 (hereafter '1995 Curricula Rules') to the extent it provides for prescription of uniform is incompetent and therefore, nothing can be tapped from it.

(ix) The *College Betterment (Development) Committee* constituted under Government Circular dated 31.1.2014 is only an extra-legal authority and therefore, its prescription of dress code/uniform for the students is without jurisdiction. The prospectus issued by the Education Department prohibits prescription of any uniform. The composition & complexion of

College Betterment (Development) Committee under the Government Circular dated 31.1.2014 *inter alia* compromising of local Member of Legislative Assembly as its President and his nominee as the Vice – President would unjustifiably politicize the educational environment and thereby, pollute the tender minds. The Pre-University institutions are expected to be independent and safe spaces.

(x) The *College Betterment (Development) Committee* which *inter alia* comprises of the local Member of Legislative Assembly vide the Government Circular dated 31.1.2014, apart from being unauthorized, is violative of *'doctrine of separation of powers'* which is a basic feature of our Constitution vide *KESAVANANDA BHARATI vs. STATE OF KERALA*[17] read with *RAI SAHIB RAM JAWAYA KAPUR vs. STATE OF PUNJAB*[18], and *STATE OF WEST BENGAL vs. COMMITTEE FOR PROTECTION OF DEMOCRACTIC RIGHTS*[19] also infringes upon of the principle of accountability vide *BHIM SINGH vs. UNION OF INDIA*[20]. This committee has no power to prescribe school uniforms.

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[17] AIR 1973 SC 1461
[18] AIR 1955 SC 549
[19] (2010) 3 SCC 571
[20] (2010) 5 SCC 538

(xi) The ground of '*public order*' (*sārvajanika suvyavasthe*) on which the impugned Government Order is founded is un-understandable; this expression is construed with reference to '*public disorder*' and therefore, the State action is bad vide *COMMISSIONER OF POLICE vs. C. ANITA*[21]. If wearing of *hijab* disrupts the public order, the State should take action against those responsible for such disruption and not ban the wearing of *hijab*. Such a duty is cast on the State in view of a positive duty vide *GULAM ABBAS vs. STATE OF UTTAR PRADESH*[22], *INDIBILY CREATIVE PVT. LTD vs. STATE OF WEST BENGAL*[23]. In addition such a right cannot be curtailed based on the actions of the disrupters, i.e., the *'hecklers don't get the veto'* vide *TERMINIELLO vs. CHICAGO*[24], *BROWN vs. LOUISIANA*[25], *TINKER vs. DES MOINES*[26], which view is affirmed by the Apex Court in *UNION OF INDIA vs. K.M.SHANKARAPPA*[27]. This duty is made more onerous because of positive secularism contemplated by the

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[21] (2004) 7 SCC 467
[22] (1982) 1 SCC 71
[23] (2020) 12 SCC 436
[24] 337 U.S. 1 (1949)
[25] 383 U.S. 131 (1966)
[26] 393 U.S. 503 (1969)
[27] (2001) 1 SCC 582

Constitution vide *STATE OF KARNATAKA vs. PRAVEEN BHAI THOGADIA (DR.)*[28], *ARUNA ROY vs. UNION OF INDIA*[29].

(xii) Proscribing *hijab* in the educational institutions apart from offending women's autonomy is violative of Article 14 inasmuch as the same amounts to *'gender–based'* discrimination which Article 15 does not permit. It also violates right to education since entry of students with *hijab* to the institution is interdicted. The government and the schools should promote plurality, not uniformity or homogeneity but heterogeneity in all aspects of lives as opposed to conformity and homogeneity consistent with the constitutional spirit of diversity and inclusiveness vide *VALSAMMA PAUL (MRS) vs. COCHIN UNIVERSITY*[30], *SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN vs. UNION OF INDIA*[31] and *NAVTEJ SINGH JOHAR vs. UNION OF INDIA*[32].

(xiii) The action of the State and the school authorities is in derogation of International Conventions that provide for protective discrimination of women's rights vide *UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)*, *CONVENTION OF*

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[28] (2004) 4 SCC 684
[29] (2002) 7 SCC 368
[30] (1996) 3 SCC 545
[31] (2012) 6 SCC 1
[32] AIR 2018 SC 4321

ELIMINATION ON ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1981), INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS (1966), UNITED NATIONS CONVENTION ON RIGHTS OF CHILD (1989). To provide for a holistic and comparative view of the *'principle of reasonable accommodation'* as facets of '*substantive–equality'* under Article 14 & 15 vide *LT. COL. NITISHA vs. UNION OF INDIA*[33]; petitioners referred to the following decisions of foreign jurisdictions in addition to native ones: *MEC FOR EDUCATION: KWAZULU – NATAL vs. NAVANEETHUM PILLAY*[34], *CHRISTIAN EDUCATION SOUTH AFRICA vs. MINISTER OF EDUCATION*[35], *R. vs. VIDEOFLEX*[36], *BALVIR SSINGH MULTANI vs. COMMISSION SCOLAIRE MARGUERITE - BOURGEOYS*[37], *ANTONIE vs. GOVERNING BODY, SETTLERS HIGH SCHOOL*[38] and *MOHAMMAD FUGICHA vs. METHODIST CHRUCH IN KENYA*[39].

(xiv) In W.P.No.2146/2022, the school teachers have been acting in derogation of the Brochure of the Education

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[33] (2021) SCC OnLine SC 261
[34] [CCT51/06 [2007] ZACC 21]
[35] [2000] ZACC 2
[36] 1948 2D 395
[37] (2006) SCC OnLine Can SC 6
[38] 2002 (4) SA 738 (T)
[39] (2016) SCC OnLine Kenya 3023

Department which prohibits prescribing any kind of uniform inasmuch as they are forcing the students to remove *hijab* and therefore, disciplinary action should be taken against them. The respondents – 15 & 16 have no legal authority to be on the College Betterment (Development) Committee and therefore, they are liable to be removed by issuing a Writ of *Quo Warranto*.

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

Respondents i.e., State, institutions and teachers per contra contend that:

(i) The fact matrix emerging from the petition averments lacks the material particulars as to the wearing of *hijab* being in practice at any point of time; no evidentiary material worth mentioning is loaded to the record of the case, even in respect of the scanty averments in the petition. Since how long, the students have been wearing *hijab* invariably has not been pleaded. At no point of time these students did wear any head scarf not only in the class room but also in the institution. Even otherwise, whatever rights petitioners claim under Article 25 of the Constitution, are not absolute. They are susceptible to reasonable restriction and regulation by

law. In any circumstance, the wearing *hijab* arguably as being part of *'essential religious practice'* in Islam cannot be claimed by the students as a matter of right in all-girl-institutions like the respondent PU College, Udupi.

(ii) Wearing *hijab* or head scarf is not a part of '*essential religious practice'* of Islamic faith; the Holy Quran does not contain any such injunctions; the Apex Court has laid down the principles for determining what is an '*essential religious practice'* vide *COMMISSIONER HINDU RELIGIOUS ENDOWMENTS MADRAS vs. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT*[40], *DURGAH COMMITTEE, AJMER vs. SYED HUSSAIN ALI*[41], *M. ISMAIL FARUQUI vs. UNION OF INDIA*[42], *A.S. NARAYANA DEEKSHITULU vs. STATE OF ANDHRA PRADESH*[43], *JAVED vs. STATE OF HARYANA*[44], *COMMISSIONER OF POLICE vs. ACHARYA JAGADISHWARANANDA AVADHUTA*[45], *AJMAL KHAN vs. THE ELECTION COMMISSION*[46], *SHARAYA BANO, INDIAN YOUNG LAWYERS ASSOCIATION*. Wearing *hijab* at the most may be a

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[40] AIR 1954 SC 282
[41] AIR 1961 SC 1402
[42] (1994) 4 SCC 360
[43] (1996) 9 SCC 611
[44] (2003) 8 SCC 369
[45] (2004) 12 SCC 770
[46] 2006 SCC OnLine Mad 794

'cultural' practice which has nothing to do with religion. Culture and religion are different from each other.

(iii) The educational institutions of the kind being '*qualified public places*', the students have to adhere to the campus discipline and dress code as lawfully prescribed since years i.e., as early as 2004. The parents have in the admission forms of their wards (minor students) have signified their consent to such adherence. All the students had been accordingly adhering to the same all through. It is only in the recent past; quite a few students have raked up this issue after being brainwashed by some fundamentalist Muslim organizations like Popular Front of India, Campus Front of India, *Jamaat*-e-*Islami*, and Students Islamic Organization of India. An FIR is also registered. Police papers are furnished to the court in a sealed cover since investigation is half way through. Otherwise, the students and parents of the Muslim community do not have any issue at all. Therefore, they cannot now turn around and contend or act to the contrary.

(iv) The power to prescribe school uniform is inherent in the concept of school education itself. There is sufficient

indication of the same in the 1983 Act and the 1995 Curricula Rules. It is wrong to argue that prescription of uniform is a '*police power*' and that unless the Statute gives the same; there cannot be any prescription of dress code for the students. The so called '*prospectus*' allegedly issued by the Education Department prohibiting prescription of uniform/dress code in the schools does not have any authenticity nor legal efficacy.

(v) The Government Order dated 05.02.2022 is compliant with the scheme of the 1983 Act, which provides for '*cultivating a scientific and secular outlook through education'* and this G.O. has been issued under Section 133 read with Sections 7(1)(i), 7(2)(g)(v) of the Act and Rule 11 of the 1995 Curricula Rules; this order only authorizes the prescription of dress code by the institutions on their own and it as such, does not prescribe any. These Sections and the Rule intend to give effect to constitutional secularism and to the ideals that animate Articles 39(f) & 51(A). The children have to develop in a healthy manner and in conditions of *'freedom and dignity'*; the school has to promote the spirit of *harmony and common brotherhood* transcending *religious, linguistic, regional or sectional diversities*. The practices that

are derogatory to the dignity of women have to be renounced. All this would help nation building. This view is reflected in the decision of Apex Court in *MOHD. AHMED KHAN vs. SHAH BANO BEGUM*[47].

(vi) The Government Order dated 5.02.2022 came to be issued in the backdrop of social unrest and agitations within the educational institutions and without engineered by Popular Front of India, Students Islamic Organization of India, Campus Front of India & *Jamaat*-e-*Islami.* The action of the institutions in insisting adherence to uniforms is in the interest of maintaining *'peace & tranquility'*. The term '*public order*' (*sārvajanika suvyavasthe*) employed in the Government Order has contextual meaning that keeps away from the same expression employed in Article 19(2) of the Constitution.

(vii) The '*College Betterment (Development) Committees'* have been established vide Government Circular dated 31.01.2014 consistent with the object of 1983 Act and 1995 Curricula Rules. For about eight years or so, it has been in place with not even a little finger being raised by anyone nor is there any complaint against the composition or functioning of these Committees. This Circular is not put in challenge in

[47] (1985) 2 SCC 556

any of the Writ Petitions. These autonomous Committees have been given power to prescribe uniforms/dress code vide *SIR M. VENKATA SUBBARAO & ASHA RENJAN supra, FATHIMA THASNEEM vs. STATE OF KERALA*[48] and *JANE SATHYA vs. MEENAKSHI SUNDARAM ENGINEERING COLLEGE*[49]. The Constitution does not prohibit elected representatives of the people being made a part of such committees.

(viii) The right to wear *hijab* if claimed under Article 19(1)(a), the provisions of Article 25 are not invocable inasmuch as the simultaneous claims made under these two provisions are not only mutually exclusive but denuding of each other. In addition, be it the freedom of conscience, be it the right to practise religion, be it the right to expression or be it the right to privacy, all they are not absolute rights and therefore, are susceptible to reasonable restriction or regulation by law, of course subject to the riders prescribed vide *CHINTAMAN RAO vs. STATE OF MADHYA PRADESH*[50] and *MOHD. FARUK V. STATE OF MADHYA PRADESH, supra.*

(ix) Permitting the petitioner – students to wear *hijab* (head – scarf) would offend the tenets of human dignity

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[48] 2018 SCC OnLine Ker 5267
[49] 2012 SCC OnLine Mad 2607
[50] AIR 1951 SC 118

inasmuch as, the practice robs away the individual choice of Muslim women; the so called religious practice if claimed as a matter of right, the claimant has to *prima facie* satisfy its *constitutional morality* vide *K.S PUTTAWAMY supra*, *INDIAN YOUNG LAWYERS ASSOCIATION supra*. There is a big shift in the judicial approach to the very idea of essential religious practice in Islamic faith since the decision in *SHAYARA BANO*, supra, which the case of the petitioners overlooks. To be an essential religious practice that merits protection under Article 25, it has to be shown to be essential to the religion concerned, in the sense that if the practice is renounced, the religion in question ceases to be the religion.

(x) Children studying in schools are placed under the care and supervision of the authorities and teachers of the institution; therefore, they have '*parental and quasi – parental*' authority over the school children. This apart, schools are '*qualified public places*' and therefore exclusion of religious symbols is justified in light of 1995 Curricula Regulation that are premised on the objective of secular education, uniformity and standardization vide *ADI SAIVA SIVACHARIYARGAL NALA*

SANGAM vs. STATE OF TAMIL NADU[51], *S.R. BOMMAI vs. UNION OF INDIA*[52], *S.K. MOHD. RAFIQUE vs. CONTAI RAHAMANIA HIGH MADRASAH*[53] and *CHURCH OF GOD (FULL GOSPEL) IN INDIA vs. K.K.R MAJECTIC COLONY WELFARE ASSCOIATION*[54]. What is prescribed in *Kendriya Vidyalayas* as school uniform is not relevant for the State to decide on the question of school uniform/dress code in other institutions. This apart there is absolutely no violation of right to education in any sense.

(xi) Petitioner-students in Writ Petition No.2146/2022 are absolutely not justified in seeking a disciplinary enquiry against some teachers of the respondent college and removal of some others from their position by issuing a Writ of *Quo Warranto*. As already mentioned above, the so called prospectus/instructions allegedly issued by the Education Department prohibiting the dress code in the colleges cannot be the basis for the issuance of coercive direction for refraining the enforcement of dress code. The authenticity and efficacy of the prospectus/instructions are not established.

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[51] (2016) 2 SCC 725
[52] (1994) 3 SCC 1
[53] (2020) 6 SCC 689
[54] (2000) 7 SCC 282

In support of their contention and to provide for a holistic and comparative view, the respondents have referred to the following decisions of foreign jurisdictions, in addition to native ones: *LEYLA SAHIN vs. TURKEY*[55]*, WABE and MH MÜLLER HANDEL*[56]*, REGINA vs. GOVERNORS OF DENBIGH HIGH SCHOOL*[57] and *UNITED STATES vs. O'BRIEN*[58] and *KOSE vs. TURKEY*[59]*.*

IV. All these cases broadly involving common questions of law & facts are heard together on day to day basis with the concurrence of the Bar. There were a few Public Interest Litigations espousing or opposing the causes involved in these cases. However, we decline to grant indulgence in them by separate orders. Similarly, we decline to entertain applications for impleadment and intervention in these cases, although we have adverted to the written submissions/supplements filed by the respective applicants.

Having heard the learned counsel appearing for the parties and having perused the papers on record, we

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55 Application No. 44774/98
56 C-804/18 and C-341/19 dated 15th July 2021
57 [2006] 2 WLR 719
58 391 US 367 (1968)
59 Application No. 26625/02

have broadly framed the following questions for consideration:

SL.NO.	QUESTIONS FOR CONSIDERATION
1.	Whether wearing *hijab*/head-scarf is a part of *'essential religious practice'* in Islamic Faith protected under Article 25 of the Constitution?
2.	Whether prescription of school uniform is not legally permissible, as being violative of petitioners Fundamental Rights *inter alia* guaranteed under Articles, 19(1)(a), (i.e., *freedom of expression*) and 21, (i.e., *privacy*) of the Constitution?
3.	Whether the Government Order dated 05.02.2022 apart from being incompetent is issued without application of mind and further is manifestly arbitrary and therefore, violates Articles 14 & 15 of the Constitution?
4.	Whether any case is made out in W.P.No.2146/2022 for issuance of a direction for initiating disciplinary enquiry against respondent Nos.6 to 14 and for issuance of a Writ of *Quo Warranto* against respondent Nos.15 & 16?

V. SECULARISM AND FREEDOM OF CONSCIENCE & RELIGION UNDER OUR CONSTITUTION:

Since both the sides in their submissions emphasized on Secularism and freedom of conscience & right to religion, we need to concisely treat them in a structured way. Such a need is amplified even for adjudging the validity of the Government Order dated 05.02.2022, which according to the State gives effect to and operationalizes constitutional Secularism.

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

(i) '*India, that is Bharat*' (Article 1), since centuries, has been the sanctuary for several religions, faiths & cultures that have prosperously co-existed, regardless of the ebb & flow of political regimes. Chief Justice S.R. Das in *IN RE: KERALA EDUCATION BILL*[60] made the following observation lauding the greatness of our heritage:

> "*…Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:*
>
> *"None shall be turned away From the shore of this vast sea of humanity that is India" (Poems by Rabindranath Tagore)…"*

In *S.R.BOMMAI*, *supra* at paragraph 25, the Hon'ble Supreme Court of India observed: "*India can rightly be described as the world's most heterogeneous society. It is a country with a rich heritage. Several races have converged in this sub-continent. They brought with them their own cultures, languages, religions and customs. These diversities threw up*

[60] (1959) 1 SCR 996

their own problems but the early leadership showed wisdom and sagacity in tackling them by preaching the philosophy of accommodation and tolerance…"

(ii) The 42nd Amendment (1976) introduced the word '*secular*' to the Preamble when our Constitution already had such an animating character *ab inceptio*. Whatever be the variants of its meaning, secularism has been a *Basic Feature* of our polity vide *KESAVANANDA*, *supra* even before this Amendment. The ethos of Indian secularism may not be approximated to the idea of *separation between Church and State* as envisaged under American Constitution post First Amendment (1791). Our Constitution does not enact Karl Marx's structural-functionalist view '*Religion is the opium of masses*' (1844). H.M.SEERVAI, an acclaimed jurist of yester decades in his *magnum opus* 'Constitutional Law of India, Fourth Edition, Tripathi at page 1259*, writes: 'India is a secular but not an anti-religious State, for our Constitution guarantees the freedom of conscience and religion. Articles 27 and 28 emphasize the secular nature of the State…'* Indian secularism oscillates between s*ārva dharma samabhāava and dharma nirapekshata.* The Apex Court in *INDIRA NEHRU*

GANDHI vs. RAJ NARAIN[61] explained the basic feature of secularism to mean that *the State shall have no religion of its own and all persons shall be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate religion.* Since ages, India is a secular country. For India, there is no official religion, inasmuch as it is not a theocratic State. The State does not extend patronage to any particular religion and thus, it maintains neutrality in the sense that it does not discriminate anyone on the basis of religious identities *per se*. Ours being a 'positive secularism' vide *PRAVEEN BHAI THOGADIA supra*, is not antithesis of religious devoutness but comprises in religious tolerance. It is pertinent to mention here that Article 51A(e) of our Constitution imposes a Fundamental Duty on every citizen '*to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women*'. It is relevant to mention here itself that this constitutional duty to transcend the sectional diversities of religion finds its utterance in section 7(2)(v) & (vi) of the 1983 Act which empowers the State

[61] (1975) Supp. SCC 1

Government to prescribe the curricula that would amongst other inculcate the sense of this duty.

VI. CONSTITUTIONAL RIGHT TO RELIGION AND RESTRICTIONS THEREON:

(i) Whichever be the society, '*you can never separate social life from religious life*' said Alladi Krishnaswami Aiyar during debates on Fundamental Rights in the Advisory Committee (April 1947). The judicial pronouncements in America and Australia coupled with freedom of religion guaranteed in the Constitutions of several other countries have substantially shaped the making of *inter alia* Articles 25 & 26 of our Constitution. Article 25(1) & (2) read as under:

> *"25. Freedom of conscience and free profession, practice and propagation of religion*
>
> *(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion*
>
> *(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -*
>
> *(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;*
>
> *(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.*
>
> *Explanation I - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.*

> *Explanation II - In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."*

This Article guarantees that every person in India shall have the freedom of conscience and also the right to profess practise and propagate religion. It is relevant to mention that unlike Article 29, this article does not mention *'culture'* as such, which arguably may share a common border with religion. We shall be touching the cultural aspect of *hijab,* later. We do not propose to discuss about this as such. The introduction of word 'conscience' was at the instance of Dr. B.R.Ambedkar, who in his wisdom could visualize persons who do not profess any religion or faith, like Chāarvāakas, atheists & agnostics. Professor UPENDRA BAXI in *'THE FUTURE OF HUMAN RIGHTS' (Oxford), 3rd Edition, 2008, at page 149* says*:*

> *"…Under assemblage of human rights, individual human beings may choose atheism or agnosticism, or they may make choices to belong to fundamental faith communities. Conscientious practices of freedom of conscience enable exit through conversion from traditions of religion acquired initially by the accident of birth or by the revision of choice of faith, which may thus never be made irrevocably once for all…"*

BIJOE EMMANUEL, supra operationalized the freedom of conscience intricately mixed with a great measure of right to religion. An acclaimed jurist DR. DURGA DAS BASU in his '*Commentary on the Constitution of India*', 8th Edition at page 3459 writes: "*It is next to be noted that the expression 'freedom of conscience' stands in juxtaposition to the words "right freely to profess, practise and propagate religion". If these two parts of Art. 25(1) are read together, it would appear, by the expression 'freedom of conscience' reference is made to the mental process of belief or non-belief, while profession, practice and propagation refer to external action in pursuance of the mental idea or concept of the person...It is also to be noted that the freedom of conscience or belief is, by its nature, absolute, it would become subject to State regulation, in India as in the U.S.A. as soon as it is externalized i.e., when such belief is reflected into action which must necessarily affect other people...*"

(ii) There is no definition of religion or conscience in our constitution. What the American Supreme Court in *DAVIS V. BEASON*[62] observed assumes relevance: "*...the term religion has reference to one's views of his relation to his Creator and to*

[62] (1889) 133 US 333

the obligation they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter". **WILL DURANT**, a great American historian (1885-1981) in his Magnum Opus *'THE STORY OF CIVILIZATION',* Volume 1 entitled *'OUR ORIENTAL HERITAGE'* at pages 68 & 69 writes:

> *'The priest did not create religion, he merely used it, as a statesman uses the impulses and customs of mankind; religion arises not out of sacerdotal invention or chicanery, but out of the persistent wonder, fear, insecurity, hopefulness and loneliness of men…" The priest did harm by tolerating superstition and monopolizing certain forms of knowledge…Religion supports morality by two means chiefly: myth and tabu. Myth creates the supernatural creed through which celestial sanctions may be given to forms of conduct socially (or sacerdotally) desirable; heavenly hopes and terrors inspire the individual to put up with restraints placed upon him by his masters and his group. Man is not naturally obedient, gentle, or chaste; and next to that ancient compulsion which finally generates conscience, nothing so quietly and continuously conduces to these uncongenial virtues as the fear of the gods…'.*

In *NARAYANAN NAMBUDRIPAD vs. MADRAS*[63], Venkatarama Aiyar J. quoted the following observations of Leathem C.J in

[63] AIR 1954 MAD 385

ADELAIDE CO. OF JEHOVAH'S WITNESSES INC. V. COMMONWEALTH[64]:

> *"It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world. There are those who regard religion as consisting principally in a system of beliefs or statement of doctrine. So viewed religion may be either true or false. Others are more inclined to regard religion as prescribing a code of conduct. So viewed a religion may be good or bad. There are others who pay greater attention to religion as involving some prescribed form of ritual or religious observance. Many religious conflicts have been concerned with matters of ritual and observance…"*

In *SHIRUR MUTT* supra, 'religion' has been given the widest possible meaning. The English word 'religion' has different shades and colours. It does not fully convey the Indian concept of religion i.e., 'dharma' which has a very wide meaning, one being 'moral values or ethics' on which the life is naturally regulated. The Apex Court referring to the aforesaid foreign decision observed:

> *"…We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon article 44(2) of the Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution. Religion is certainly a matter of faith with individuals or communities*

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[64] (1943) 67 C.L.R. 116, 123

and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress…"

(iii) It is relevant to quote what BERTRAND RUSSELL in his '*EDUCATION AND SOCIAL ORDER*' (1932) at page 69 wrote: '*Religion is a complex phenomenon, having both an individual and a social aspect …*t*hroughout history, increase of civilization has been correlated with decrease of religiosity.'* The free exercise of religion under Article 25 is subject to restrictions imposed by the State on the grounds of public order, morality and health. Further it is made subordinate to other provisions of Part III. Article 25(2)(a) reserves the power of State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice. Article 25(2)(b) empowers the State to legislate for social welfare and reform even though by so doing, it might interfere with religious practice.

H.M.SEERVAI[65] at paragraph 11.35, page 1274, states: "*It has been rightly held by Justice Venkatarama Aiyar for a very strong Constitution Bench that Article 25(2) which provides for social and economic reform is, on a plain reading, not limited to individual rights. So, by an express provision, the freedom of religion does not exclude social and economic reform although the scope of social reform, would require to be defined.*" This apart, Article 25(1) deals with rights of individuals whereas Article 25(2) is much wider in its content and has reference to communities. This Article, it is significant to note, begins with the expression '*Subject to…*'. Limitations imposed on religious practices on the ground of public order, morality and health having already been saved by the opening words of Article 25(1), the saving would cover beliefs and practices even though considered essential or vital by those professing the religion. The text & context of this Article juxtaposed with other unmistakably show that the freedom guaranteed by this provision in terms of sanctity, are placed on comparatively a lower pedestal by the Makers of our Constitution *qua* other Fundamental Rights conferred in Part III. This broad view

[65] Constitutional Law of India: A Critical Commentary, 4th Edition

draws support from a catena of decisions of the Apex Court beginning with *VENKATARAMANA DEVARU, supra*.

(iv) RELIGIOUS FREEDOM UNDER OUR CONSTITUTION VIS-À-VIS AMERICAN CONSTITUTION:

The First Amendment to the US Constitution confers freedoms in absolute terms and the freedoms granted are the rule and restrictions on those freedoms are the exceptions evolved by their courts. However, the Makers of our Constitution in their wisdom markedly differed from this view. Article 25 of our Constitution begins with the restriction and further incorporates a specific provision i.e., clause (2) that in so many words saves the power of State to regulate or restrict these freedoms. Mr.Justice Douglas of the US Supreme Court in *KINGSLEY BOOKS INC. vs. BROWN*[66], in a sense lamented about the absence of a corresponding provision in their Constitution, saying "*If we had a provision in our Constitution for 'reasonable' regulation of the press such as India has included in hers, there would be room for argument that censorship in the interest of morality would be permissible*". In a similar context, what Chief Justice Hidayatullah, observed

[66] 354 US 436 (1957)

in *K.A.ABBAS vs. UNION OF INDIA* [67] makes it even more evoking:

> *"…The American Constitution stated the guarantee in absolute terms without any qualification. The Judges try to give full effect to the guarantee by every argument they can validly use. But the strongest proponent of the freedom (Justice Douglas) himself recognised in the Kingsley case that there must be a vital difference in approach... In spite of the absence of such a provision Judges in America have tried to read the words 'reasonable restrictions' into the First Amendment and thus to make the rights it grants subject to reasonable regulation …"*

Succinctly put, in the United States and Australia, the freedom of religion was declared in absolute terms and courts had to evolve exceptions to that freedom, whereas in India, Articles 25 & 26 of the Constitution appreciably embody the limits of that freedom.

(v) What is observed in *INDIAN YOUNG LAWYERS ASSOCIATION, supra* at paragraphs 209 & 210 about the scope and content of freedom of religion is illuminating:

> *"…Yet, the right to the freedom of religion is not absolute. For the Constitution has expressly made it subject to public order, morality and health on one hand and to the other provisions of Part III, on the other. The subjection of the individual right to the freedom of religion to the other provisions of the Part is a nuanced departure from the position occupied by the other rights to freedom recognized in Articles 14, 15, 19 and 21. While*

[67] 1971 SCR (2) 446

guaranteeing equality and the equal protection of laws in Article 14 and its emanation, in Article 15, which prohibits discrimination on grounds of religion, race, caste, sex or place of birth, the Constitution does not condition these basic norms of equality to the other provisions of Part III. Similar is the case with the freedoms guaranteed by Article 19(1) or the right to life under Article 21. The subjection of the individual right to the freedom of religion under Article 25(1) to the other provisions of Part III was not a matter without substantive content. Evidently, in the constitutional order of priorities, the individual right to the freedom of religion was not intended to prevail over but was subject to the overriding constitutional postulates of equality, liberty and personal freedoms recognised in the other provisions of Part III.

Clause (2) of Article 25 protects laws which existed at the adoption of the Constitution and the power of the state to enact laws in future, dealing with two categories. The first of those categories consists of laws regulating or restricting economic, financial, political or other secular activities which may be associated with religious practices. Thus, in sub-clause (a) of Article 25 (2), the Constitution has segregated matters of religious practice from secular activities, including those of an economic, financial or political nature. The expression "other secular activity" which follows upon the expression "economic, financial, political" indicates that matters of a secular nature may be regulated or restricted by law. The fact that these secular activities are associated with or, in other words, carried out in conjunction with religious practice, would not put them beyond the pale of legislative regulation. The second category consists of laws providing for (i) social welfare and reform; or (ii) throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. The expression "social welfare and reform" is not confined to matters only of the Hindu religion. However, in matters of temple entry, the Constitution recognised the disabilities which Hindu religion had imposed over the centuries which restricted the rights of access to dalits and to various groups within Hindu society. The effect of clause (2) of Article 25 is to protect the ability of the state to

enact laws, and to save existing laws on matters governed by sub-clauses (a) and (b). Clause (2) of Article 25 is clarificatory of the regulatory power of the state over matters of public order, morality and health which already stand recognised in clause (1). Clause 1 makes the right conferred subject to public order, morality and health. Clause 2 does not circumscribe the ambit of the 'subject to public order, morality or health' stipulation in clause 1. What clause 2 indicates is that the authority of the state to enact laws on the categories is not trammelled by Article 25…"

VII. AS TO PROTECTION OF ESSENTIAL RELIGIOUS PRACTICE AND THE TEST FOR ITS ASCERTAINMENT:

(i) Since the question of *hijab* being a part of essential religious practice is the bone of contention, it becomes necessary to briefly state as to what is an *essential religious practice* in Indian context and how it is to be ascertained. This doctrine can plausibly be traced to the Chief Architect of our Constitution, Dr. B.R.Ambedkar and to his famous statement in the Constituent Assembly during debates on the Codification of Hindu Law: "*the religious conception in this country are so vast that they cover every aspect of life from birth to death…there is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious…" [Constituent Assembly Debates VII:*

781]. In *ACHARYA JAGADISHWARANANDA AVADHUTA, supra,* it has been observed at paragraph 9 as under:

> *"The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion… What is meant by "an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (sic essential) part or practices."*

(ii) *INDIAN YOUNG LAWYERS ASSOCIATION* surveyed the development of law relating to essential religious practice and the extent of its constitutional patronage consistent with

the long standing view. Ordinarily, a religious practice in order to be called an '*essential religious practice*' should have the following indicia: *(i) Not every activity associated with the religion is essential to such religion. Practice should be fundamental to religion and it should be from the time immemorial. (ii) Foundation of the practice must precede the religion itself or should be co-founded at the origin of the religion. (iii) Such practice must form the cornerstone of religion itself. If that practice is not observed or followed, it would result in the change of religion itself and, (iv) Such practice must be binding nature of the religion itself and it must be compelling.* That a practice claimed to be essential to the religion has been carried on since time immemorial or is grounded in religious texts *per se* does not lend to it the constitutional protection unless it passes the test of essentiality as is adjudged by the Courts in their role as the guardians of the Constitution.

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

(i) March of law regarding essential religious practice: Law is an organic social institution and not just a black letter section. In order to be '*living law of the people'*, it marches

with the ebb and flow of the times, either through legislative action or judicial process. Constitution being the Fundamental Law of the Land has to be purposively construed to meet and cover changing conditions of social & economic life that would have been unfamiliar to its Framers. Since *SHAYARA BANO,* there has been a paradigm shift in the approach to the concept of essential religious practice, as rightly pointed by the learned Advocate General. In *INDIAN YOUNG LAWYERS ASSOCIATION*, this branch of law marched further when the Apex Court added another dimension to the concept of essential religious practice, by observing at paragraphs 289 & 291 as under:

> *"For decades, this Court has witnessed claims resting on the essentiality of a practice that militate against the constitutional protection of dignity and individual freedom under the Constitution. It is the duty of the courts to ensure that what is protected is in conformity with fundamental constitutional values and guarantees and accords with constitutional morality. While the Constitution is solicitous in its protection of religious freedom as well as denominational rights, it must be understood that dignity, liberty and equality constitute the trinity which defines the faith of the Constitution. Together, these three values combine to define a constitutional order of priorities. Practices or beliefs which detract from these foundational values cannot claim legitimacy...*
>
> *Our Constitution places the individual at the heart of the discourse on rights. In a constitutional order characterized by the Rule of Law, the constitutional*

> *commitment to egalitarianism and the dignity of every individual enjoins upon the Court a duty to resolve the inherent tensions between the constitutional guarantee of religious freedom afforded to religious denominations and constitutional guarantees of dignity and equality afforded to individuals. There are a multiplicity of intersecting constitutional values and interests involved in determining the essentiality of religious practices. In order to achieve a balance between competing rights and interests, the test of essentiality is infused with these necessary limitations.*"

Thus, a person who seeks refuge under the umbrella of Article 25 of the Constitution has to demonstrate not only *essential religious practice* but also its engagement with the constitutional values that are illustratively mentioned at paragraph 291 of the said decision. It's a matter of concurrent requirement. It hardly needs to be stated, if *essential religious practice* as a threshold requirement is not satisfied, the case does not travel to the domain of those constitutional values.

VIII. SOURCES OF ISLAMIC LAW, HOLY QURAN BEING ITS PRINCIPAL SOURCE:

1. The above having been said, now we need to concisely discuss about the authentic sources of Islamic law inasmuch as Quran and *Ahadith* are cited by both the sides in support of their argument & counter argument relating to wearing of *hijab*. At this juncture, we cannot resist our feel to reproduce *Aiyat* 242 of the Quran which says: "***It is expected***

that you will use your commonsense". (Quoted by the Apex Court in *SHAH BANO, supra*.

(i) SIR DINSHAH FARDUNJI MULLA'S TREATISE[68], at sections 33, 34 & 35 lucidly states:

> *"**33.** **Sources of Mahomedan Law:** There are four sources of Mahomedan law, namely, (1) the Koran; (2) Hadis, that is, precepts, actions and sayings of the Prophet Mahomed, not written down during his lifetime, but preserved by tradition and handed down by authorized persons; (3) Ijmaa, that is, a concurrence of opinion of the companions of Mahomed and his disciples; and (4) Qiyas, being analogical deductions derived from a comparison of the first three sources when they did not apply to the particular case."*
>
> "***34. Interpretation of the Koran:*** *The Courts, in administering Mahomedan law, should not, as a rule, attempt to put their own construction on the Koran in opposition to the express ruling of Mahomedan commentators of great antiquity and high authority."*
>
> "***35. Precepts of the Prophet:*** *Neither the ancient texts nor the preceipts of the Prophet Mahomed should be taken literally so as to deduce from them new rules of law, especially when such proposed rules do not conduce to substantial justice…"*

(ii) FYZEE'S TREATISE: Referring to another Islamic jurist of great repute Asaf A.A. Fyzee[69], what the Apex Court at paragraphs 7 & 54 in *SHAYARA BANO*, *supra*, observed evokes interest:

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[68] Principles of Mahomedan law, 20th Edition (2013)

[69] Outlines of Muhammadan, Law 5th Edition (2008)

> *"7. There are four sources for Islamic law- (i) Quran (ii) Hadith (iii) Ijma (iv) Qiyas. The learned author has rightly said that the Holy Quran is the "first source of law". According to the learned author, pre-eminence is to be given to the Quran. That means, sources other than the Holy Quran are only to supplement what is given in it and to supply what is not provided for. In other words, there cannot be any Hadith, Ijma or Qiyas against what is expressly stated in the Quran. Islam cannot be anti-Quran...*
>
> *54. …Indeed, Islam divides all human action into five kinds, as has been stated by Hidayatullah, J. in his Introduction to Mulla (supra). There it is stated:*
>
> *"E. Degrees of obedience: Islam divides all actions into five kinds which figure differently in the sight of God and in respect of which His Commands are different. This plays an important part in the lives of Muslims.*
>
> *(i) First degree: Fard. Whatever is commanded in the Koran, Hadis or ijmaa must be obeyed.Wajib. Perhaps a little less compulsory than Fard but only slightly less so.(ii) Second degree: Masnun, Mandub and Mustahab: These are recommended actions.(iii) Third degree: Jaiz or Mubah: These are permissible actions as to which religion is indifferent (iv) Fourth degree: Makruh: That which is reprobated as unworthy (v) Fifth degree: Haram: That which is forbidden."*

The Apex Court at paragraph 55 of *SHAYARA BANO* has treated the structural hierarchy of binding nature of Islamic norms starting from Quran and ending with Haram, while proscribing the obnoxious practice of *triple talaq*. The argument of *hijab* being mandatory under Ahadith, if not under Quran, shall be treated hereinafter, in the light of such a structure.

2. AS TO WHICH AUTHORITATIVE COMMENTARY ON HOLY QURAN, WE ARE PRINCIPALLY RELYING UPON AND REASONS FOR THAT:

(i) At the outset we make it clear that, in these cases, our inquiry concerns the nature and practice of wearing of *hijab* amongst Muslim women and therefore, references to the Holy Quran and other sources of Islamic law shall be confined to the same. During the course of hearing, the versions of different authors on this scripture were cited, viz., Abdullah Yusuf Ali, Abdul Haleem, Pickthall, Muhammad *Hijab*, Dr. Mustafa Khattab, Muhammad Taqi-ud-Din al-Hilali, Muhammad Muhsin Khan, Dr. Ghali. However, this Court prefers to bank upon the '*The Holy Quran: Text, Translation and Commentary' by Abdullah Yusuf Ali, (published by Goodword Books; 2019 reprint),* there being a broad unanimity at the Bar as to its authenticity & reliability. The speculative and generalizing mind of this author views the verses of the scriptures in their proper perspective. He provides the unifying principles that underlie. His monumental work has a systematic completeness and perfection of form. It is pertinent to reproduce *Abdullah Yusuf Ali's 'Preface to First Edition'* of his book, which is as under:

> *"…In translating the Text I have aired no views of my own, but followed the received commentators. Where they differed among themselves, I have had to choose what appeared to me to be the most reasonable opinion from all points of view. Where it is a question merely of words, I have not considered the question important enough to discuss in the Notes, but where it is a question of substance, I hope adequate explanations will be found in the notes. Where I have departed from the literal translation in order to express the spirit of the original better in English, I have explained the literal meaning in the Notes… Let me explain the scope of the Notes. I have made them as short as possible consistently with the object I have in view, viz., to give to the English reader, scholar as well as general reader, a fairly complete but concise view of what I understand to be the meaning of the Text…"*

(ii) There is yet another reason as to why we place our reliance on the commentary of Mr. Abdullah Yusuf Ali. The Apex court itself in a catena of cases has treated the same as the authoritative work. In *SHAYARA BANO,* we find the following observations *at* paragraphs 17 & 18:

> *"17. Muslims believe that the Quran was revealed by God to the Prophet Muhammad over a period of about 23 years, beginning from 22.12.609, when Muhammad was 40 years old. The revelation continued upto the year 632 – the year of his death. Shortly after Muhammad's death, the Quran was completed by his companions, who had either written it down, or had memorized parts of it. These compilations had differences of perception. Therefore, Caliph Usman - the third, in the line of caliphs recorded a standard version of the Quran, now known as Usman's codex. This codex is generally treated, as the original rendering of the Quran.*
>
> *18. During the course of hearing, references to the Quran were made from 'The Holy Quran: Text Translation and Commentary' by Abdullah Yusuf Ali, (published by Kitab*

> *Bhawan, New Delhi, 14th edition, 2016). Learned counsel representing the rival parties commended, that the text and translation in this book, being the most reliable, could safely be relied upon. The text and the inferences are therefore drawn from the above publication…The Quran is divided into 'suras' (chapters). Each 'sura' contains 'verses', which are arranged in sections.…"*

The above apart, none at the Bar has disputed the profound scholarship of this writer or the authenticity of his commentary. We too find construction of and comments on suras and verses of the scripture illuminative and immensely appealing to reason & justice.

IX. AS TO *HIJAB* BEING A QURANIC INJUNCTION:

(i) Learned advocates appearing for the petitioners vehemently argued that the Quran injuncts Muslim women to wear *hijab* whilst in public gaze. In support, they heavily banked upon certain *suras* from Abdullah Yusuf Ali's book. Before we reproduce the relevant suras and verses, we feel it appropriate to quote what Prophet had appreciably said at *sūra (ii)* verse 256 in Holy Quran: ***'Let there be no compulsion in religion…'*** What Mr. Abdullah Yusuf Ali in footnote 300 to this verse, appreciably reasons out, is again worth quoting: '*Compulsion is incompatible with religion because religion depends upon faith and will, and these would be meaningless if induced by force…'* With this at heart, we are

reproducing the following verses from the scripture, which were pressed into service at the Bar.

***Sūra xxiv* (*Nūr*):**

The environmental and social influences which most frequently wreck our spiritual ideals have to do with sex, and especially with its misuse, whether in the form of unregulated behavior, of false charges or scandals, or breach of the refined conventions of personal or domestic privacy. Our complete conquest of all pitfalls in such matters enables us to rise to the higher regions of Light and of God-created Nature, about which a mystic doctrine is suggested. This subject is continued in the next Sūra.

Privacy should be respected, and the utmost decorum should be observed in dress and manners
(xxiv. 27 – 34, and C. 158)

Domestic manners and manners in public or collective life all contribute to the highest virtues, and are part of our spiritual duties leading upto God"
(xxiv. 58 – 64, and C. 160).

"And say to the believing women
That they should lower
Their gaze and guard[*]*.*
Their modesty; that they
Should not display their
Beauty and ornaments except*
What (must ordinarily) appear
Thereof; that they should
Draw their veils over
Their bosoms and not display
Their beauty except
To their husband, their fathers,
Their husbands' father, their sons,
Their husbands' sons,
Their brothers or their brothers' sons,
Or their sisters' sons,

[*] References to the footnote attached to these verses shall be made in subsequent paragraphs.

Or their women, or the slaves
Whom their right hands
Possess, or male servants
Free from physical needs,
Or small children who
Have no sense of the shame
Of sex; that they
Should strike their feet
In order to draw attention
To their hidden ornaments.
And O ye Believers!
Turn ye all together
Towards God, that ye
May attain Bliss.[*]*"* ***(xxiv. 31, C. – 158)***

Sūra xxxiii (Ahzāb)

"Prophet! Tell
Thy wives and daughters,
And the believing women[*]*,*
That they should case
Their outer garments over[*]
Their persons (when abroad):
That is most convenient,
That they should be known[*]
(As such) and not molested.
And God is Oft – Forgiving, [*]
Most Merciful." ***(xxxiii. 59, C. - 189)***

Is *hijab* Islam-specific?

(ii) *Hijab* is a veil ordinarily worn by Muslim women, is true. Its origin in the Arabic verb *hajaba*, has etymological similarities with the verb "*to hide*". *Hijab* nearly translates to partition, screen or curtain. There are numerous dimensions of understanding the usage of the *hijab*: visual, spatial, ethical

[*] *Id*

and moral. This way, the *hijab* hides, marks the difference, protects, and arguably affirms the religious identity of the Muslim women. This word as such is not employed in Quran, cannot be disputed, although commentators may have employed it. Indian jurist Abdullah Yusuf Ali referring to *sūra (xxxiii), verse 59, at footnote 3765 in his book states: "Jilbāb, plural Jalābib: an outer garment; a long gown covering the whole body, or a cloak covering the neck as bosom."*. In the footnote 3760 to *Verse 53,* he states: "***...In the wording, note that for Muslim women generally, no screen or hijab (Purdah) is mentioned, but only a veil to cover the bosom, and modesty in dress. The screen was a special feature of honor for the Prophet's household, introduced about five or six years before his death...***" Added, in footnote 3767 to verse 59 of the same sura, he opines: "***This rule was not absolute: if for any reason it could not be observed, 'God is Oft. Returning, Most Merciful.'...***" Thus, there is sufficient intrinsic material within the scripture itself to support the view that wearing *hijab* has been only recommendatory, if at all it is.

(iii) The Holy Quran does not mandate wearing of *hijab* or headgear for Muslim women. Whatever is stated in the

above *sūras*, we say, is only directory, because of absence of prescription of penalty or penance for not wearing *hijab,* the linguistic structure of verses supports this view. This apparel at the most is a means to gain access to public places and not a religious end in itself. It was a measure of women enablement and not a figurative constraint. There is a laudable purpose which can be churned out from Yusuf Ali's footnotes *2984*, *2985* & *2987 to verses in Sūra xxiv* (*Nūr*) and footnotes *3764 & 3765 to verses in Sū*ra *xxxiii* (*Ahzāb*). They are reproduced below:

***Sūra xxiv* (*Nūr*)**

> *"2984. The need for modesty is the same in both men and women. But on account of the differentiation of the sexes in nature, temperaments and social life, a greater amount of privacy is required for women than for men, especially in the matter of dress and uncovering of the bosom."*
>
> *"2985. Zinat means both natural beauty and artificial ornaments. I think both are implied here but chiefly the former. The woman is asked 'not to make a display of her figure or appear in undress except to the following classes of people: (1) her husband, (2) her near relatives who would be living in the same house, and with whom a certain amount of negligé is permissible: (3) her women i.e., her maid-servants, who would be constantly in attendance on her; some Commentators include all believing women; it is not good form in a Muslim household for women to meet other women, except when they are properly dressed; (4) slaves, male and female, as they would be in constant*

attendance; but this item would now be blank, with the abolition of slavery; (5) old or infirm men-servants; and (6) infants or small children before they get a sense of sex.

"2987. While all these details of the purity and the good form of domestic life are being brought to our attention, we are clearly reminded that the chief object we should hold in view is our spiritual welfare. All our brief life on this earth is a probation, and we must make our individual, domestic, and social life all contribute to our holiness, so that we can get the real success and bliss which is the aim of our spiritual endeavor. Mystics understand the rules of decorum themselves to typify spiritual truths. Our soul, like a modest maiden, allows not her eyes to stray from the One True God. And her beauty is not for vulgar show but for God."

Sūra xxxiii (Ahzāb)

"3764. This is for all Muslim women, those of the Prophet's household, as well as the others. The times were those of insecurity (see next verse) and they were asked to cover themselves with outer garments when walking abroad. It was never contemplated that they should be confined to their houses like prisoners."

"3765. Jilbāb, plural Jalābib: an outer garment; a long gown covering the whole body, or a cloak covering the neck as bosom."

(iv) *The essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself*, gains support from the following observations in *INDIAN YOUNG LAWYERS ASSOCIATION*:

> *"286. In determining the essentiality of a practice, it is crucial to consider whether the practice is prescribed to be of an obligatory nature within that religion. If a practice is optional, it has been held that it cannot be said to be 'essential' to a religion. A practice claimed to be essential must be such that the nature of the religion would be altered in the absence of that practice. If there is a fundamental change in the character of the religion, only then can such a practice be claimed to be an 'essential' part of that religion."*

It is very pertinent to reproduce what the Islamic jurist Asaf A.A. Fyzee, *supra* at pages 9-11 of his book states:

> *"…We have the Qur'an which is the very word of God. Supplementary to it we have Hadith which are the Traditions of the Prophet- the records of his actions and his sayings- from which we must derive help and inspiration in arriving at legal decisions. If there is nothing either in the Qur'an or in the Hadith to answer the particular question which is before us, we have to follow the dictates of secular reason in accordance with certain definite principles. These principles constitute the basis of sacred law or Shariat as the Muslim doctors understand it. And it is these fundamental juristic notions which we must try to study and analyse before we approach the study of the Islamic civil law as a whole, or even that small part of it which in India is known as Muslim law…"*

(v) Petitioners pressed into service *sūra (xxxiii*), verse 59, in support of their contention that wearing *hijab* is an indispensable requirement of Islamic faith. This contention is bit difficult to countenance. It is relevant to refer to the historical aspects of this particular verse as vividly explained by *Abdullah Yusuf Ali* himself at footnote 3766:

> *"The object was not to restrict the liberty of women, but to protect them from harm and molestation under the conditions then existing in Medina. In the East and in the West a distinctive public dress of some sort or another has always been a badge of honour or distinction, both among men and women. This can be traced back to the earliest civilizations. Assyrian Law in its palmist days (say, 7th century B.C.), enjoined the veiling of married women and forbade the veiling of slaves and women of ill fame: see Cambridge Ancient History,* III.107*"*

It needs to be stated that wearing *hijab* is not religion-specific, as explained by Sara Slininger from Centralia, Illinois in her research paper *"VEILED WOMEN: HIJAB, RELIGION, AND CULTURAL PRACTICE"*. What she writes throws some light on the socio-cultural practices of wearing *hijab* in the region, during the relevant times:

> *"Islam was not the first culture to practice veiling their women. Veiling practices started long before the Islamic prophet Muhammad was born. Societies like the Byzantines, Sassanids, and other cultures in Near and Middle East practiced veiling. There is even some evidence that indicates that two clans in southwestern Arabia practiced veiling in pre-Islamic times, the Banū Ismāʿīl and Banū Qaḥṭān. Veiling was a sign of a women's social status within those societies. In Mesopotamia, the veil was a sign of a woman's high status and respectability. Women wore the veil to distinguish Slininger themselves from slaves and unchaste women. In some ancient legal traditions, such as in Assyrian law, unchaste or unclean women, such as harlots and slaves, were prohibited from veiling themselves. If they were caught illegally veiling, they were liable to severe penalties. The practice of veiling spread throughout the ancient world the same way that many other ideas traveled from place to place during this time: invasion."*

(vi) Regard being had to the kind of life conditions then obtaining in the region concerned, wearing *hijab* was recommended as a measure of social security for women and to facilitate their safe access to public domain. At the most the practice of wearing this apparel may have something to do with *culture* but certainly not with religion. This gains credence from Yusuf Ali's Note 3764 to verse 59 which runs as under:

> *"…The times were those of insecurity (see next verse) and they were asked to cover themselves with outer garments when walking abroad. It was never contemplated that they should be confined to their houses like prisoners."*

History of mankind is replete with instances of abuse and oppression of women. The region and the times from which Islam originated were not an exception. The era before the introduction of Islam is known as *Jahiliya-a* time of barbarism and ignorance. The Quran shows concern for the cases of '*molestation of innocent women*' and therefore, it recommended wearing of this and other apparel as a measure of social security. May be in the course of time, some elements of religion permeated into this practice as ordinarily happens in any religion. However, that *per se* does not render the practice predominantly religious and much less essential

to the Islamic faith. This becomes evident from Ali's footnote 3768 to verse 60 which concludes with the following profound line **"Alas! We must ask ourselves the question: *'Are these conditions present among us today?'*"** Thus, it can be reasonably assumed that the practice of wearing *hijab* had a thick nexus to the *socio-cultural* conditions then prevalent in the region. The veil was a safe means for the women to leave the confines of their homes. Ali's short but leading question is premised on this analysis. What is not religiously made obligatory therefore cannot be made a quintessential aspect of the religion through public agitations or by the passionate arguments in courts.

(vii) Petitioners also relied upon verses 4758 & 4759 (Chapter 12) from Dr.Muhammad Muhsin Khan's *'The Translation of the Meanings of Sahih Al-Bukhari, Arabic-English*', Volume 6, Darussalam publication, Riyadh, Saudi Arabia. This verse reads:

> *"4758. Narrated 'Aishah': May Allah bestow His Mercy on the early emigrant women. When Allah revealed:*
>
> *"…and to draw their veils all over their Juyubihinna (i.e., their bodies, faces, necks and bosoms)…" (V.24:31) they tore their Murut (woolen dresses or waist-binding clothes or aprons etc.) and covered their heads and faces with those torn Muruts.*

> *4759. Narrated Safiyya bint Shaiba: Aishah used to say: "When (the Verse): '… and to draw their veils all over their Juhubihinna (i.e., their bodies, faces, necks and bosoms, etc.)…' (V.24:31) was revealed, (the ladies) cult their waist-sheets from their margins and covered their heads and faces with those cut pieces of cloth."*

Firstly, no material is placed by the petitioners to show the credentials of the translator namely Dr.Muhammad Muhsin Khan. The first page of volume 6 describes him as: "F*ormerly Director, University Hospital, Islamic University, Al-Madina, Al-Munawwara (Kingdom of Saudi Arabia).* By this, credentials required for a commentator cannot be assumed. He has held a prominent position in the field of medicine, is beside the point. We found reference to this author in a decision of Jammu & Kashmir High Court in *LUBNA MEHRAJ VS. MEHRAJ-UD-DIN KANTH*[70]. Even here, no credentials are discussed nor is anything stated about the authenticity and reliability of his version of Ahadith. Secondly, the text & context of the verse do not show its obligatory nature. Our attention is not drawn to any other verses in the translation from which we can otherwise infer its mandatory nature. Whichever be the religion, whatever is stated in the scriptures, does not become *per se* mandatory in a wholesale way. That is how the concept of essential religious practice, is

[70] 2004 (1) JKJ 418

coined. If everything were to be essential to the religion logically, this very concept would not have taken birth. It is on this premise the Apex Court in *SHAYARA BANO,* proscribed the 1400 year old pernicious practice of *triple talaq* in Islam. What is made recommendatory by the Holy Quran cannot be metamorphosed into mandatory dicta by Ahadith which is treated as supplementary to the scripture. A contra argument offends the very logic of Islamic jurisprudence and normative hierarchy of sources. This view gains support from paragraph 42 of *SHAYARA BANO* which in turn refers to Fyzee's work. Therefore, this contention too fails.

X. AS TO VIEWS OF OTHER HIGH COURTS ON *HIJAB* BEING AN ESSENTIAL RELIGIOUS PRACTICE:

Strangely, in support of their version and counter version, both the petitioners and the respondents drew our attention to two decisions of the Kerala High Court, one decision of Madras and Bombay each. Let us examine what these cases were and from which fact matrix, they emanated.

(i) *In re AMNAH BINT BASHEER, supra:* this judgment was rendered by a learned Single Judge A.Muhamed Mustaque J. of Hon'ble Kerala High Court on 26.4.2016. Petitioner, the students (minors) professing Islam had an

issue with the dress code prescribed for All India Pre-Medical Entrance Test, 2016. This prescription by the Central Board of Secondary Education was in the wake of large scale malpractices in the entrance test during the previous years. At paragraph 29, learned Judge observed:

> "*Thus, the analysis of the Quranic injunctions and the Hadiths would show that it is a farz to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram). When farz is violated by action opposite to farz that action becomes forbidden (haram). However, there is a possibility of having different views or opinions for the believers of the Islam based on Ijithihad (independent reasoning). This Court is not discarding such views. The possibility of having different propositions is not a ground to deny the freedom, if such propositions have some foundation in the claim…*"

Firstly, it was not a case of school uniform as part of Curricula as such. Students were taking All India Pre-Medical Entrance Test, 2016 as a onetime affair and not on daily basis, unlike in schools. No Rule or Regulation having force of law prescribing such a uniform was pressed into service. Secondly, the measure of ensuring personal examination of the candidates with the presence of one lady member prior to they entering the examination hall was a feasible alternative. This 'reasonable exception' cannot be stretched too wide to swallow the rule itself. That feasibility

evaporates when one comes to regular adherence to school uniform on daily basis. Thirdly, learned Judge himself in all grace states: "*However, there is a possibility of having different views or opinions for the believers of the Islam based on Ijithihad (independent reasoning).* In formulating our view, i.e., in variance with this learned Judge's, we have heavily drawn from the considered opinions of Abdullah Yusuf Ali's works that are recognized by the Apex Court as being authoritative vide *SHAYARA BANO* and in other several decisions. There is no reference to this learned authors' commentary in the said judgment. Learned Judge refers to other commentators whose credentials and authority are not forthcoming. The fact that the Writ Appeal against the same came to be negatived[71] by a Division Bench, does not make much difference. Therefore, from this decision, both the sides cannot derive much support for their mutually opposing versions.

(ii) *In re FATHIMA THASNEEM supra:* the girl students professing Islam had an issue with the dress code prescribed by the management of a school run by a religious minority (Christians) who had protection under Articles 29 & 30 of the

[71] (2016) SCC Online Ker 487

Constitution. This apart, learned Judge i.e., A.Muhamed Mustaque J. was harmonizing the competing interests protected by law i.e., community rights of the minority educational institution and the individual right of a student. He held that the former overrides the latter and negatived the challenge, vide order dated 4.12.2018 with the following observation:

> "*10. In such view of the matter, I am of the considered view that the petitioners cannot seek imposition of their individual right as against the larger right of the institution. It is for the institution to decide whether the petitioners can be permitted to attend the classes with the headscarf and full sleeve shirt. It is purely within the domain of the institution to decide on the same. The Court cannot even direct the institution to consider such a request. Therefore, the writ petition must fail. Accordingly, the writ petition is dismissed. If the petitioners approach the institution for Transfer Certificate, the school authority shall issue Transfer Certificate without making any remarks. No doubt, if the petitioners are willing to abide by the school dress code, they shall be permitted to continue in the same school…*"

This decision follows up to a particular point the reasoning in the earlier decision (2016), aforementioned. Neither the petitioners nor the respondent-State can bank upon this decision, its fact matrix being miles away from that of these petitions. This apart, what we observed about the earlier decision substantially holds water for this too.

(iii) *In re FATHIMA HUSSAIN, supra:* This decision by a Division Bench of Bombay High Court discussed about Muslim girl students' right to wear *hijab* "*…in exclusive girls section cannot be said to in any manner acting inconsistent with the aforesaid verse 31 or violating any injunction provided in Holy Quran.* ***It is not an obligatory overt act enjoined by Muslim religion that a girl studying in all girl section must wear head-covering.*** *The essence of Muslim religion or Islam cannot be said to have been interfered with by directing petitioner not to wear head-scarf in the school.*" These observations should strike the death knell to Writ Petition Nos.2146, 2347, 3038/2022 wherein the respondent college happens to be all-girl-institution (not co-education). The Bench whilst rejecting the petition, at paragraph 8 observed: "*We therefore, do not find any merit in the contention of the learned counsel for the petitioner that direction given by the Principal to the petitioner on 28-11-2001 to not to wear head-scarf or cover her head while attending school is violative of Article 25 of Constitution of India."* We are at loss to know how this decision is relevant for the adjudication of these petitions.

(iv) *In re SIR M. VENKATA SUBBARAO, supra:* The challenge in this case was to paragraph 1 of the Code of

Conduct prescribing a dress code for the teachers. The Division Bench of Madras High Court while dismissing the challenge at paragraph 16 observed as under:

> *"For the foregoing reasons and also in view of the fact that the teachers are entrusted with not only teaching subjects prescribed under the syllabus, but also entrusted with the duty of inculcating discipline amongst the students, they should set high standards of discipline and should be a role model for the students. We have elaborately referred to the role of teachers in the earlier portion of the order. Dress code, in our view, is one of the modes to enforce discipline not only amongst the students, but also amongst the teachers. Such imposition of dress code for following uniform discipline cannot be the subject matter of litigation that too, at the instance of the teachers, who are vested with the responsibility of inculcating discipline amongst the students. The Court would be very slow to interfere in the matter of discipline imposed by the management of the school only on the ground that it has no statutory background. That apart, we have held that the management of the respondent school had the power to issue circulars in terms of clause 6 of Annexure VIII of the Regulations. In that view of the matter also, we are unable to accept the contention of the learned counsel for appellant in questioning the circular imposing penalty for not adhering to the dress code."*

This case has completely a different fact matrix. Even the State could not have banked upon this in structuring the impugned Govt. Order dated 5.2.2022. The challenge to the dress code was by the teacher and not by the students. The freedom of conscience or right to religion under Article 25 was not discussed. This decision is absolutely irrelevant.

(v) *In re PRAYAG DAS vs. CIVIL JUDGE BULANDSHAHR*[72]*:* This decision is cited by the petitioner in W.P.No.4338/2022 (PIL) who supports the case of the State. This decision related to a challenge to the prescription of dress code for the lawyers. The Division Bench of Allahabad High Court whilst rejecting the challenge, observed at paragraph 20 as under:

> *"In our opinion the various rules prescribing the dress of an Advocate serve a very useful purpose. In the first place, they distinguish an Advocate from a litigant or other members of the public who may be jostling with him in a Court room. They literally reinforce the Shakespearian aphorism that the apparel oft proclaims the man. When a lawyer is in prescribed dress his identity can never be mistaken. In the second place, a uniform prescribed dress worn by the members of the Bar induces a seriousness of purpose and a sense of decorum which are highly conducive to the dispensation of justice..."*

This decision is not much relevant although it gives some idea as to the justification for prescribing uniform, be it in a profession or in an educational institution. Beyond this, it is of no utility to the adjudication of issues that are being debated in these petitions.

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[72] 1973 SCC OnLine All 333

XI. AS TO WEARING *HIJAB* BEING A MATTER OF FREEDOM OF CONSCIENCE:

(1) Some of the petitioners vehemently argued that, regardless of right to religion, the girl students have the freedom of conscience guaranteed under Article 25 itself and that they have been wearing *hijab* as a matter of conscience and therefore, interdicting this overt act is offensive to their conscience and thus, is violative of their fundamental right. In support, they heavily rely upon *BIJOE EMMANUEL supra,* wherein at paragraph 25, it is observed as under:

> *"We are satisfied, in the present case, that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand up respectfully when the anthem is sung, is a violation of their fundamental right to freedom of conscience and freely to profess, practice and propagate religion."* .

Conscience is by its very nature subjective. Whether the petitioners had the conscience of the kind and how they developed it are not averred in the petition with material particulars. Merely stating that wearing *hijab* is an overt act of conscience and therefore, asking them to remove *hijab* would offend conscience, would not be sufficient for treating it as a ground for granting relief. Freedom of conscience as already mentioned above, is in distinction to right to religion as was

clarified by Dr. B.R.Ambedkar in the Constituent Assembly Debates. There is scope for the argument that the freedom of conscience and the right to religion are mutually exclusive. Even by overt act, in furtherance of conscience, the matter does not fall into the domain of right to religion and thus, the distinction is maintained. No material is placed before us for evaluation and determination of pleaded conscience of the petitioners. They have not averred anything as to how they associate wearing *hijab* with their conscience, as an overt act. There is no evidence that the petitioners chose to wear their headscarf as a means of conveying any thought or belief on their part or as a means of symbolic expression. Pleadings at least for urging the ground of conscience are perfunctory, to say the least.

(2) *BIJOE EMMANUEL* CASE: ITS FACT MATRIX AND *RATIO DECIDENDI*:

(i) Since the petitioners heavily banked upon *BIJOE EMMANUEL,* in support of their contention as to freedom of conscience, we need to examine what were the material facts of the case and the propositions of law emanating therefrom. This exercise we have undertaken in the light of what Rupert Cross and J.W.Harris in their '*PRECEDENT IN ENGLISH LAW*',

4th Edition – CLARENDON, at page 39 have said: "*the ratio decidendi is best approached by a consideration of the structure of a typical judgment…A Judge generally summarizes the evidence, announcing his findings of fact and reviews the arguments that have been addressed to him by counsel for each of the parties. If a point of law has been raised, he often discusses a number of previous decisions…It is not everything said by a Judge when giving judgment that constitutes a precedent…This status is reserved for his pronouncements on the law…The dispute is solely concerned with the facts…It is not always easy to distinguish law from fact and the reasons which led a Judge to come to a factual conclusion…"* What LORD HALSBURY said more than a century ago in the celebrated case of *QUINN vs. LEATHEM*[73] is worth noting. He had craftily articulated that a decision is an authority for the proposition that is laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down.

(ii) With the above in mind, let us examine the material facts of *BIJOE EMMANUEL*: *Three 'law abiding children' being the faithful of Jehovah witnesses, did*

[73] (1901) A.C. 495

respectfully stand up but refused to sing the National Anthem in the school prayer. This refusal was founded on the dicta of their religion. They were expelled under the instructions of Deputy Inspector of School. These instructions were proven to have no force of law. They did not prevent the singing of National Anthem nor did they cause any disturbance while others were singing. Only these facts tailored the skirt, rest being the frills. The decision turned out to be more on the right to religion than freedom of conscience, although there is some reference to the conscience. The court recognized the negative of a fundamental right i.e., the freedom of speech & expression guaranteed under Article 19 as including right to remain silent. What weighed with the court was the fact '*the children were well behaved, they respectfully stood up when the National Anthem was sung and would continue to do so respectfully in the future*' (paragraph 23). Besides, Court found that their refusal to sing was not confined to Indian National Anthem but extended to the Songs of every other country.

(iii) True it is that the *BIJOE EMMANUEL* reproduces the following observation of Davar J. made in *JAMSHEDJI CURSETJEE TARACHAND vs. SOONABAI*[74]*:*

> *"…If this is the belief of the community--and it is proved undoubtedly to be the belief of the Zoroastrian community--a secular judge is bound to accept that belief--it is not for him to sit in judgment on that belief--he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind…"*

These observations essentially relate to '*the belief of the Zoroastrian community*'. It very little related to the '*freedom of conscience'* as envisaged under Article 25 of the Constitution enacted about four decades thereafter. The expression '*conscience of a donor'* is in the light of religious belief much away from '*freedom of conscience'*. After all the meaning of a word takes its colour with the companion words i.e., *noscitur a sociis.* After all, a word in a judgment cannot be construed as a word employed in a Statute. In the absence of demonstrable conformity to the essentials of a decision, the denomination emerging as a ratio would not be an operationable entity in every case comprising neighbourly fact matrix. What is noticeable is that *BIJOE EMMANUEL* did not demarcate the boundaries between 'freedom of conscience'

[74] (1909) 33 BOM. 122

and 'right to practise religion' presumably because the overt act of the students in respectfully standing up while National Anthem was being sung transcended the realm of their conscience and took their case to the domain of religious belief. Thus, *BIJOE EMMANUEL* is not the best vehicle for drawing a proposition essentially founded on freedom of conscience.

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

(i) In order to establish their case, claimants have to plead and prove that wearing of *hijab* is a religious requirement and it is a part of *'essential religious practice'* in Islam in the light of a catena of decision of the Apex Court that ultimately ended with *INDIAN YOUNG LAWYERS ASSOCIATION.* The same has already been summarized by us above. All these belong to the domain of facts. In *NARAYANA DEEKSHITHULU,* it is said: "…*What are essential parts of religion or religious belief or matters of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen and the evidence-factual or legislative or historic-presented in that context is required to be considered and a decision reached…*" The

claimants have to plead these facts and produce requisite material to prove the same. The respondents are more than justified in contending that the Writ Petitions lack the essential averments and that the petitioners have not loaded to the record the evidentiary material to prove their case. The material before us is extremely meager and it is surprising that on a matter of this significance, petition averments should be as vague as can be. We have no affidavit before us sworn to by any *Maulana* explaining the implications of the *suras* quoted by the petitioners' side. Pleadings of the petitioners are not much different from those in *MOHD. HANIF QUARESHI*, supra which the Apex Court had critized. Since how long all the petitioners have been wearing *hijab* is not specifically pleaded. The plea with regard to wearing of *hijab* before they joined this institution is militantly absent. No explanation is offered for giving an undertaking at the time of admission to the course that they would abide by school discipline. The Apex Court in *INDIAN YOUNG LAWYERS ASSOCIATION*, supra, has stated that matters that are essential to religious faith or belief; have to be adjudged on the evidence borne out by record. There is absolutely no material placed on record to prima facie show that wearing of

hijab is a part of an essential religious practice in Islam and that the petitioners have been wearing *hijab* from the beginning. This apart, it can hardly be argued that *hijab* being a matter of attire, can be justifiably treated as fundamental to Islamic faith. It is not that if the alleged practice of wearing *hijab* is not adhered to, those not wearing *hijab* become the sinners, Islam loses its glory and it ceases to be a religion. Petitioners have miserably failed to meet the threshold requirement of pleadings and proof as to wearing *hijab* is an inviolable religious practice in Islam and much less a part of *'essential religious practice'*.

In view of the above discussion, we are of the considered opinion that wearing of *hijab* by Muslim women does not form a part of *essential religious practice* in Islamic faith.

XIII. AS TO SCHOOL DISCIPLINE & UNIFORM AND POWER TO PRESCRIBE THE SAME:

(i) We are confronted with the question whether there is power to prescribe dress code in educational institutions. This is because of passionate submissions of the petitioners that there is absolutely no such power in the scheme of 1983 Act or the Rules promulgated thereunder. The idea of

schooling is incomplete without teachers, taught and the dress code. Collectively they make a singularity. No reasonable mind can imagine a school without uniform. After all, the concept of school uniform is not of a nascent origin. It is not that, Moghuls or Britishers brought it here for the first time. It has been there since the ancient *gurukul* days. Several Indian scriptures mention *samavastr/shubhravesh* in Samskrit, their English near equivalent being uniform. '*HISTORY OF DHARMASĀSTRA*' by P.V. Kane, Volume II, page 278 makes copious reference to student uniforms. (This work is treated by the Apex Court as authoritative vide *DEOKI NANDAN vs. MURLIDHAR*[75]). In England, the first recorded use of standardized uniform/dress code in institutions dates to back to 1222 i.e., *Magna Carta* days. '*LAW, RELIGIOUS FREEDOMS AND EDUCATION IN EUROPE*' is edited by Myrian Hunter-Henin; Mark Hill, a contributor to the book, at Chapter 15 titles his paper '*BRACELETS, RINGS AND VEILS: THE ACCOMMODATION OF RELIGIOUS SYMBOLS IN THE UNIFORM POLICIES OF ENGLISH SCHOOLS'*. At page 308, what he pens is pertinent:

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[75] AIR 1957 SC 133

> '…*The wearing of a prescribed uniform for school children of all ages is a near-universal feature of its educational system, whether in state schools or in private (fee-paying) schools. This is not a matter of primary or secondary legislation or of local governmental regulation but rather reflects a widespread and long-standing social practice. It is exceptional for a school not to have a policy on uniform for its pupils. The uniform (traditionally black or grey trousers, jumpers and jackets in the coloured livery of the school and ties for boys serves to identify individuals as members of a specific institution and to encourage and promote the corporate, collective ethos of the school. More subtly, by insisting upon identical clothing (often from a designated manufacturer) it ensures that all school children dress the same and appear equal: thus, differences of social and economic background that would be evident from the nature and extent of personal wardrobes are eliminated. It is an effective leveling feature-particularly in comprehensive secondary schools whose catchment areas may include a range of school children drawn from differing parental income brackets and social classes…'*

'AMERICAN JURISPRUDENCE', 2nd Edition. (1973), Volume 68, edited by The Lawyers Cooperative Publishing Company states:

> *"§249. In accord with the general principle that school authorities may make reasonable rules and regulations governing the conduct of pupils under their control, it may be stated generally that school authorities may prescribe the kind of dress to be worn by students or make reasonable regulations as to their personal appearance…It has been held that so long as students are under the control of school authorities, they may be required to wear a designated uniform, or may be forbidden to use face powder or cosmetics, or to wear transparent hosiery low-necked dresses, or any style of clothing tending toward immodesty in dress…*
>
> *§251. Several cases have held that school regulations proscribing certain hairstyles were valid, usually on the*

> *basis that a legitimate school interest was served by such a regulation. Thus, it has been held that a public high school regulation which bars a student from attending classes because of the length or appearance of his hair is not invalid as being unreasonable, and arbitrary as having no reasonable connection with the successful operation of the school, since a student's unusual hairstyle could result in the distraction of other pupils, and could disrupt and impede the maintenance of a proper classroom atmosphere or decorum…*"

(ii) The argument of petitioners that prescribing school uniforms pertains to the domain of '*police power*' and therefore, unless the law in so many words confers such power, there cannot be any prescription, is too farfetched. In civilized societies, preachers of the education are treated next to the parents. Pupils are under the supervisory control of the teachers. The parents whilst admitting their wards to the schools, in some measure share their authority with the teachers. Thus, the authority which the teachers exercise over the students is a shared '*parental power*'. The following observations In *T.M.A.PAI FOUNDATION,* at paragraph 64, lend credence to this view:

> *"An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster- parents who are required to look after, cultivate and guide the students in their pursuit of education…*"

It is relevant to state that not even a single ruling of a court nor a sporadic opinion of a jurist nor of an educationist was cited in support of petitioners argument that prescribing school uniform partakes the character of '*police power*'. Respondents are justified in tracing this power to the text & context of sections 7(2) & 133 of the 1983 Act read with Rule 11 of 1995 Curricula Rules. We do not propose to reproduce these provisions that are as clear as gangetic waters. This apart, the Preamble to the 1983 Act mentions *inter alia* of *"fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education."* Section 7(2)(g)(v) provides for promoting "*harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women."* The Apex Court in *MODERN DENTAL COLLEGE*, supra, construed the term 'education' to include 'curricula' vide paragraph 123. The word 'curricula' employed in section 7(2) of the Act needs to be broadly construed to include the power to prescribe uniform. Under the scheme of 1983 Act coupled with international conventions to which India is a party, there is a

duty cast on the State to provide education at least up to particular level and this duty coupled with power includes the power to prescribe school uniform.

(iii) In the *LAW OF TORTS*, 26th Edition by *RATANLAL AND DHIRAJLAL* at page 98, parental and quasi parental authority is discussed: "*The old view was that the authority of a schoolmaster, while it existed, was the same as that of a parent. A parent, when he places his child with a schoolmaster, delegates to him all his own authority, so far as it is necessary for the welfare of the child. The modern view is that the schoolmaster has his own independent authority to act for the welfare of the child. This authority is not limited to offences committed by the pupil upon the premises of the school, but may extend to acts done by such pupil while on the way to and from the school…"* It is relevant to mention an old English case in *REX vs. NEWPORT (SALOP)*[76] which these authors have summarized as under:

> "*At a school for boys there was a rule prohibiting smoking by pupils whether in the school or in public. A pupil after returning home smoked a cigarette in a public street and next day the schoolmaster administered to him five strokes with a cane. It was held that the father of the boy by sending him to the school authorized the schoolmaster to administer reasonable punishment to the boy for*

[76] (1929) 2 KB 416

> *breach of a school rule, and that the punishment administered was reasonable."*

Even in the absence of enabling provisions, we are of the view that the power to prescribe uniform as of necessity inheres in every school subject to all just exceptions.

(iv) The incidental question as to who should prescribe the school uniform also figures for our consideration in the light of petitioners' contention that government has no power in the scheme of 1983 Act. In *T.M.A.PAI FOUNDATION,* the Apex Court observed at paragraph 55 as under:

> *"…There can be no doubt that in seeking affiliation or recognition, the Board or the university or the affiliating or recognizing authority can lay down conditions consistent with the requirement to ensure the excellence of education. It can, for instance, indicate the quality of the teachers by prescribing the minimum qualifications that they must possess, and the courses of study and curricula. It can, for the same reasons, also stipulate the existence of infrastructure sufficient for its growth, as a pre-requisite. But the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the government-aided institutions. Whereas in the latter case, the Government will have greater say in the administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence..."*

Section 133(2) of the 1983 Act vests power in the government to give direction to any educational institution for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the Rules, and that the institution be it governmental, State aided or privately managed, is bound to obey the same. This section coupled with section 7(2) clothes the government with power *inter alia* to prescribe or caused to be prescribed school uniform. The government vide Circular dated 31.1.2014 accordingly has issued a direction. Significantly, this is not put in challenge and we are not called upon to adjudge its validity, although some submissions were made *de hors* the pleadings that to the extent the Circular includes the local Member of the Legislative Assembly and his nominee respectively as the President and Vice President of the College Betterment (Development) Committee, it is vulnerable for challenge. In furtherance thereof, it has also issued a Government Order dated 5.2.2022. We shall be discussing more about the said Circular and the Order, a bit later. Suffice it to say now that the contention as to absence of power to prescribe dress code in schools is liable to be rejected.

XIV. AS TO PRESCRIPTION OF SCHOOL UNIFORM TO THE EXCLUSION OF *HIJAB* IF VIOLATES ARTICLES, 14, 15, 19(1)(a) & 21:

(i) There has been a overwhelming juridical opinion in all advanced countries that in accord with the general principle, the school authorities may make reasonable regulations governing the conduct of pupils under their control and that they may prescribe the kind of dress to be worn by students or make reasonable regulations as to their personal appearance, as well. In *MILLER vs. GILLS*[77]*, a rule that the students of an agricultural high school should wear a khaki uniform when in attendance at the class and whilst visiting public places within 5 miles of the school is not ultra vires, unreasonable, and void.* Similarly, in *CHRISTMAS vs. EL RENO BOARD OF EDUCATION*[78], a regulation prohibiting male students who wore hair over their eyes, ears or collars from participating in a graduation diploma ceremony, which had no effect on the student's actual graduation from high school, so that no educational rights were denied, has been held valid. It is also true that our Constitution protects the rights of school children too against unreasonable regulations. However, the prescription of dress code for the students that

[77] (D.C. III) 315 F SUP. 94
[78] (D.C. Okla.) 313 F SUPP. 618

too within the four walls of the class room as distinguished from rest of the school premises does not offend constitutionally protected category of rights, when they are '*religion-neutral*' and '*universally applicable*' to all the students. This view gains support from Justice Scalia's decision in *EMPLOYMENT DIVISION vs. SMITH*[79]. School uniforms promote harmony & spirit of common brotherhood transcending religious or sectional diversities. This apart, it is impossible to instill the scientific temperament which our Constitution prescribes as a fundamental duty vide Article 51A(h) into the young minds so long as any propositions such as wearing of *hijab or bhagwa* are regarded as religiously sacrosanct and therefore, not open to question. They inculcate secular values amongst the students in their impressionable & formative years.

(ii) The school regulations prescribing dress code for all the students as one homogenous class, serve constitutional secularism. It is relevant to quote the observations of Chief Justice Venkatachalaiah, in *ISMAIL FARUQUI*, supra:

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[79] 494 U.S. 872 (1990)

> *"The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution… In a pluralist, secular polity law is perhaps the greatest integrating force. Secularism is more than a passive…It is a positive concept of equal treatment of all religions. What is material is that it is a constitutional goal and a Basic Feature of the Constitution."*

It is pertinent to mention that the preamble to the 1983 Act appreciably states the statutory object being "*fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education."* This also accords with the Fundamental Duty constitutionally prescribed under Article 51A(e) in the same language, as already mentioned above. Petitioners' argument that '*the goal of education is to promote plurality, not promote uniformity or homogeneity, but heterogeneity*' and therefore, prescription of student uniform offends the constitutional spirit and ideal, is thoroughly misconceived.

(iii) Petitioners argued that regardless of their freedom of conscience and right to religion, wearing of *hijab* does possess cognitive elements of '*expression'* protected under Article 19(1)(a) vide *NATIONAL LEGAL SERVICES AUTHORITY, supra* and it has also the substance of privacy/autonomy that are guarded under Article 21 vide *K.S.PUTTASWAMY, supra.*

Learned advocates appearing for them vociferously submit that the Muslim students would adhere to the dress code with *hijab* of a matching colour as may be prescribed and this should be permitted by the school by virtue of '*reasonable accommodation'*. If this proposal is not conceded to, then prescription of any uniform would be violative of their rights availing under these Articles, as not passing the '*least restrictive test*' and '*proportionality test*', contended they. In support, they press into service *CHINTAMAN RAO and MD. FARUK, supra*. Let us examine this contention. The Apex Court succinctly considered these tests in *INTERNET & MOBILE ASSN. OF INDIA vs. RESERVE BANK OF INDIA*[80], with the following observations:

> "*…While testing the validity of a law imposing a restriction on the carrying on of a business or a profession, the Court must, as formulated in Md. Faruk, attempt an evaluation of (i) its direct and immediate impact upon of the fundamental rights of the citizens affected thereby (ii) the larger public interest sought to be ensured in the light of the object sought to be achieved (iii) the necessity to restrict the citizens' freedom (iv) the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public and (v) the possibility of achieving the same object by imposing a less drastic restraint… On the question of proportionality, the learned Counsel for the petitioners relies upon the four-pronged test summed up in the opinion of the majority in Modern Dental College and Research*

[80] (2020) 10 SCC 274

> *Centre v. State of Madhya Pradesh. These four tests are (i) that the measure is designated for a proper purpose (ii) that the measures are rationally connected to the fulfilment of the purpose (iii) that there are no alternative less invasive measures and (iv) that there is a proper relation between the importance of achieving the aim and the importance of limiting the right…But even by our own standards, we are obliged to see if there were less intrusive measures available and whether RBI has at least considered these alternatives..."*

(iv) All rights have to be viewed in the contextual conditions which were framed under the Constitution and the way in which they have evolved in due course. As already mentioned above, the Fundamental Rights have relative content and their efficacy levels depend upon the circumstances in which they are sought to be exercised. To evaluate the content and effect of restrictions and to adjudge their reasonableness, the aforesaid tests become handy. However, the petitions we are treating do not involve the right to freedom of speech & expression or right to privacy, to such an extent as to warrant the employment of these tests for evaluation of argued restrictions, in the form of school dress code. The complaint of the petitioners is against the violation of essentially 'derivative rights' of the kind. Their grievances do not go to the core of *substantive rights* as such but lie in the penumbra thereof. So, by a sheer constitutional logic, the

protection that otherwise avails to the *substantive rights* as such cannot be stretched too far even to cover the *derivative rights* of this nature, regardless of the '*qualified public places*' in which they are sought to be exercised. It hardly needs to be stated that schools are '*qualified public places*' that are structured predominantly for imparting educational instructions to the students. Such '*qualified spaces*' by their very nature repel the assertion of individual rights to the detriment of their general discipline & decorum. Even the *substantive rights* themselves metamorphise into a kind of *derivative rights* in such places. These illustrate this: the rights of an under – trial detenue qualitatively and quantitatively are inferior to those of a free citizen. Similarly, the rights of a serving convict are inferior to those of an under – trial detenue. By no stretch of imagination, it can be gainfully argued that prescription of dress code offends students' fundamental right to expression or their autonomy. In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination *inter alia* under Articles 14 & 15, when the dress code is equally applicable to all the students, regardless of religion, language, gender or the like. It is nobody's case that the dress code is sectarian.

(v) Petitioners' contention that '*a class room should be a place for recognition and reflection of diversity of society, a mirror image of the society (socially & ethically)'* in its deeper analysis is only a hollow rhetoric, '*unity in diversity*' being the oft quoted platitude since the days of *IN RE KERALA EDUCATION BILL, supra ,* wherein paragraph 51 reads: *'…the genius of India has been able to find unity in diversity by assimilating the best of all creeds and cultures.'* The counsel appearing for Respondent Nos.15 & 16 in W.P.No.2146/2022, is justified in pressing into service a House of Lords decision in *REGINA vs. GOVERNORS OF DENBIGH HIGH SCHOOL, supra* wherein at paragraph 97, it is observed as under:

> "*But schools are different. Their task is to educate the young from all the many and diverse families and communities in this country in accordance with the national curriculum. Their task is to help all of their pupils achieve their full potential. This includes growing up to play whatever part they choose in the society in which they are living. The school's task is also to promote the ability of people of diverse races, religions and cultures to live together in harmony. Fostering a sense of community and cohesion within the school is an important part of that. A uniform dress code can play its role in smoothing over ethnic, religious and social divisions…*"

(vi) It hardly needs to be stated that our Constitution is founded on the principle of '*limited government*'. "*What is the most important gift to the common person given by this*

Constitution is 'fundamental rights', which may be called 'human rights' as well." It is also equally true that in this country, the freedom of citizens has been broadening precedent by precedent and the most remarkable feature of this relentless expansion is by the magical wand of judicial activism. Many new rights with which the Makers of our Constitution were not familiar, have been shaped by the constitutional courts. Though the basic human rights are universal, their regulation as of necessity is also a constitutional reality. The restriction and regulation of rights be they fundamental or otherwise are a small price which persons pay for being the members of a civilized community. There has to be a sort of balancing of competing interests i.e., the collective rights of the community at large and the individual rights of its members. True it is that the Apex Court in *NATIONAL LEGAL SERVICES AUTHORITY supra,* said that dressing too is an 'expression' protected under Article 19(1)(a) and therefore, ordinarily, no restriction can be placed on one's personal appearance or choice of apparel. However, it also specifically mentioned at paragraph 69 that this right is "*subject to the restrictions contained in Article 19(2) of the Constitution.*" The said decision was structured keeping the

'*gender identity'* at its focal point, attire being associated with such identity. Autonomy and privacy rights have also blossomed vide *K.S.PUTTASWAMY, supra.* We have no quarrel with the petitioners' essential proposition that what one desires to wear is a facet of one's autonomy and that one's attire is one's expression. But all that is subject to reasonable regulation.

(vii) Nobody disputes that persons have a host of rights that are constitutionally guaranteed in varying degrees and they are subject to reasonable restrictions. What is reasonable is dictated by a host of qualitative & quantitative factors. Ordinarily, a positive of the right includes its negative. Thus, right to speech includes right to be silent vide *BIJOE EMMANUEL.* However, the negative of a right is not invariably coextensive with its positive aspect. Precedentially speaking, the right to close down an industry is not coextensive with its positive facet i.e., the right to establish industry under Article 19(1)(g) vide *EXCEL WEAR vs. UNION OF INDIA*[81]. Similarly, the right to life does not include the right to die under Article 21 vide *COMMON CAUSE vs. UNION OF INDIA*[82], attempt to

[81] AIR 1979 SC 25
[82] (2018) 5 SCC 1

commit suicide being an offence under Section 309 of Indian Penal Code. It hardly needs to be stated the content & scope of a right, in terms of its exercise are circumstantially dependent. Ordinarily, liberties of a person stand curtailed *inter alia* by his position, placement and the like. The extent of autonomy is enormous at home, since ordinarily residence of a person is treated as his inviolable castle. However, in '*qualified public places*' like schools, courts, war rooms, defence camps, etc., the freedom of individuals as of necessity, is curtailed consistent with their discipline & decorum and function & purpose. Since wearing *hijab* as a facet of expression protected under Article 19(1)(a) is being debated, we may profitably advert to the '*free speech jurisprudence*' in other jurisdictions. The Apex Court in *INDIAN EXPRESS NEWSPAPERS vs. UNION OF INDIA*[83] observed:

> *"While examining the constitutionality of a law which is alleged to contravene Article 19(1)(a) of the Constitution, we cannot, no doubt, be solely guided by the decisions of the Supreme Court of the United States of America. But in order to understand the basic principles of freedom of speech and expression and the need for that freedom in a democratic country, we may take them into consideration...".*

[83] (1985) 1 SCC 641

(viii) In US, the Fourteenth Amendment is held to protect the First Amendment rights of school children against unreasonable rules or regulations vide *BURNSIDE vs. BYARS*[84]. Therefore, a prohibition by the school officials, of a particular expression of opinion is held unsustainable where there is no showing that the exercise of the forbidden right would materially interfere with the requirements of a school' positive discipline. However, conduct by a student, in class or out of it, which for any reason-whether it stems from time, place, or type of behavior-materially disrupts class work or involves substantial disorder or invasion of the rights of others, is not immunized by the constitutional guaranty of freedom of speech vide *JOHN F. TINKER vs. DES MOINES INDEPENDENT COMMUNITY SCHOOL, supra* In a country wherein right to speech & expression is held to heart, if school restrictions are sustainable on the ground of positive discipline & decorum, there is no reason as to why it should be otherwise in our land. An extreme argument that the students should be free to choose their attire in the school individually, if countenanced, would only breed indiscipline that may eventually degenerate into chaos in the campus and

[84] 363 F 2d 744 (5th Cir. 1966)

later, in the society at large. This is not desirable to say the least. It is too farfetched to argue that the school dress code militates against the fundamental freedoms guaranteed under Articles, 14, 15, 19, 21 & 25 of the Constitution and therefore, the same should be outlawed by the stroke of a pen.

(ix) CONCEDING *HIJAB* ON THE PRINCIPLE OF REASONABLE ACCOMMODATION:

The counsel for the petitioners passionately submitted that the students should be permitted to wear *hijab* of structure & colour that suit to the prescribed dress code. In support of this, they bank upon the '*principle of reasonable accommodation*'. They drew our attention to the prevalent practice of dress codes/uniforms in *Kendriya Vidyalayas*. We are not impressed by this argument. Reasons are not far to seek: firstly, such a proposal if accepted, the school uniform ceases to be uniform. There shall be two categories of girl students viz., those who wear the uniform with *hijab* and those who do it without. That would establish a sense of *'social-separateness'*, which is not desirable. It also offends the feel of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion & faiths. As already mentioned above, the statutory

scheme militates against sectarianism of every kind. Therefore, the accommodation which the petitioners seek cannot be said to be reasonable. The object of prescribing uniform will be defeated if there is non-uniformity in the matter of uniforms. Youth is an impressionable period when identity and opinion begin to crystallize. Young students are able to readily grasp from their immediate environment, differentiating lines of race, region, religion, language, caste, place of birth, etc. The aim of the regulation is to create a *'safe space'* where such divisive lines should have no place and the ideals of egalitarianism should be readily apparent to all students alike. Adherence to dress code is a mandatory for students. Recently, a Division Bench of this Court disposed off on 28.08.2019, Writ Petition No.13751 OF 2019 (EDN-RES-PIL) between *MASTER MANJUNATH vs. UNION OF INDIA* on this premise. What the *Kendriya Vidyalayas* prescribe as uniform/dress code is left to the policy of the Central Government. Ours being a kind of Federal Structure (Professor K.C. Wheare), the Federal Units, namely the States need not toe the line of Center.

(x) Petitioners' heavy reliance on the South African court decision in *MEC FOR EDUCATION: KWAZULU-NATAL*,

supra, does not much come to their aid. Constitutional schemes and socio-political ideologies vary from one country to another, regardless of textual similarities. A Constitution of a country being the Fundamental Law, is shaped by several streams of forces such as history, religion, culture, way of life, values and a host of such other factors. In a given fact matrix, how a foreign jurisdiction treats the case cannot be the sole model readily availing for adoption in our system which ordinarily treats foreign law & foreign judgments as matters of facts. Secondly, the said case involved a nose stud, which is ocularly insignificantly, apparently being as small as can be. By no stretch of imagination, that would not in any way affect the uniformity which the dress code intends to bring in the class room. That was an inarticulate factor of the said judgment. By and large, the first reason *supra* answers the Malaysian court decision too[85]. Malaysia being a theistic Nation has Islam as the State religion and the court in its wisdom treated wearing *hijab* as being a part of religious practice. We have a wealth of material with which a view in respectful variance is formed. Those foreign decisions cited by

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[85] HJH HALIMATUSSAADIAH BTE HJ KAMARUDDIN V. PUBLIC SERVICES COMMISSION, MALAYSIA (CIVIL APPEAL NO. 01-05-92) DECIDED ON 5-8-1994 [1994] 3 MLJ

the other side of spectrum in opposing *hijab* argument, for the same reasons do not come to much assistance. In several countries, wearing of burqa or *hijab* is prohibited, is of no assistance to us. Noble thoughts coming from whichever direction are most welcome. Foreign decisions also throw light on the issues debated, cannot be disputed. However, courts have to adjudge the causes brought before them essentially in accordance with native law.

In view of the above, we are of the considered opinion that the prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to.

XV. AS TO VALIDITY OF GOVERNMENT CIRCULAR DATED 31.1.2014 CONCERNING THE FORMATION OF SCHOOL BETTERMENT (DEVELOPMENT) COMMITTEES:

(i) The government vide Circular dated 31.1.2014 directed constitution of School Betterment Committee *inter alia* with the object of securing State Aid & its appropriation and enhancing the basic facilities & their optimum utilization. This Committee in every Pre-University College shall be headed by the local Member of Legislative Assembly (MLA) as its President and his nominee as the Vice President. The Principal of the College shall be the Member Secretary. Its

membership comprises of student representatives, parents, one educationist, a Vice Principal/Senior Professor & a Senior Lecturer. The requirement of reservation of SC/ST/Women is horizontally prescribed. It is submitted at the Bar that these Committees have been functioning since about eight years or so with no complaints whatsoever. Petitioners argued for Committee's invalidation on the ground that the presence of local Member of Legislative Assembly and his nominee would only infuse politics in the campus and therefore, not desirable. He also submits that even otherwise, the College Development Committee being extra-legal authority has no power to prescribe uniform.

(ii) We are not much inclined to undertake a deeper discussion on the validity of constitution & functioning of School Betterment (Development) Committees since none of the Writ Petitions seeks to lay challenge to Government Circular of January 2014. Merely because these Committees are headed by the local Member of Legislative Assembly, we cannot hastily jump to the conclusion that their formation is bad. It is also relevant to mention what the Apex Court said in

STATE OF PUNJAB VS. GURDEV SINGH[86], after referring to Professor Wade's Administrative Law:

> *"…Apropos to this principle, Prof. Wade states: "the principle must be equally true even where the 'brand' of invalidity' is plainly visible; for their also the order can effectively be resisted in law only by obtaining the decision of the Court (See: Administrative Law 6th Ed. p. 352). Prof. Wade sums up these principles: The truth of the matter is that the court will invalidate an order only if 'the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plain- tiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another." (Ibid p. 352) It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the Court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the Court within the prescribed period of limitation. If the statutory time limit expires the Court cannot give the declaration sought for…"*

It is nobody's case that the Government Circular is *void ab initio* and consequently, the School Betterment (Development) Committees are *non est*. They have been functioning since last eight years and no complaint is raised about their performance, nor is any material placed on record that warrants consideration of the question of their validity despite

[86] AIR 1992 SC 111

absence of pleadings & prayers. It hardly needs to be stated that schools & hospitals amongst other, are the electoral considerations and therefore, peoples' representatives do show concern for the same, as a measure of their performances. That being the position, induction of local Members of Legislative Assembly in the Committees *per se* is not a ground for voiding the subject Circular.

(iii) We have already held that the schools & institutions have power to prescribe student uniform. There is no legal bar for the School Betterment (Development) Committees to associate with the process of such prescription. However, there may be some scope for the view that it is not desirable to have elected representatives of the people in the school committees of the kind, one of the obvious reasons being the possible infusion of '*party-politics*' into the campus. This is not to cast aspersion on anyone. We are not unaware of the advantages of the schools associating with the elected representatives. They may fetch funds and such other things helping development of institutions. This apart, no law or ruling is brought to our notice that interdicts their induction as the constituent members of such committees.

XVI. AS TO VALIDITY OF GOVERNMENT ORDER DATED 5.2.2022 PROVIDING FOR PRESCRIPTION OF DRESS CODES IN EDUCATIONAL INSTITUTIONS:

(i) The validity of Government Order dated 05.02.2022 had been hotly debated in these petitions. Petitioners argue that this order could not have been issued in purported exercise of power under sections 133 and 7(2) of the 1983 Act read with Rule 11 of the 1995 Curricula Rules. The State and other contesting respondents contend to the contrary, *inter alia* by invoking sections 142 & 143 of the 1983 Act, as well. This Order *per se* does not prescribe any dress code and it only provides for prescription of uniform in four different types of educational institutions. The near English version of the above as submitted by both the sides is already stated in the beginning part of the judgment. However, the same is reiterated for the ease of reference:

Students should compulsorily adhere to the dress code/uniform as follows:

a. *in government schools, as prescribed by the government;*
b. *in private schools, as prescribed by the school management;*
c. *in Pre–University colleges that come within the jurisdiction of the Department of the Pre–University*

Education, as prescribed by the College Development Committee or College Supervision Committee; and

d. wherever no dress code is prescribed, such attire that would accord with 'equality & integrity' and would not disrupt the 'public order'.

(ii) Petitioners firstly argued that this Order suffers from material irregularity apparent on its face inasmuch as the rulings cited therein do not lay down the ratio which the government wrongly states that they do. This Order refers to two decisions of the Kerala High Court and one decision of Bombay and Madras High Courts each. We have already discussed all these decisions supra at paragraph (X) and therefore, much need not be discussed here. Regardless of the ratio of these decisions, if the Government Order is otherwise sustainable in law, which we believe it does, the challenge thereto has to fail for more than one reason: The subject matter of the Government Order is the prescription of school uniform. Power to prescribe, we have already held, avails in the scheme of 1983 Act and the Rules promulgated thereunder. Section 133(2) of the Act which is broadly worded empowers the government to issue any directions to give effect to the purposes of the Act or to any provision of the Act or to any Rule made thereunder. This is a wide conferment of power which obviously includes the authority to prescribe

school dress code. It is more so because Rule 11 of 1995 Curricula Rules itself provides for the prescription of school uniform and its modalities. The Government Order can be construed as the one issued to give effect to this rule itself. Such an order needs to be construed in the light of the said rule and the 2014 Circular, since there exists a kinship *inter se*. Therefore, the question as to competence of the government to issue order of the kind is answered in the affirmative.

(iii) Petitioners' second contention relates to exercise of statutory power by the government that culminated into issuance of the impugned order. There is difference between existence of power and the exercise of power; existence of power *per se* does not justify its exercise. The public power that is coupled with duty needs to be wielded for effectuating the purpose of its conferment. Learned counsel appearing for the students argued that the Government Order has to be voided since the reasons on which it is structured are *ex facie* bad and that new grounds cannot be imported to the body of the Order for infusing validity thereto vide *COMMISSIONER OF*

POLICE vs. GORDHANDAS BHANJE[87]*.* This decision articulated the Administrative Law principle that the validity of a statutory order has to be adjudged only on the reasons stated in the order itself. We have no quarrel with this principle which has been reiterated in *MOHINDER SINGH GILL, supra.* However, we are not sure of its invocation in a case wherein validity of the impugned order can otherwise be sustained on the basis of other intrinsic material. As we have already mentioned, the Government Order is issued to give effect to the purposes of the 1983 Act and to Rule 11 of the 1995 Curricula Rules. That being the position the question of un-sustainability of some of the reasons on which the said Order is constructed, pales into insignificance.

(iv) Petitioners next argued that the Government Order cites '*sārvajanika suvyavasthe*' i.e., '*public order'* as one of the reasons for prescribing uniform to the exclusion of *hijab;* disruption of public order is not by those who wear this apparel but by those who oppose it; most of these opposers wear *bhagwa* or such other cloth symbolic of religious overtones. The government should take action against the hooligans disrupting peace, instead of asking the Muslim girl

[87] AIR 1952 SC 16

students to remove their *hijab*. In support of this contention, they drew attention of the court to the concept of '*hecklers veto'* as discussed in *K.M.SHANKARAPPA, supra*. They further argued that ours being a '*positive secularism*', the State should endeavor to create congenial atmosphere for the exercise of citizens rights, by taking stern action against those who obstruct vide *PRAVEEN BHAI THOGADIA, supra.* Again we do not have any quarrel with the proposition of law. However, we are not convinced that the same is invocable for invalidating the Government Order, which *per se* does not prescribe any uniform but only provides for prescription in a structured way, which we have already upheld in the light of our specific finding that wearing *hijab* is not an *essential religious practice* and school uniform to its exclusion can be prescribed. It hardly needs to be stated that the uniform can exclude any other apparel like *bhagwa* or *blue shawl* that may have the visible religious overtones. The object of prescribing uniform cannot be better stated than by quoting from *'MANUAL ON SCHOOL UNIFORMS'* published by U.S. Department of Education:

> '*A safe and disciplined learning environment is the first requirement of a good school. Young people who are safe and secure, who learn basic American values and the*

> *essentials of good citizenship, are better students. In response to growing levels of violence in our schools, many parents, teachers, and school officials have come to see school uniforms as one positive and creative way to reduce discipline problems and increase school safety.'*

(v) We hasten to add that certain terms used in a Government Order such as '*public order',* etc.*,* cannot be construed as the ones employed in the Constitution or Statutes. There is a sea of difference in the textual structuring of legislation and in promulgating a statutory order as the one at hands. The draftsmen of the former are ascribed of due diligence & seriousness in the employment of terminology which the government officers at times lack whilst textually framing the statutory policies. Nowadays, courts do often come across several Government Orders and Circulars which have lavish terminologies, at times lending weight to the challenge. The words used in Government Orders have to be construed in the generality of their text and with common sense and with a measure of grace to their linguistic pitfalls. The text & context of the Act under which such orders are issued also figure in the mind. The impugned order could have been well drafted, is true. '*There is scope for improvement even in heaven*' said Oscar Wilde. We cannot resist ourselves from quoting what Justice Holmes had said in *TOWNE vs.*

EISNER[88]*, "a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."* Thus, there is no much scope for invoking the concept of *'law and order'* as discussed in *ANITA and GULAB ABBAS*, *supra*, although the Government Order gives a loose impression that there is some nexus between wearing of *hijab* and the '*law & order*' situation.

(vi) Petitioners had also produced some '*loose papers*' without head and tail, which purported to be of a brochure issued by the Education Department to the effect that there was no requirement of any school uniform and that the prescription of one by any institution shall be illegal. There is nothing on record for authenticating this version. Those producing the same have not stated as to who their author is and what legal authority he possessed to issue the same. Even otherwise, this purported brochure cannot stand in the face of Government Order dated 05.02.2022 whose validity we have already considered. Similarly, petitioners had banked upon the so called *research papers* allegedly published by '*Pew Research Centre*' about r*eligious clothing and personal*

[88] 245 U.S.418 (1918)

appearance. They contend that this paper is generated from the research that studied various religious groups & communities and that a finding has been recorded: '*Most Hindu, Muslim and Sikh women cover their heads outside the home*' and therefore, the Government Order which militates against this social reality, is arbitrary. We are not inclined to subscribe to this view. No credentials of the researchers are stated nor the representative character of the statistics mentioned in the papers are demonstrated. The authenticity of the contents is apparently lacking.

(vii) Petitioners contended that the said Government Order has been hastily issued even when the contemplated High Powered Committee was yet to look into the issue as to the desirability of prescription and modules of dress codes in the educational institutions. The contents of Government Order give this impression, is true. However, that is too feeble a ground for faltering a policy decision like this. At times, regard being had to special conditions like social unrest and public agitations, governments do take certain urgent decisions which may appear to be *knee-jerk* reactions. However, these are matters of perceptions. May be, such decisions are at times in variance with their earlier stand.

Even that cannot be faltered when they are dictated by circumstances. After all, in matters of this kind, the doctrine of *'estoppel'* does not readily apply. Whether a particular decision should be taken at a particular time, is a matter left to the *executive wisdom,* and courts cannot run a race of opinions with the Executive, more particularly when policy content & considerations that shaped the decision are not judicially assessable. The doctrine of *'separation of powers'* which figures in our constitution as a '*basic feature*' expects the organs of the State to show due deference to each other's opinions. The last contention that the Government Order is a product of '*acting under dictation*' and therefore, is bad in law is bit difficult to countenance. Who acted under whose dictation cannot be adjudged merely on the basis of some concessional arguments submitted on behalf of the State Government. Such a proposition cannot be readily invoked inasmuch as invocation would affect the institutional dignity & efficacy of the government. A strong case has to be made to invoke such a ground, in terms of pleadings & proof.

In view of the above, we are of the considered opinion that the government has power to issue the impugned Order dated 05.2.2022 and that no case is made out for its invalidation.

XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

(i) There have been several International Conventions & Conferences in which India is a participant if not a signatory. *UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948), CONVENTION OF ELIMINATION ON ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1981), INTERNATIONAL COVENANTS ON CIVIL AND POLITICAL RIGHTS (1966), UNITED NATIONS CONVENTION ON RIGHTS OF CHILD (1989),* are only a few to name. Under our *Constitutional Jurisprudence,* owing to Article 51 which provides for promotion of international peace & security, the International Conventions of the kind assume a significant role in construing the welfare legislations and the statutes which have kinship to the subject matter of such Conventions. In a sense, these instruments of International Law permeate into our domestic law. Throughout, there has been both legislative & judicial process to emancipate women from pernicious discrimination in all its forms and means. Women regardless of religion being equal, if not superior to men, are also joining defence services on permanent commission basis vide Apex

Court decision in C.A.No.9367-9369/2011 between *THE SECRETARY, MINISTRY OF DEFENCE vs. BABITA PUNIYA*, decided on 17.2.2020. Be it business, industry, profession, public & private employments, sports, arts and such other walks of life, women are breaking the glass ceiling and faring better than their counterparts.

(ii) It is relevant to quote what Dr. B.R.Ambedkar in his book *'PAKISTAN OR THE PARTITION OF INDIA'* (1945) at Chapter X, Part 1 titled '*Social Stagnation'* wrote:

> *"…A woman (Muslim) is allowed to see only her son, brothers, father, uncles, and husband, or any other near relation who may be admitted to a position of trust. She cannot even go to the Mosque to pray, and must wear burka (veil) whenever she has to go out. These burka woman walking in the streets is one of the most hideous sights one can witness in India…The Muslims have all the social evils of the Hindus and something more. That something more is the compulsory system of purdah for Muslim women… Such seclusion cannot have its deteriorating effect upon the physical constitution of Muslim women… Being completely secluded from the outer world, they engage their minds in petty family quarrels with the result that they become narrow and restrictive in their outlook… They cannot take part in any outdoor activity and are weighed down by a slavish mentality and an inferiority complex…Purdah women in particular become helpless, timid…Considering the large number of purdah women amongst Muslims in India, one can easily understand the vastness and seriousness of the problem of purdah…As a consequence of the purdah system, a segregation of Muslim women is brought about …"*

What the Chief Architect of our Constitution observed more than half a century ago about the *purdah* practice equally applies to wearing of *hijab* there is a lot of scope for the argument that insistence on wearing of *purdah*, veil, or headgear in any community may hinder the process of emancipation of woman in general and Muslim woman in particular. That militates against our constitutional spirit of '*equal opportunity'* of '*public participation*' and '*positive secularism*'. Prescription of school dress code to the exclusion of *hijab, bhagwa,* or any other apparel symbolic of religion can be a step forward in the direction of emancipation and more particularly, to the access to education. It hardly needs to be stated that this does not rob off the autonomy of women or their right to education inasmuch as they can wear any apparel of their choice outside the classroom.

XVIII. AS TO PRAYER FOR A WRIT OF QUO WARRANTO IN SOME WRIT PETITIONS:

The petitioners in W.P. No.2146/2022, have sought for a Writ of Mandamus for initiating a disciplinary enquiry on the ground that the respondent Nos.6 to 14 i.e., Principal & teachers of the respondent-college are violating the departmental guidelines which prohibit prescription of any

uniform and for their hostile approach. Strangely, petitioners have also sought for a Writ of *Quo Warranto* against respondent Nos. 15 & 16 for their alleged interference in the administration of 5th respondent school and for promoting political agenda. The petition is apparently ill-drafted and pleadings lack cogency and coherence that are required for considering the serious prayers of this kind. We have already commented upon the Departmental Guidelines as having no force of law. Therefore, the question of the said respondents violating the same even remotely does not arise. We have also recorded a finding that the college can prescribe uniform to the exclusion of *hijab or bhagwa or such other religious symbols,* and therefore, the alleged act of the respondents in seeking adherence to the school discipline & dress code cannot be faltered. Absolutely no case is made out for granting the prayers or any other reliefs on the basis of these pleadings. The law of *Quo Warranto* is no longer in a fluid state in our country; the principles governing issuance of this writ having been well defined vide UNIVERSITY OF MYSORE vs. C.D. GOVINDA RAO[89] . For seeking a Writ of this nature, one has to demonstrate that the post or office which the

[89] AIR 1965 SC 491

person concerned holds is a public post or a public office. In our considered view, the respondent Nos.15 & 16 do not hold any such position in the respondent-school. Their placement in the College Betterment (Development) Committee does not fill the public character required as a pre-condition for the issuance of Writ of *Quo Warranto*.

In view of the above, we are of the considered opinion that no case is made out in W.P. No.2146/2022 for issuance of a direction for initiating disciplinary enquiry against respondent Nos. 6 to 14. The prayer for issuance of Writ of *Quo Warranto* against respondent Nos. 15 and 16 is rejected being not maintainable.

From the submissions made on behalf of the Respondent – Pre – University College at Udupi and the material placed on record, we notice that all was well with the dress code since 2004. We are also impressed that even Muslims participate in the festivals that are celebrated in the '*ashta mutt sampradāya*', (Udupi being the place where eight *Mutts* are situated). We are dismayed as to how all of a sudden that too in the middle of the academic term the issue of *hijab* is generated and blown out of proportion by the powers that be. The way, *hijab imbroglio* unfolded gives scope for the argument that some *'unseen hands'* are at work to

engineer social unrest and disharmony. Much is not necessary to specify. We are not commenting on the ongoing police investigation *lest* it should be affected. We have perused and returned copies of the police papers that were furnished to us in a sealed cover. We expect a speedy & effective investigation into the matter and culprits being brought to book, brooking no delay.

XIX. THE PUBLIC INTEREST LITIGATIONS:

(i) One Dr. Vinod Kulkarni has filed PIL in W.P.No.3424/2022 seeking a Writ of Mandamus to the Central Government and State Government *inter alia 'to permit Female Muslim students to sport Hijab provided they wear the stipulated school uniform also*' (*sic*). The petition mentions about *BIJOE EMMANUEL, INDIAN YOUNG LAWYERS ASSOCIATION, JAGADISHWARANANDA AVADHUTA, CHANDANMAL vs. STATE OF WEST BENGAL*[90] and such other cases. Petition is unsatisfactorily structured on the basis of some print & electronic media reports that are not made part of the paper book. There is another PIL in *GHANSHYAM UPADHYAY VS. UNION OF INDIA* in W.P.No.4338/2022 (GM-

[90] AIR 1986 CAL. 104

RES-PIL) *inter alia* seeking a Writ of Mandamus for undertaking an investigation by the Central Bureau of Investigation (CBI), National Investigating Agency (NIA) as to the involvement of radical Islamic organizations such as Popular Front of India, Students Islamic Organization of India, Campus Front of India and *Jamaat*-e-*Islami* and their funding by some foreign universities to Islamize India. There are other incoherent prayers. This petitioner opposes the case of students who desire to wear *hijab*. Most of the contentions taken up in these petitions are broadly treated in the companion Writ Petitions. We are not inclined to entertain these two Writ Petitions filed in PIL jurisdiction, both on the ground of their maintainability & merits. The second petition, it needs to be stated, seeks to expand the parameters of the essential *lis* involved in all these cases much beyond the warranted frame of consideration. In W.P.No.3942/2022 (GM-RES-PIL) between *ABDUL MANSOOR MURTUZA SAYED AND STATE OF KARNATAKA* decided on 25.02.2022, we have already held that when the aggrieved parties are effectively prosecuting their personal causes, others cannot interfere by invoking PIL jurisdiction. A battery of eminent lawyers are

representing the parties on both the sides. Even otherwise, no exceptional case is made out for our indulgence.

In view of the above, we are of the considered opinion that both the above Writ Petitions filed as Public Interest Litigations are liable to be rejected, absolutely no case having been made out for indulgence.

In the above circumstances, all these petitions being devoid of merits, are liable to be and accordingly are dismissed. In view of dismissal of these Writ Petitions, all pending applications pale into insignificance and are accordingly, disposed off.

Costs made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

SJ/CBC

IN THE SUPREME COURT OF INDIA

UNDER ORDER XXI RULE 3 (1) (a)

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (C) NO..... OF 2022

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF:

		BEFORE THE HIGH COURT	**BEFORE THIS HON'BLE COURT**
1.	MUNISA BUSHRA ABEDI D/O ASGHAR ALI ABEDI AGED ABOUT 59 YEARS R/O D/404, HILL VIEW TOWERS, SURYA NAGAR. VIKHROLI, WEST MUMBAI, MAHARASHTRA-400083	NOT A PARTY	PETITIONER NO.1
2.	MS. JALEESA SULTANA YASEEN D/O MD. YOUSUF AGED ABOUT 54 YEARS R/O 11-3-694, NEW MALLAPALLY HYDERABAD, TELANGANA-500001	NOT A PARTY	PETITIONER NO.2
3.	ALL INDIA MUSLIM PERSONAL LAW BOARD, A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATION ACT, THROUGH ITS SECRETARY MR. MOHAMMED FAZLURRAHIM HAVING ITS OFFICE AT 76A/1, MAIN MARKET, OKHLA VILLAGE, JAMIA NAGAR, NEW DELHI - 110025	NOT A PARTY	PETITIONER NO.3

	VERSUS		
1.	STATE OF KARNATAKA, REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION, 2ND GATE, 6TH FLOOR, MS BUILDING, BEGALURU-560001	RESPONDENT NO. 1	CONTESTING RESPONDENT NO. 1
2.	GOVERNMENT PU COLLEGE, BEHIND SYNDICATE BANK, NEAR HARSHA STORE, UDUPI, KARNATAKA-576101, REPRESENTED BY ITS PRINCIPAL	RESPONDENT NO. 2	CONTESTING RERSPONDENT NO. 2
3.	DISTRICT COMMISSIONER UDUPI DISTRICT, MANIPAL AGUMBE-UDUPI HIGHWAY, ESHWAR NAGAR MANIPAL, KARNATAKA-576104	RESPONDENT NO. 3	CONTESTING RERSPONDENT NO. 3
4.	THE DIRECTOR, KARNATAKA PRE-UNIVERSITY BOARD, DEPARTMENT OF PRE-UNIVERSITY EDUCATION, KARNATAKA, 18TH CROSS ROAD SAMPIGE ROAD, MALLESHWARAM, BENGALURU-560012	RESPONDENT NO. 4	CONTESTING RERSPONDENT NO. 4
5.	SMT. RESHAM D/O K FARUK, AGED ABOUT 17 YEARS, THROUGH NEXT FRIEND, RESIDING AT NO. 9-138 PERAMPALI ROAD, SANTHEKATTE SANTOSH NAGARA MANIPAL ROAD, KUNJIBETTU POST UDUPI KARNATAKA-576105	PETITIONER NO. 1	PROFORMA RERSPONDENT NO. 5
6.	SRI MUBARAK, S/O K FARUK, AGED ABOUT 21 YEARS, THROUGH NEXT FRIEND, RESIDING AT NO. 9-138 PERAMPALI ROAD, SANTHEKATTE SANTOSH NAGARA MANIPAL ROAD, KUNJIBETTU POST UDUPI KARNATAKA-576105	PETITIONER NO. 2	PROFORMA RERSPONDENT NO. 6

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA AT NEW DELHI

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner above, by way of this Petition, seeks Special Leave to Appeal against the common Judgment and Order dated 15.03.2022 passed by a Three Judge Bench of the Hon'ble High Court of Karnataka at Bengaluru Bench in W.P. No. 2347 of 2022 in terms whereof the Hon'ble High Court has dismissed the Petition.

1A. It is submitted that against the impugned judgment in W.P. No. 2347 of 2022 and the other Writ Petitions passed by the Hon'ble High Court of Karnataka at Bengaluru Bench, no Special Appeal lies before the Hon'ble High Court and as such no remedies have been availed.

2. QUESTIONS OF LAW:

The following substantial questions of law arise for consideration by this Hon'ble Court:

A. WHETHER the fundamental right of conscience under Article 25(1) of the Constitution and the fundamental right of expression under Article 19(1)(a) of the Constitution are mutually exclusive?

B. WHETHER the fundamental right of conscience under Article 25 (1) and the fundamental right of expression under Article 19(1)(a) of the Constitution complement each other and any state action has to pass the muster of constitutionality on the touch stone of both the Articles?

C. WHETHER the state action (in the instant case, the Government Order dated 05.02.2022 ("G.O."), passed by the Karnataka State) assuming

without admitting *ex - facie* neutral its impact on the ground reality can be ignored?

D. WHAT is the scope of the Doctrine of Proportionality and its application in the case?

E. IS the doctrine of essential religious practice is attracted when the right of freedom of conscience of an individual is invoked under Article 25(1) of the Constitution?

F. WHETHER the doctrine of essential religious practice is attracted to the expression of conscientious religious belief in the form of dress or other manifestations in exercise of the right under Article 19(1)(a) of the Constitution?

G. WHAT is the correct ratio of the judicial pronouncement of this Hon'ble Court on the doctrine of essential religious practice, more particularly when the same is invoked in relation to the assertion of the right of the religious denomination to manage its own affairs in the matters of religion guaranteed under Article 26(b) of the Constitution?

H. WHETHER the right of freedom of conscience guaranteed under Article 25(1)(a) of the Constitution can be regulated / restricted by executive / administrative action, purporting to be taken for social welfare and reform under Article 25(2)(b) of the Constitution?

I. WHETHER the Courts have the power / j urisdiction to interpret religious scriptures / books held authentic by a religious denomination?

J. In respect of Constitutional Secularism**:**

a. **WHAT** is the correct concept of "constitutional secularism"?

b. **WHETHER** constitutional secularism is violated by applying the doctrine of proportionality and spirit of accommodation to a religious minority?

K. **WHETHER** the differential treatment to religious minorities (who are numerically weaker) is prohibited under Articles 14 and 15 of the Constitution?

3. DECLARATION IN TERMS OF RULE 3(2):

The Petitioner states that no other petition seeking leave to appeal has been filed by the Petitioner herein against the impugned final judgment dated 15.03.2022 passed by a Three Judge Bench of the High Court of Karnataka at Bengaluru Bench in W.P. No. 2347 of 2022.

4. DECLARATION IN TERMS OF RULE 5:

That Annexure (s) P-1 to P-13 are reproduced along with the Special Leave Petition, are true copies of the pleadings / documents which were referred and formed part of the record of the case in the Court / Tribunal below against whose order the leave to appeal is sought in this Petition.

5. GROUNDS:

Leave to appeal is sought for on the following grounds:

A. **BECAUSE** the impugned judgment is violative of the rights guaranteed under Articles 14, 15, 19, 21, 25 & 29 of the Constitution of India and principles as enunciated by the Hon'ble Supreme Court of India. Accordingly, the same is liable to be set - aside in terms of prayer made in the instant Petition.

B. **BECAUSE** a Muslim woman wearing Hijab does not compete with any relatable issue of 'public order', 'decency', 'morality' (see Article 19), 'public order', 'morality', 'health' (see Article 25(1)). Education being a separate matter is also not relatable to Article 25(2) which relate to power of State to regulate 'economic or financial', 'political' or any other 'secular activity' associated with religious practice. Hence, the proposition laid down in the impugned judgement, by applying the principle of 'Essential Religious Practice', appears to be erroneous and is liable to be set aside.

Re: <u>In Violation of the Basic Structure of Secularism</u>

C. **BECAUSE** this Hon'ble Court through many of its landmark judgments has identified the diversity that exists in India. One of the most famous examples of it being in the case of T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481 when this Hon'ble Court while deliberating on an education matter had given an overview of the entire demography of India, the relevant portion of the same has been reproduced hereinbelow,

> *"**158.** The one billion population of India consists of six main ethnic groups and fifty-two major tribes; six major religions and 6400 castes and sub-castes; eighteen major languages and 1600 minor languages and dialects. The essence of secularism in India can best be depicted if a relief map of India is made in mosaic, where the aforesaid one billion people are the small pieces of marble that go into the making of a map. Each person, whatever his/her language, caste, religion has his/her individual identity, which has to be preserved, so that when pieced together it goes to form a depiction with the different geographical features of India. These small pieces of marble, in the form of human beings, which may individually be dissimilar to each other, when placed together in a systematic manner, produce the beautiful map of India. Each piece, like a citizen of India, plays an important part in making of the whole. The variations of the colours as well as different shades of the same colour in a map are the result of these small pieces of different shades and colours of marble, but even when one small piece of marble is removed, the whole map of India would be scarred, and the beauty would be lost."*

D. **BECAUSE** this Hon'ble Court in Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717 while dealing with the scope of Article 30 of the Constitution of India had recognized the diversity that has been present in our country by stating that:

> ***"75** …India is the second-most populous country of the world. The people inhabiting this vast land profess different religions and speak different languages. Despite the diversity of religion and language, there runs through the fabric of the nation the golden thread of a basic innate unity. It is a mosaic of different religions, languages and cultures. Each of them has made a mark on the Indian polity and India today represents a synthesis of them all. The closing years of the British rule were marked by communal riots and dissensions. There was also a feeling of distrust and the demand was made by a section of the Muslims for a separate homeland. This ultimately resulted in the partition of the country. Those who led the fight for independence in India always laid great stress on communal amity and accord. They wanted the establishment of a secular State*

wherein people belonging to the different religions should all have a feeling of equality and non-discrimination. Demand had also been made before the partition by sections of people belonging to the minorities for reservation of seats and separate electorates. In order to bring about integration and fusion of the different sections of the population, the framers of the Constitution did away with separate electorates and introduced the system of joint electorates, so that every candidate in an election should have to look for support of all sections of the citizens. Special safeguards were guaranteed for the minorities and they were made a part of the fundamental rights with a view to instil a sense of confidence and security in the minorities. Those provisions were a kind of a Charter of rights for the minorities so that none might have the feeling that any section of the population consisted of first-class citizens and the others of second-class citizens."

E. **BECAUSE** the concept of "Secularism" as imbibed in India is no longer res integra and has been declared by this Hon'ble Court as one of the basic features of the Indian Constitution [AIR 1994 SC 1918]. Dr. B. R. Ambedkar in the Parliamentary Debate explained the meaning of a secular State as, "A secular State does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people." In Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629, the then Chief Justice, Dr. T. S. Thakur while explaining this subject referred to what Dr. Radhakrishnan noted about India being a secular State:

"When India is said to be a secular State, it does not mean that we reject reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives. Though faith in the Supreme is the basic principle of the Indian tradition, the Indian State will not identify itself with or be controlled by any particular religion. We hold that no one religion should be given preferential status, or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be a violation of the basic principles of democracy and contrary to the best interests of religion and Government. This view of religious impartiality, of comprehension and forbearance, has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges, which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all like should be free to share to the fullest degree in the common life. This is the basic principle involved in the separation of church and State."

F. **BECAUSE** in Syedna Taher Saifuddin Saheb v. State of Bombay AIR 1962 SC 853, a Constitution Bench of this Hon'ble Court described secularism thus as:

> "*50. … these articles embody the principle of religious toleration that has been the characteristic feature of Indian civilisation from the start of history, the instances and periods when this feature was absent being merely temporary aberrations. Besides, they serve to emphasise the secular nature of the Indian democracy which the Founding Fathers considered should be the very basis of the Constitution.*"

G. **BECAUSE** the impugned judgment, while acknowledging secularism as a basic feature of the Constitution as "the ethos of Indian secularism may not be approximated to the idea of separation between Church and State as envisaged under American Constitution post First Amendment (1791). Our Constitution does not enact Karl Marx's structural-functionalist view 'Religion is the opium of masses' (1844)". The impugned judgment goes on further to quote H. M. Seervai while discussing the nature of Indian secularism, "India is a secular but not an anti-religious State, for our Constitution guarantees the freedom of conscience and religion. Articles 27 and 28 emphasize the secular nature of the State…". Thus, the Hon'ble High Court concludes, "Indian secularism oscillates between sarva dharma samabhaava and dharma nirapekshata". The Hon'ble High Court further adds, "Ours being a 'positive secularism' vide PRAVEEN BHAI THOGADIA supra, is not antithesis of religious devoutness but comprises in religious tolerance." [V(ii) of the impugned Judgment], in effect by upholding Hijab ban in educational institutions goes against the very idea of secularism.

H. **BECAUSE** in the present matter, young Muslim girls have been barred from entering into educational institutions, classrooms on the pretext of an extra piece of cloth they wrap over their heads out of their religious beliefs. Hence, the issue is not violating the principle of Secularism because of an additional piece of cloth but an issue of appreciating the secular ideals as set out in our Constitution, more importantly if a person belonging to other religion can cover his hair from a piece of cloth of his choice. It is submitted that the impugned judgment is in

conflict with the idea of secularism forming part of the basic structure of the Constitution of India.

I. **BECAUSE** ironically the impugned judgment contradicts the basic values on which secularism is founded in our Constitution which are listed hereunder:

i. *It ignores the doctrine of proportionality and spirit of accommodation which are the foundation for the values of equality, liberty of thought, expression, belief and fraternity mentioned in the preamble of the Constitution.*
ii. *It ignores the foundational value of the Constitution viz. to value and preserve the Rich Heritage of our composite culture and also to promote harmony and a spirit of common brotherhood and respect religious, linguistic and sectional diversities while following noble ideals which inspired our national struggle for freedom, enshrined as fundamental duties in Part IV-A of the constitution mentioned in greater detail in Article 51-A (a), (b), (e) and (f).*

Re: <u>In Violation of Right to Equality (Article 14)</u>

J. **BECAUSE** Article 14 of the Constitution of India confers "Equality before Law" i.e. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". In the present issue, young Muslim women have been barred from educational institutions for wearing a piece of cloth over their heads. Ironically, the same educational institutions (in terms of the impugned judgment dated 15.03.2022) does not bar students from other religious backgrounds from wearing religious symbols like that worn by Sikh students donning turbans. This distinction is totally arbitrary and is sans any reasonable classification. In R. K. Garg v. Union of India (1981) 4 SCC 675, the test of classification - reasonableness of classification under Article 14 was laid down. In order to pass the test, the classification must not be arbitrary and must be rational, ergo two conditions must be fulfilled, namely:

a. *That the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and*
b. *That differentia must have a rational relation to the object sought to be achieved by the Act*

It is further submitted that any classification which is illogical, unfair and unjust is an 'unreasonable' classification [See (1989) 2 SCC 145]

and any arbitrary or unreasonable action of an "authority" under Article 12 of the Constitution of India would be violative of Article 14 of the Constitution of India. Article 14 strikes at arbitrariness because an action that is arbitrary must necessarily involve negation of equality [(1981) 1 SCC 722]. The impugned judgment itself recognizes the fact that the Government Order dated 05.02.2022 could have been drafted better which it is not and given justification in support of its validity. The Petitioners submit that the G. O. is vague in addition to the fact that it gives arbitrary powers to the College Development Committee (CDC). In the present case, even without written regulation by the CDCs, the Muslim girls have been deprived from their constitutional rights by applying the said vague Government Order [Kindly see para 55 onwards reported at (2015) 5 SCC 1].

K. **BECAUSE** the impugned judgment distinguishes the judgment cited on behalf of the Petitioners before the Hon'ble High Court of Karnataka (MEC FOR EDUCATION: KWAZULU-NATAL) which, it is submitted, very eloquently articulated the principle of accommodation on specious ground that the case merely concerned with a nose stud while the case before the Hon'ble High Court concerned Hijab. The sub - text of such specious distinction is that a p erson may have any ocular religious marker to identify her or him as belonging to a particular community and that may be permitted but not a dress which may identify a person to a particular community. This distinction of the purported principle is based on and to accommodate the religious markers in the form of bindis, sindoor or mangalsutra generally adorned by the women from the majority community. Such observations will definitely encourage a practice of insidious discrimination in the society; it definitely shows tolerance towards markers of religious identity of the majority community and intolerance towards the markers of the identity of religious minority communities.

Re: Doctrine of Manifest Arbitrariness

L. **BECAUSE** the impugned judgment is manifestly arbitrary and thus in violation of Right to Equality as per this Hon'ble Court's judgment of Shayara Bano v. Union of India, (2017) 9 SCC 1 wherein this Court

observed that "the thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14".

In paragraph 101 of Shayara Bano's case, this Hon'ble Court has laid down the test of manifest arbitrariness, as extracted hereunder:

> *"...The test of manifest arbitrariness, therefore, as laid down in the judgments (discussed in paras 88 to 101) would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and / or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. Thus, arbitrariness in the sense of manifest arbitrariness as discussed above would apply to negate legislation as well under Article 14."*

M. **BECAUSE** any state action cannot be manifestly arbitrary, which is a facet of Article 14. It is admitted position that the impugned G. O. is passed at the fag - end of academic year 2021 - 2022. There is no urgency or emergency by the Respondent No. 1 shown for passing the impugned G. O. in the middle of the academic year. This Hon'ble Court's attention is invited to Rule 11 of Karnataka Education Rules which prescribes that every recognized educational institution may specify its own set of uniform, such uniform once specified shall not be changed within the period of next 5 years. Rule 11 (2) provides that if an educational institution intends to change the uniform, it is compulsory to issue notice to parents in this regard at least 1 year in advance. In the present proceedings, uncontrovertibly the aggrieved Muslim girl students had been wearing the Hijab without any objection since the respective dates of their admission and objection to the wearing of Hijab was taken only from August 2021. In the first phase the girl students were humiliated and abused and in the second phase they were asked not to attend classes and in the third phase they were denied entry into the school premises. This is clearly in defiance of the Petitioners rights under Art. 19(1)(a) and Art. 25(1) along with the right to receive education.

N. **BECAUSE** contrary to the provisions contained in the Karnataka Education Rules under Rule 12 that there should be Parent - Teacher committee (PT Committee) and further sub - rule (5) provides the functions of such Parent-Teachers Committee, and it is specifically laid down that one of the functions of the PT Committee is to redress the grievances of the students and their parents, if any. In spite of the grievance of the Muslim girl students about the disturbance of their right to attend the school and participate in the bona fide education activities, there is nothing on record to show that any steps were taken, or directions given by the Government to address the grievances of the students by convening the meeting of the parents and teachers to redress the grievances of the parents in Government Schools where the issue had cropped up. In abruptly passing the impugned G. O. Order, the Government has acted arbitrarily and offended Art. 14 of the Constitution. In other words, the Government has arbitrarily sidelined redressing the grievances amicably and such action of the Government is Arbitrary. The entire procedure laid down under the Karnataka Education Act, 1983 ("the Act") read with Rules thereunder, for smooth functioning of Educational Institution is sidelined.

O. **BECAUSE** on a plain reading of the impugned G. O., it is clear that it is targeting the Muslim girls and denying them of their right to education and Fundamental Rights. The Government response quotes sections 6 and 7 of the Karnataka Education Act, 1983 but fails to substantiate its claim that the impugned G. O. is to cherish and follow the noble ideals which inspired our national struggle for freedom to promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women and to value and preserve the right heritage of our composite culture. The impugned G.O. is a flagrant violation of the ideals and values mentioned in section 7(2) of the Karnataka Education Act, 1983. No harmony can be established, or the spirit of common brotherhood developed by upholding wrongful objections of some for exercise of the Fundamental Rights of the others. Even on the grounds of balance of convenience, it

is submitted that once the prima facie right is established, the balance of convenience should shift in favor of the Petitioner's whose rights are destroyed. The Petitioners are given the Hobson's choices either to educate themselves or to uphold their conscientious belief. In other words, students are asked to educate themselves at the cost of sacrificing their right guaranteed under Articles 19(1)(a), 21 and 25 of the constitution. There is no explanation offered by the decision - making authority as to why the procedure laid down in Sec. 7 of the Karnataka Education Act, 1983 read with Rules 11 and 12 was not followed.

P. **BECAUSE** the Government of Karnataka in its response, has mentioned that the Government has issued directions on 25.01.2022 that it is examining larger issues of dress code and uniform system up to Pre - University level and there are conflicting views and interests on the subject and in view of the sensitivity involved in the matter, a High - level committee is being formed to examine and report back with the recommendations to the Government. It is also stated that the Government has not yet formed a comprehensive policy or decision on the subject. It is significant to note that in spite of the fact that there are conflicting views and interest on the subject of providing dress code, the matter was still under consideration and in the meantime, at the end of the academic year, the government has issued the impugned G. O. dated 05.02.2022. This is manifestly unjust.

The Petitioners therefore submit that the impugned government order is manifestly arbitrary and violates Article 14 of the Constitution.

Discriminatory on the Ground of Religion (Article 15)

Q. **BECAUSE** Article 15 of the Constitution of India deals with "Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth". The Article states that the State shall not discriminate against any citizen on grounds of only religion, race, caste, sex, place of birth or any of them [Article 15 (1)]. The Article further states that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition inter alia with regard to places of public entertainment and

public resort maintained wholly or partly out of State funds or dedicated to the use of the general public [Article 15 (2)]. On the other hand, the Constitution of India [See Article 14, 15 (4), 16 (4)] presses upon Affirmative action and Compensatory discrimination by the State for the advancement of women, children, socially and educationally backward classes of citizens or Scheduled Castes and the Scheduled Tribes[1]. It is submitted that it is apparent that the Constitution in India not only actively and vehemently prohibits discrimination on the bases of religion; conversely, it strongly focuses on the advancement of educationally backward classes of citizens and women. The present issue emanates from a situation where women from the Muslim community, a community that is even statistically at the educational margins of the Indian society, have been actively barred from receiving an education. This is in clear contravention of the very basic principles of the Indian Constitution and negates the cherished rights enshrined in the Part III of the Constitution of India.

R. **BECAUSE** the Muslim women have been discriminated in the present issue before this Hon'ble Court for not only one 'monolithic' identity but intersection of both their religious and gender identity. This Hon'ble Court in Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 stated that to provide meaning to Article 15 of the Constitution appreciation of intersection of "varied identities and characteristics" is vital (Para 431).

S. **BECAUSE** the impugned judgment is in complete violation of this Hon'ble Court's doctrine of indirect discrimination as in the guise of uniformity and homogeneity which prima facie are held to be neutral criteria in the impugned judgment, Muslim women students, in effect, are specifically being targeted for covering their hair as per their conscience and religious mandate. In the present matter, the Hon'ble High Court states, "However, the prescription of dress code for the students that too within the four walls of the class room as distinguished from rest of the school premises does not offend constitutionally protected category of rights, when they are 'religion - neutral' and 'universally applicable' to all the students."

[1]See (1984) 3 SCC 654, (1990) 3 SCC 130, 1992 Supp (3) SCC 217.

It further goes on to state, *"In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination inter alia under Articles 14 & 15, when the dress code is equally applicable to all the students, regardless of religion, language, gender or the like. It is nobody's case that the dress code is sectarian."* This understanding in the impugned judgement is in the teeth of this Hon'ble Court's recognised doctrine of indirect discrimination as laid down in ***Nitisha v. Union of India, 2021 SCC OnLine SC 261*** wherein this Hon'ble Court has observed:

> ***"61.*** *... Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion."*

<u>Re: In Violation of Article 19 & 21 of the Constitution of India</u>

T. **BECAUSE** wearing clothes that enable an individual to maintain a high standard of 'decency' and 'civility' in public life considering, and based on, such belief system of the practicing person is a matter of personal choice. a personal matter of 'choice' of wearing clothes in order to maintain high quality 'decency' and 'civility' in public life considering the belief system of the practising person. Hijab to cover head and neck can't and should not be considered as against an 'indecent' act or reason to cause harm to any other student in the school. Religious beliefs and observing faith, may or may not be the reason to practice the Hijab way of 'decency' and 'civility' but at the same time the State, while determining the term 'public order', is required to adopt a reasonable approach and have an impartial view as to whether a particular practice of an 'outlook' is harmful to the others or not.

U. **BECAUSE** the right to dress as per one's choice has already been held to be an integral part of Article 19(1)(a) by this Hon'ble Court [NALSA case]. This Hon'ble Court in the NALSA judgment, held that dress can form a "symbolic expression" of one's identity and that is protected by Article 19(1)(a) of the Constitution. This Hon'ble Court adopts the test of reasonable accommodation where a particular claim for departing from the default setting can be reasonably accommodated. In the

present matter, wearing of Hijab along with the prescribed uniform of the educational institution was an expression that could have been reasonably accommodated alongside the uniform without hampering the purpose of educational institutions i.e., imparting education.

V. **BECAUSE** the impugned judgment misquotes *Regina v. Headteacher and Governors of Denbigh High School [U2006] UKHL 15*, the UK House of Lords judgment is not concerned with wearing of *Hijab* along with school uniform. The Court in Denbigh High School case was concerned with wearing *Jilbab (A coat like garment which is worn over the dress)* and not *Hijab*. As per the factual matrix of the case, *Hijab* was permitted along with school uniform. It is appropriate to quote the following extracts from the speech of Baroness Hale of Richmond in paragraph 98.

> *"... Social cohesion is promoted by the uniform elements of Shirt, tie and jumper, and the requirement that all outer garments be in the school color. But cultural and religious diversity is respected by allowing girls to wear either a skirt, trousers, or the shalwar kameez, and by allowing those who wished to do so to wear Hijab..."*

W. **BECAUSE** for a Muslim woman this practice of wearing Hijab is a non-harming way to "unveil" her in public space, based upon her own idea while maintaining "unity", "equality" and "public order". These terms have always been subject to being defined in larger interest of individual freedom while considering the fact that the said definition never encroaches upon the rights of others in "public space". "Public order" and "unity" cannot be defined in order to create an emotional tool to encroach upon the non-harming practice of others based upon individual freedom and liberty whether the said exercise of freedom is relatable to "culture", "widely practiced way of living" or for that matter relatable to "religious belief or practice". It is immaterial to see from where the practice has originated. After all, Hijab is a matter of covering certain part of body and not otherwise and hence issue of public order must be understood in that background. Establishing a procedural regulation to regulate "public order" cannot frustrate an individual's right to life and liberty with "dignity".

X. **BECAUSE** the impugned judgment violates the very basic concept of fraternity (in the present context one may also say "sisterhood") and "collective wellbeing of the community" and runs against the concept of a "humane and compassionate society".

Y. **BECAUSE** the concept of "public order", "equality" and "individual's basic freedom" has to be examined considering the recent developments in the field of constitutional rights of an individual. One such development is the principles enunciated by a 9 Judge Bench judgment in the case of ***K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1** wherein the Hon'ble Supreme Court has stated,

> ***"****Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).*"

Z. **BECAUSE** D. Y. Chandrachud, J. in ***Puttaswamy*** explained the distinct connotations of privacy as:

> "***248.*** *Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. [Bhairav Acharya, "The Four Parts of Privacy in India", Economic & Political Weekly (2015), Vol. 50 Issue 22, at p. 32.] Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or* ***modes of dress****..."*
>
> *(emphasis supplied)*

The impugned judgment negates the decisional autonomy of students who wants to dress publicly as per their faith and belief.

AA. **BECAUSE** this Hon'ble Court in Puttaswamy (Chelameshwar, J.) specifically recognised "choice of appearance and apparel" as "aspects of right of privacy".

> *"...The choice of appearance and apparel are also aspects of the right to privacy. The freedom of certain groups of subjects to determine their appearance and apparel (such as keeping long hair and wearing a turban) are protected not as a part of the right to privacy but as a part of their religious belief. Such a freedom need not necessarily be based on religious beliefs falling under Article 25..." (para 373)*

In this regard, proposition laid down in paras 297-299 are relevant for the present case and the impugned judgement appear to be in conflict with it.

Re: Doctrine of Proportionality

BB. **BECAUSE** since Articles 19(1)(a), 21 and 25(1) are subject to certain restrictions / regulations, the test of proportionality becomes applicable. The test of proportionality requires the least restrictive method to be adopted by the State in order to achieve its goals. However, in the present case, the Hon'ble High Court has upheld the impugned G. O. dated 05.02.2022 which places the most disproportionate restriction i.e., a ban on Hijabs in educational institutions instead of easily and reasonably accommodating wearing of Hijab along with the prescribed uniform which would have been in consonance with the goal of the State, the Government Order and the Karnataka Education Act, 1983 i.e., purpose of education.

CC. **BECAUSE** the impugned government order cannot be characterized as imposing reasonable regulations or restrictions on the fundamental rights under Articles 19(1)(a), 21 and 25(1). There has not been a proper balancing of the fundamental rights of the Petitioners and restrictions imposed on them. The government has completely ignored the doctrine of proportionality when imposing restrictions in the form of the impugned order. The doctrine of proportionality and its components are explained by the Supreme Court in the case of ***Modern Dental College and Research Centre v. State of Madhya Pradesh*** **(2016) 7 SCC 353** ***at para 60***

> *"Doctrine of proportionality explained and applied*
>
> *59. (xxx)*

60. ... Another significant feature which can be noticed from the reading of the aforesaid clause is that the State is empowered to make any law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation or trade or business. Thus, while examining as to whether the impugned provisions of the statute and Rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as 'Doctrine of Proportionality'. Jurisprudentially, 'proportionality' can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied[13], a limitation of a constitutional right will be constitutionally permissible if: (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfillment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally (iv) there needs to be a proper relation ('proportionality stricto sensu' or 'balancing') between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."

(emphasis supplied)

DD. **BECAUSE** the objections to wear the apparel of Hijab is not in consonance with or does not advance the purpose of the act. The purpose of the Act is to foster harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education as stated in the preamble. Section 7(2)(g)(v) also talks of fundamental duties of the citizens enshrined under Article 51(A) of the Constitution and section 2(g)(v) speaks of promoting harmony and the spirit of common brotherhood, transcending religious sections of diversities. The objection to wearing Hijab is to promote disharmony and to appease the obstructionist and to bow down to their demand is also not in consonance of inculcating the spirit of common sisterhood / b rotherhood and appeasing to intolerance of the obstructionists. S uch attitude does not even develop the spirit of humanism. The policy to bow down to the intolerance manifested by the obstructionists is against the purpose of the Act. And further, the measures undertaken to prevent the Petitioners to attend the classes are

totally irrational and not connected with the fulfillment of the purpose of the Act. Additionally making students to abide by the uniform dress code with rigidity smacks of irrationality and a lack of understanding / empathy towards the Petitioners whose fundamental rights under Article 19(1)(a) and 25(1) and above all the right to receive education under Article 21 of the Constitution are blatantly violated. The relaxation of the rigid rule of dress code which is enforced on specious ground of maintaining discipline completely ignores that the same discipline can be enforced by making relaxation in the rules and inculcating the spirit of accommodation in the obstructionists. The policy and the manner in which the policy is enforced by the school authorities, who have not filed any reply to controvert facts averred in the petition, has not balanced the fundamental rights of the petitioners. Therefore, the same cannot be upheld.

Re: <u>Completely Derogates the Agency of Women</u>

EE. **BECAUSE** the Hon'ble High Court held [XVII (ii)] that,

> *"insistence on wearing of purdah, veil, or headgear in any community may hinder the process of emancipation of woman in general and Muslim woman in particular. That militates against our constitutional spirit of 'equal opportunity' of 'public participation' and 'positive secularism'. Prescription of school dress code to the exclusion of hijab, bhagwa, or any other apparel symbolic of religion can be a step forward in the direction of emancipation and more particularly, to the access to education. It hardly needs to be stated that this does not rob off the autonomy of women or their right to education inasmuch as they can wear any apparel of their choice outside the classroom."*

It is submitted that this is a completely erroneous understanding and is completely opposite to the ideas of women rights and educational rights, etc.

FF. **BECAUSE** people cannot be reduced to monolithic identities. The importance attached to particular identities is left for the person to choose. In the present matter before this Hon'ble Court, Muslim women are being subjected to the present exclusion and segregation on account of both their identities viz., religious i.e., Islam and gender i.e., woman. Constitution prohibits discrimination on both these protected grounds.

GG. **BECAUSE** what a woman chooses to wear is a personal choice that cannot be interfered with on flimsy grounds. Forcing a woman to abandon this personal choice is in complete derogation of her agency and dignity.

HH. **BECAUSE** by subjecting these young Muslim girls with a conundrum where they are being made to choose between education and the comfort that they drive from practicing their faith by doing *Hijab*, a dangerous precedent is being set for young women in particular and women in general that their decisions as to their own bodies and comfort are immaterial. It further solidifies the tattered mentality that women are incapable of deciding for themselves ergo a complete negation of women's bodily autonomy and agency.

II. **BECAUSE** the Muslim women students in the present matter, time and again, were made to clarify that they do not feel comfortable without their *Hijabs* and how important the practice is to them. However, not only were the personal experiences of these Muslim women who are being directly affected by the present exclusion / restriction on *Hijab* rejected but were also forced to explain the "reasons" as to why they choose to dress in a certain manner. This only reinforces the very problematic and misogynistic perception that women are inferior beings who need guidance even for basic things such as choice of clothes.

JJ. **BECAUSE** Muslim women students were heckled by mobs of Hindutva men chanting communal slogans; all this only because these women have been persisting over their right to wear clothes as per their choice.

KK. **BECAUSE** the inaction of the Hon'ble High Court orchestrated a situation where Muslim women, both students as well as teachers, were forced to remove their *burqas* and *Hijab* on the gates of educational institutions in full public spectre. This public humiliation and disrobing of Muslim women are nothing short of a scary and shameful precedent for any civilised society.

Re: <u>In Violation of the Right to Education Ergo Perpetuates Structural Gatekeeping</u>

LL. **BECAUSE** the Right to Education has been recognized as a fundamental right implicit in Article 21 of the Constitution by this Hon'ble Court [Unni Krishnan, J.P. v. State of A.P., (1993) 1 SCC 645].

MM. **BECAUSE** Article 46 of the Constitution puts a mandate upon the State to promote educational and economic interests of the weaker sections of the people.

NN. **BECAUSE** the Muslim community in general and Muslim women in particular constitute a weaker section of the people. The Sachar Committee Report which was High Level Committee constituted to prepare a report on the social, economic and educational status of the Muslim Community in India found that the literacy rate among Muslims in 2001 was 59.1%, below the national average (64.8%). The Report found that *"with regard to school education, the condition of Muslims is one of grave concern":*

Literacy rates (2001)

	All India	Rural			Urban		
		All	Male	Female	All	Male	Female
All	64.8	59	71	46	80	86	73
Hindu	65.1	59	72	46	81	88	74
SC/ST	52.2	49	61	36	68	78	58
Muslim	59.1	53	62	43	70	76	63
Others	70.8	64	77	52	85	90	78

Children Currently Studying as a Proportion of Population by Age Groups – 2004-05

Age	Hindus			Muslims	Other Minorities
	Gen	OBC	SCs/STs		
6-13	19.1 (17.3)	36.1 (35.5)	25.7 (27.4)	14.0 (15.1)	5.1 (4.8)
14-15	24.3 (19.1)	36.1 (35.2)	21.4 (25.2)	12.2 (14.5)	6.0 (5.3)
16-17	28.9 (21.1)	33.7 (35.0)	20.2 (24.7)	10.7 (14.0)	6.3 (5.1)
18-22	34.0 (20.8)	30.5 (34.4)	17.7 (25.5)	10.2 (13.9)	7.6 (5.5)
23 & up	35.6 (23.9)	29.2 (35.1)	18.3 (24.1)	7.4 (10.9)	9.5 (5.9)

Note: Figures in parentheses show the proportion of the community in the respective age-group.

OO. **BECAUSE** the Hon'ble High Court, throughout the impugned Judgment has focused on the importance of uniform rather than the purpose of education. In doing so, the Hon'ble High Court has concentrated on the interpretation of the impugned G. O. dated 05.02.2022. The Hon'ble High Court at XIV (ix) uses the term uniform and dress code interchangeably. At XIV, the Hon'ble Court states that, "This Order per se does not prescribe any dress code and it only provides for prescription of uniform in four different types of educational institutions." Interestingly, going further, the Hon'ble High Court makes an observation which is contradictory to its own earlier mentioned observation that, "However, we are not convinced that the same is invocable for invalidating the Government Order, which per se does not prescribe any uniform but only provides for prescription in a structured way" [XVI (iv)].

PP. **BECAUSE** by not allowing Muslim women students to observe their faith while getting an education, they are being pushed to further marginalization thereby the State structurally gatekeeping these Muslim girls who already belong to a weaker section of people from getting an education and consequentially encouraging discrimination instead of performing the duty to preserve and protect the fundamental rights of these women students.

QQ. **BECAUSE** the Hon'ble High Court observed that *"the school regulations prescribing the dress code for all the students as one homogeneous class, serve constitutional secularism"* [XIV (ii)]. This observation is in the teeth of the Hon'ble High Court's own analysis of 'positive secularism' not being anti-thesis to religious devoutness but comprises in religious tolerance [V(ii) of the impugned Judgment].

RR. **BECAUSE** in the present matter, the Hon'ble High Court focused on a misconstrued reading of uniforms / dress codes, instead of achieving and protecting the purpose of education i.e., the goal of a State, the Government Order and the Karnataka Education Act, 1983.

Re: <u>In Violation of Impugned Government Order dated 05.02.2022</u>

SS. **BECAUSE** There is an erroneous attempt by the Hon'ble High Court to justify the order dated 05.02.2022 which was targeted against the Muslim girl students only. The Hon'ble High Court completely ignored diabolically communal slant in the impugned G. O. dated 05.02.2022 which is evident from various recitals contained therein emphasising only one fact that *Hijab* is not integral part of Islam and therefore directed the CDC not to prescribe *Hijab* as part of uniform. Secondly, the impugned order also suffered from gender bias as it did not direct the educational institutions to prescribe uniform for boys without any marker of religious identity. The impugned judgment tries to cross over such patently communal and gender bias order by resorting to specious arguments of bureaucratic incompetence and inefficiency.

The impugned G. O. dated 05.02.2022 clearly slanted in favour of those who objected to Muslim girl students wearing *Hijab* to create the situation of disturbance of public order. The impugned G. O. clearly was issued to appease such hecklers and the high court ignored this fact.

Re: <u>In Violation of the Article 25 of the Constitution of India</u>

TT. **BECAUSE** Article 25 of the Constitution of India provides for "Freedom of Conscience and Free Profession, Practice and Propagation of Religion" to all persons equally subject to only public order, morality and health and to other provisions of Part III of the Constitution of India. Interestingly, Explanation I to this Article provides wearing and carrying of Kirpans (small swords) to be deemed to be included in the profession of the Sikh religion. Going further, Article 26 of the Constitution of India provides for "Freedom to Manage Religious Affairs" to every religious denomination or any section thereof. Clause (b) to this Article specifically provides every religious denomination or any section thereof the right to manage its own affairs in matters of religion. The freedom / right under Article 26 is only subject to public order, morality and health.

UU. **BECAUSE** an individual's right under Article 25 and group rights under Article 26 have been subjected to the doctrine of "essential or integral" practice of the religion. In relation to the practice of *Hijab*, application of 'Essentiality' or 'Integrality' Test can be applied only in a

given situation where, if the principles of law emanating from Article 21 read with Article 19 rights is not in a position to protect the practice of *Hijab* in public space.

VV. **BECAUSE** while reaching the conclusion as to whether a particular practice is essential or not itself has been a matter of subjective opinion of the court system. It is submitted that religion differs, followers of religion differ (in understanding the belief system) and accordingly, practices differ (based on understanding of a believer). Many a time, courts have given narrow definition of 'essentials' of a religion to restrict a practice but have also given 'expansive' definition to permit the same. Courts have understood the issues by applying different yardsticks (many a times not suitable to a particular religious belief system); thus, leading to violation of Article 14. Considering these entire facts, a 9 Judge Bench of the Hon'ble Supreme Court has considered it appropriate to frame an issue, *"5. What is the scope and extent of judicial review with regard to a religious practice as referred to in Article 25 of the Constitution of India?"* to examine the scope of intervention in religious matters considering the guarantees to citizens under Article 25 of the Constitution of India.

Re: <u>Articles 19(1)(a) and 25(1) & Essential Religious Practice (ERP)</u>

WW. **BECAUSE** the Petitioner's right to wear Hijab flows from Art. 19(1)(a) and 25(1). It is submitted that every religious minority has the fundamental right to conserve its religio - cultural identity. The Petitioners are adherents of Islam and in their individual capacities, have a right to display / express their religio - cultural manifestations by wearing Hijab. This is the fundamental right of the Petitioners flowing from a conjoint reading of Articles 19(1)(a), 25(1) and 29 of the Constitution.

XX. **BECAUSE** the Articles, when so read conjointly, a citizen of India by exercising his thought process can entertain a conscientious belief and put such belief into the practice; it is not necessary for him to justify his conscientious belief and practice on the ground that the same is "integral part of his religion". Article 25(1) guarantees to every

individual freedom of conscience. Article 19(1)(a) guarantees freedom of speech and expression. Under both the articles, it is not necessary for an individual or any citizen of the country to prove that to entertain conscientious belief and put the same into practice he should justify the same on the ground that it is the integral part of his religion. An atheist or a person believing in universality of religions cannot be obliged to justify his conscientious belief on the ground that the same is an integral part of religion. The doctrine of integral part of religion emerged only in cases where certain claim was made by a religious denomination to "manage its own affairs in matters of religion". It is when a religious denomination asserts its rights under Article 26(b) of the Constitution that the doctrine of integral part of religion is applied. The trend of the decisions of the Hon'ble Supreme Court commencing from the case of ***The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt*** **1954 SCR 1005**, clearly show that the order of Supreme Court has revolved around the doctrine of integral part of religion only in cases arising under Article 26(b) of the Constitution. The same has never been applied under Article 25(1) of the Constitution.

YY. **BECAUSE** the doctrine of essential religious practice cannot be imported into Article 25(1) to determine individual's right of conscience. It is only when a law is made or any rule having force of law is made in the name of reform of religion under Article 25(2), the question whether such law defies the essential religious practice can be considered and not otherwise.

ZZ. **BECAUSE** the Petitioners had established that they have the freedom of expression which includes the right to express their self - identified gender; through dress, words, actions or behaviour guaranteed under Article 19(1) of the Constitution. This principle is authentically laid down in National Legal Services Authority case. And further they also have the right of privacy as laid down in Justice K. S. Puttaswamy's case (para 373). There is such freedom of expression guaranteed under Article 19(1)(a) can be restrained only by law putting reasonable

restrictions on such rights. In the instant case, there is no enacted law on the subject. The impugned G. O. which does not prescribe any uniform but directs the CDC to prescribe uniform has no force of law. These are merely executive instructions.

AAA. **BECAUSE** the impugned judgement of the Hon'ble High Court of Karnataka erroneously equates the impugned G. O. dated 05.02.2022 having force of law.

BBB. **BECAUSE** in addition to the rights enjoyed under Articles 19(1)(a) and 25(1), the Petitioners also have the fundamental right to educate themselves emanating from Article 21 of the Constitution, which guarantees right to life and personal liberty, which means meaningful a life. Right to education is fundamental as without education, a person cannot live meaningful life. It is the contention of the Petitioners that it is her individual right to wear such dress which she conscientiously believes is consistent with her religious belief. The Petitioners are not obligated to justify their conscientious belief by proving that such belief is an integral part of her religion. The burden is on the Respondents to show that such right can be restrained by putting reasonable restrictions. As Muslim women, the Petitioners are entitled to come to a conscientious decision with the freedom of choice to select what appearance best reflects their religious identity, which is further reinforced by her freedom of speech and expression under Article 19(1)(a) of the Constitution. Coming to the specific issue of wearing *Hijab*, in the present proceedings, the issue is confined to the Petitioner's assertion to wear the head scarf, which is prescribed as *Hijab*; an apparel which covers the hair and extends up to the neck. There is difference between wearing headscarf and observing *parda* or *gosha*. In these proceedings, the distinction between *parda* and *Hijab* is to be borne in mind. The Petitioners have consistently argued that wearing of *Hijab* is covered by Article 19(1)(a) and 25(1) of the Constitution.

CCC. **BECAUSE** with reference to the constitutional scheme, it is oft-repeated truism that the preamble of the Constitution encapsulates

basic values thereof. Amongst other freedoms guaranteed under the provisions of the Constitution, the most cherished one is the freedom of conscience as contained in Articles 25 and 26 of the Constitution. The preamble clearly enshrines values of liberty of thought, expression, belief, faith, worship. Turning to Article 25 of the Constitution, it guarantees freedom of conscience and freedom to profess, practice and propagate religion. Article 25 guarantees individual freedom of conscience subject to public order, morality and health and to the other provisions of the third part of the Constitutions. Interpreting the aforesaid Articles, the Apex Court in the case of *Shirur Mutt* has held that those Articles protect the essential part of religion and further that when a question arises as to what constitutes essential part of religion, the same should primarily be ascertained with reference to the Doctrines of that religion itself.

DDD. **BECAUSE** it is submitted that the doctrine of "essential religious practices" has diverse contours - starting from the 7 Judges Bench judgment in *Shirur Mutt* (AIR 1954 SC 282) case and finally reaching the sub - judice case of *Sabarimala Temple* in the Hon'ble Supreme Court of India. To quote some example, the claimed issue relating to religious practice in *Shirur Mutt* Case was management of the assets of property of the Mutt whereas the claimed essential practice on rights on the offering made to Dargah at Ajmer was an issue in the *Dargah Committee* case, at the same time the issue of essential religious practice in the case of *Bijoe Emmanuel* (1986 3 SCC Page 615) was of a student who consciously held religious faith that they will not join in singing of National Anthem though they stood up respectfully when it was sung. Again, in the case of *Syedna Saifuddin* it was an issue as to whether excommunicating a member from the community was an issue of essential practice of that community. The facts of these cases are different. However, at the same time, applying the same test the Hon'ble Supreme Court in *Mohd. Zubair* Case (2017 2 SCC 115) has reached a conclusion that sporting beard by a Muslim is not integral to Islamic faith. At the same time it is also established a

Sikh can have beard. In that background, it can be said that the concept of bringing uniformity in a particular discipline is not a rigid concept but a flexible one. Same way in the case of *Bijoe Emmanuel*, one can see that Article 25 has been applied to protect certain religious faith of a student by permitting him to not sing the National Anthem. This is a further reflection of the fact that the norm of "uniformity and unity" has accommodating features considering the nature of guarantee under Part III of the Constitution of India.

EEE. **BECAUSE** the courts of law may not be the forum to examine the issue of belief and faith in order to find out what is essential to a religion and what not. That being the reason, in the *Sri Shirur Mutt* Case, the Hon'ble Supreme Court *inter alia as under that,*

> *"A religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters." (Para 23, SCC).*

FFF. **BECAUSE** in the case of ***Sardar Syedna Saifuddin Sahab (AIR 1962 SC 853)*** the Hon'ble Supreme Court *inter alia* observed in Para 19,

> *"…… The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is, thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, as aforesaid, imposed by the State in the interest of public order, etc. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person."*

GGG. **BECAUSE** in similar cases on the question of not allowing Muslim girl students to wear Hijab in educational examinations / institutions, the Hon'ble High Courts had occasion to address the issue at hand wherein the Hon'ble High Courts have at several occasions upheld the right of Muslim women to observe Hijab.

HHH. **BECAUSE** the Hon'ble High Court of Kerala in ***Amnah Bint Basheer v. CBSE, 2016 SCC OnLine Ker 41117*** stated that the right of women to have the choice of dress based on religious

injunctions is a Fundamental Right protected under Article 25(1) of the Constitution of India. The Court further observed that the dress code shall not be enforced against those candidates, who by virtue of Article 25(1) are protected from wearing such dress as prescribed in the injunctions of their faith.

III. **BECAUSE** the Hon'ble High Court in ***Amnah Bint Basheer*** rightly attached importance on the purpose of education and not the dress code while deciding the matter.

JJJ. **BECAUSE** the Hon'ble High Court of Kerala stated in ***Nadha Raheem v. Central Board of Secondary Education, 2015 SCC OnLine Ker 21660*** that:

> *"**4**. … it cannot be ignored that in our country with its varied and diverse religions and customs, it cannot be insisted that a particular dress code be followed failing which a student would be prohibited from sitting for the examinations. This Court is of the opinion that no blanket orders are required in the writ petitions filed by two students, apprehending that they would be prohibited in writing the examination for reason of their wearing a dress conducive to their religious customs and beliefs."*

KKK. **BECAUSE** there is institutional incapacity of judiciary to interpret religious scriptures / books held authentic by a religious denomination. The Hon'ble High Court of Karnataka indulged into the arena of interpreting verses of Al - Qur'an, being Chapter 24 (An-Nūr), Verse 31 and Chapter 33 (Al-Ahzab), Verse 59 and held that what is stated in those Verses are recommendatory and not mandatory relying on secondary and doubtful source being the opinion / comment of Abdullah Yusuf Ali. The Hon'ble High Court not being equipped with the principle of interpretation of Al - Qur'an developed by Islamic theologians and scholars and contained in the book 'Asbab - ul - Nuzul' and the status of the Prophet (peace be upon him) of Islam, who is unanimously held as final interpreter of Al - Qur'an, erroneously rejected Hadith quoted in the compilation of Hadith that is unanimously held authentic by Islamic theologians and scholars in Sahih Al - Bukhari with derogatory remark. The second instance of such overreach on the part of the Learned Judges of the Hon'ble High Court of Karnataka is to make ill-informed observation at page 71 "what is

made recommendatory by the Holy Quran cannot be metamorphosed into mandatory dicta by Ahadith…" This observation displays a total lack of understanding of the status of the Prophet (peace be upon him) of Islam in Islamic jurisprudence. In Islamic jurisprudence, the first source of law is Al - Quran and if no answer is found in Al - Quran then in the sayings / precepts of the Prophet (peace be upon him) of Islam. There are a number of verses in Al -Quran which throws light on the importance of the saying and precepts of the Prophet (peace be upon him) of Islam which has given rise to the theory that Islamic jurisprudence is based on the express divine revelation contained in Al - Quran and implied revelations contained in the sayings and precepts of the Prophet (peace be upon him) of Islam. Therefore, what is stated in Al - Quran is recommendatory or mandatory has been explained by the Prophet (peace be upon him) of Islam during his lifetime by way of his sayings and precepts. In ultimate analysis therefore, the final interpreter of Al - Quran was the Prophet (peace be upon him) of Islam himself during his lifetime and is binding. It is therefore necessary to quote the necessary verses of the Al - Quran depicting the status of the Prophet (peace be upon him) of Islam. The same may be listed hereunder:

i. ***And obey Allah and the Messenger (Muhammad (peace be upon him))*** *that you may obtain mercy*. (***Āl ʿImrān*****, Chapter #3, Verse #132**)

ii. *O you who believe!* ***Obey Allah and obey the messenger (Muhammad (peace be upon him))****, and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (Muhammad (peace be upon him)), if you believe in Allah and in the Last Day. That is better and more suitable for final determination.* (**An-Nisā, Chapter #4, Verse #59**)

iii. ***He who obeys the Messenger (Muhammad (peace be upon him), has indeed obeyed Allah****, but he who turns away, then we have not sent you (O Muhammad (peace be upon him) as a watcher over them.* (**An-Nisā, Chapter #4, Verse #80**)

iv. ***And obey Allah and the Messenger (Muhammad (peace be upon him))*** *and beware (of even coming near to drinking or*

gambling or Al-Ansab, or Al-Azlam, etc.) and fear Allah. Then if you turn away, you should know that it is Our Messenger's duty to convey (the Message) in the clearest way. (**Al-Māida, Chapter #5, Verse #92**)

v. *They ask you (O Muhammad (peace be upon him)) about the spoils of war. Say: "The spoils are for Allah and the Messenger (p.b.u.h.)." So fear Allah and adjust all matters of difference among you, and* ***obey Allah and His Messenger [Muhammad (peace be upon him)], if you are believers****.* (**Al-Anfāl, Chapter #8, Verse #1**)

vi. ***O you who believe! Obey Allah and His Messenger (peace be upon him)****, and turn not away from him [i.e., Messenger Muhammad (peace be upon him)] while you are hearing.* (**Al-Anfāl, Chapter #8, Verse #20**)

vii. *And* ***obey Allah and His Messenger (peace be upon him)****, and do not dispute (with one another) lest you lose courage and your strength departs, and be patient. Surely, Allah is with those who are As-Sabirun (the patient).* (**Al-Anfāl, Chapter #8, Verse #46**)

viii. *And perform As-Salat (Iqamat-as-Salat), and give Zakat and* ***obey the Messenger (Muhammad (peace be upon him)) that you may receive mercy (from Allah)****.* (**An-Nūr, Chapter #24, Verse #56**)

ix. *And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform As-Salat (the prayers), and give Zakat (obligatory charity) and* ***obey Allah and His Messenger (peace be upon him)****. Allah wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet Muhammad (peace be upon him)), and to purify you with a thorough purification.* (**Al-Ahzāb, Chapter #33, Verse #33**)

x. *And perform As-Salat (Iqamat-as-Salat), and give Zakat and* ***obey the Messenger (Muhammad (peace be upon him)) that you may receive mercy (from Allah)****.* (**An-Nūr, Chapter #24, Verse #56**)

xi. *O you who believe!* ***Obey Allah, and obey the messenger (Muhammad (peace be upon him))*** *and* ***render not vain your deeds*****.** (**Muhammad, Chapter #47, Verse #33**)

xii. ***Obey Allah, and obey the Messenger (Muhammad (peace be upon him))****; but if you turn away, then the duty of Our Messenger is only to convey (the Message) clearly.* (**At-Taghābun, Chapter #64, Verse #12**)

LLL. **BECAUSE** the Ld. Judges at page 68 referred to certain verses of The Qur'an in relation to dress code for women and has erroneously stated that the verses are not mandatory because for not observing the same, no penal consequences are laid down. The Ld. Judges have, with the Greatest respect, innovated a new principle of interpreting the Qur'an as is clearly demonstrated by their utter lack of knowledge of the principles of interpretation of the Qur'an evolved by the Muslim theologians and commentators of the Qur'an. The whole science of exegesis of interpretation of Al - Qur'an is stated in Asbab - ul - Nuzul to which the Ld. Judges have no access. It is therefore necessary to quote the necessary verses of the Al - Quran depicting not only the status of the Prophet (peace be upon him) of Islam but also the consequences that follow for not abiding to his teachings. The same may be listed hereunder:

i. *Say (O Muhammad (peace be upon him)): "**Obey Allah and the messenger (Muhammad (peace be upon him))**." **But if they turn away, then Allah does not like the disbelievers.*** (**Aal-i-Imraan, Chapter #3, Verse #32**)

ii. *And **whosoever disobeys Allah and His messenger (Muhammad (peace be upon him))**, and transgresses His limits, **He will cast him into the Fire, to abide therein; and he shall have a d isgraceful torment**.* (**An-Nisaa, Chapter #4, Verse #14**)

iii. *On that day those who disbelieved and **disobeyed the Messenger (Muhammad (peace be upon him)) will wish that they were buried in the earth**, but they will never be able to hide a single fact from Allah.* (**An-Nisaa, Chapter #4, Verse #42**)

iv. ***And whoever contradicts and opposes the Messenger (Muhammad (peace be upon him))** after the right path has been shown clearly to him, **and follows other than the believers' way**, We shall keep him in the path he has chosen, **and burn him in Hell - what an evil destination!*** (**An-Nisaa, Chapter #4, Verse #115**)

v. *This is because they defied and disobeyed Allah and His Messenger. And **whoever defies and disobeys Allah and His Messenger (peace be upon him), then verily, Allah is Severe in punishment**.* (**Al-Anfaal, Chapter #8, Verse #13**)

vi. ***<u>On the Day when their faces will be turned over in the Fire</u>***, *they will say: "****<u>Oh, would that we had obeyed Allah and obeyed the messenger (Muhammad (peace be upon him))</u>***." (**Al-Ahzaab, Chapter #33, Verse #66**).

vii. *No blame or sin is there upon the blind, nor is there blame or sin upon the lame, nor is there blame or sin upon the sick (that they go not for fighting). And* ***<u>whosoever obeys Allah and His messenger (Muhammad (peace be upon him)),</u>*** *He will admit him to Gardens beneath which rivers flow (Paradise); and* ***<u>whosoever turns back, He will punish him with a painful torment</u>***. (**Al-Fath, Chapter #48, Verse #17**).

viii. *"(Mine is) but conveyance (of the truth) from Allah and His Messages (of Islamic Monotheism), and* ***<u>whosoever disobeys Allah and His messenger (peace be upon him), then Verily, for him is the Fire of Hell, he shall dwell therein forever</u>***." (**Al-Jinn, Chapter #72, Verse #23**).

MMM. **BECAUSE** the impugned Judgment, through a completely erroneous understanding of the primary source of Islamic law i.e., the Holy Qur'an came to the conclusion that "thus, there is sufficient intrinsic material within the scripture itself to support the view that wearing hijab has been only recommendatory, if at all it is." [IX (ii) of the impugned Judgment]. The impugned judgment further goes on to state that, "The Holy Quran does not mandate wearing of hijab or headgear for Muslim women. Whatever is stated in the above sūras, we say, is only directory, because of absence of prescription of penalty or penance for not wearing hijab, the linguistic structure of verses supports this view. This apparel at the most is a means to gain access to public places and not a religious end in itself. It was a measure of women enablement and not a figurative constraint." [IX (iii) of the impugned Judgment]. The Hon'ble Court further states, "The Quran shows concern for the cases of 'molestation of innocent women' and therefore, it recommended wearing of this and other apparel as a measure of social security. May be in the course of time, some elements of religion permeated into this practice as ordinarily happens in any religion. However, that per se does not render the practice predominantly religious and much less essential to the Islamic faith" [IX (vi) of the impugned Judgment]. Finally, the Hon'ble Court concludes, "What is not religiously made obligatory therefore cannot be made a quintessential aspect of the religion through

public agitations or by the passionate arguments in courts" [IX (vi) of the impugned Judgment] and "What is made recommendatory by the Holy Quran cannot be metamorphosed into mandatory dicta by Ahadith which is treated as supplementary to the scripture. A contra argument offends the very logic of Islamic jurisprudence and normative hierarchy of sources" [IX (vii) of the impugned Judgment].

NNN. **BECAUSE** observing Hijab i.e., head covering is a clear religious mandate in Islam emanating from the primary and highest source of the Islamic faith i.e., the Holy Qur'an and unanimously interpreted and mandated to be a r eligious obligation by the Prophet Muhammad (peace be upon him) and then the Scholars of Islam throughout the history of Islam. The Holy Qur'an in Chapter 24 (Nur i.e., Light), Verse 31 (translation and commentary by Maulana Wahiduddin Khan) inter alia says:

> *"Say to the believing women that they should lower their gaze and remain chaste and not reveal their adornment - save what is normally apparent thereof, and they should fold their shawls over their bosoms..."*

OOO. **BECAUSE** it is narrated by one of the foremost juristic scholars of Islam (also a Muslim woman), Ayesha Bint Abi Bakr that the intended meaning of the words "save what is normally apparent thereof" in the above stated Verse is "the hands and face" (Reference: Al-Sunan al-kubralil-Bayhaqī, kitāb al-ṣalāh, bābʿawrat al-marʾah al-ḥurrah, No. 3217). Chapter 33 V erse 59 (Al-Ahzab) of the Holy Qura'n again emphasizes on the mandate of Hijab / head covering. It reads:

> *"O Prophet, tell your wives and your daughters and the women of the believers to bring down over themselves [part] of their outer garments. That is more suitable that they will be known and not be abused. And ever is Allah Forgiving and Merciful."* (Saheeh International)

PPP. **BECAUSE** the famous Indian Islamic Scholar Maulana Wahiduddin Khan explains the above Verse by placing reference on the widely accepted and authentic book of Qur'anic exegesis Tafsir ibn Kathir (Vol. III, p. 284) which describes the reactions and consequences of the revelation/narration of the above Verse on the Muslim women of Medina at that time in the following words:

"Some untied their waist-belts while others used their covering sheets and made shawls out of them. The next morning that they offered prayers (salat) led by the Prophet Muhammad, ***it seemed as if crows sat on their heads (because of the scarves they wore****)."*

QQQ. **BECAUSE** Hijab is observed by Muslim women in large numbers and non - observance of hijab by some Muslim women is their matter of choice and thus not relevant to the essential / integral nature of Hijab for Muslim women in general; from both, the religious point of view as well as from the point of view of those large number of Muslim women (in general) and Muslim girl students in the present matter (in particular), who derive pride and empowerment through their interpretation of their faith, personal beliefs and convictions.

Re: In Violation of Article 29 of the Constitution of India

RRR. **BECAUSE** Article 29 of the Constitution of India provides for "Protection of Interests of Minorities". Article 29(1) reads, "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same." That this Hon'ble Court has confirmed that the right under Article 29(1) is an absolute right and is not subject to any restrictions whatsoever in Jagdev Singh Sidhanti v. Pratap Singh Daulta, AIR 1965 SC 183. That wearing of hijab has been an established part of the Muslim culture and thus is protected under Article 29(1) of the Constitution.

SSS. **BECAUSE** without prejudice to the above averments, the Hon'ble High Court in the impugned Judgment states that *"at the most the practice of wearing this apparel may have something to do with culture but certainly not with religion."* [Pg. IX (vi) of the impugned Judgment]

TTT. **BECAUSE** Article 29(2) of the Constitution of India states *"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them"*. In the present case, Muslim women students are being denied admission in educational institution solely on the ground of them practicing hijab as per their religion which is in complete derogation of Article 29(2).

Re: <u>In Violation of the Principle of Non - Retrogression of Rights</u>

UUU. **BECAUSE** in ***Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1,** this Hon'ble Court held:

> *"201. The doctrine of progressive realisation of rights, as a natural corollary, gives birth to the doctrine of non-retrogression. As per this doctrine, there must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead."*

VVV. **BECAUSE** the impugned judgment regresses the rights of women in general and Muslim women in particular by placing restrictions over their bodily and decisional autonomy, perpetuating State's interference in the protected zone of privacy, preventing them from getting an education and practicing their faith, etc. All these restrictions are negation and regression of already available rights and thus places the Indian society in a position of retreat and thus the impugned judgment is in violation of the principle of non - retrogression of rights.

WWW. **BECAUSE** Article 7 of the Universal Declaration of Human Rights as adopted by General Assembly provides that everyone is equal and entitled to equal protection against discrimination, and against incitement to such discrimination. Further, the International Covenant on Civil and Political Rights (ICCPR), which India ratified in 1992 places positive obligations to limit speech on governments. Article 20(2) of the ICCPR states *"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*

XXX. **BECAUSE** the impugned judgement is replete with irrelevant references and derogatory statements in respect of Muslim women who as a matter of their conscience or choice have willingly accepted the attire of *Hijab*. It is pertinent to refer to one such irrelevant reference at page 123 followed by the observation of the Learned Judges at pg. 124. At page 123, the Learned Judge has rereferred to an extract from the book of Dr. B. R. Ambedkar (*Pakistan or the Partition of India)* written in 1945 in which Dr. Ambedkar has referred to purdah system in derogatory terms. Firstly Dr. Ambedkar's utterances in the constituent assembly are held in high esteem and is referred to in the judgements relating to the provisions of

the Constitution. However, the same deference cannot be extended to all the utterances of Dr. Ambedkar written much before the Constituent Assembly was constituted. The observations made by the learned judges at page 124 with greatest respect reveals utter lack of understanding of the learned Judges of the purdah system which is different from wearing *Hijab*.

6. GROUNDS FOR INTERIM RELIEF:

A. BECAUSE as a consequence of the impugned judgment, young Muslim women students shall lose their academic year at educational institutions;

B. BECAUSE on the face of it, the impugned GO itself does not prohibit *Hijab* but the High Court has completely made it clear that in no manner the CDCs could prescribe an inclusive dress code which may include *Hijab*;

C. BECAUSE direct repercussion of the judgment is in conflict with the dignity of Indian Muslims in general and Muslim women in particular. The impugned judgment erases and invisibles religious freedom, agency of women, principles of equality, fraternity and actively perpetuates discrimination, communal discord and intervenes in the protected area if privacy;

D. BECAUSE the impugned judgment legitimizes the "*Hijab* ban" in educational Institutions in the State of Karnataka which goes against the very basic structure of secularism, whole gamut of fundamental rights and Indian constitutional values;

E. BECAUSE the impugned Judgment sets a dangerous precedent for a huge population of practicing Muslim women who shall be debarred from getting an education, moreover, this judgment shall have bearing on all other activities in public life of the Muslim women in particular and Muslims in general.

7. MAIN PRAYER:

That in light of the facts, circumstances, questions of law and grounds urged hereinabove; this Hon'ble Court may be pleased to:

a) Grant Leave to Appeal against the Impugned Final Order and Judgment dated 15.03.2022 passed by a Three Judge Bench of the High Court of Karnataka at Bengaluru Bench in W.P. No. 2347 of 2022; and

b) Pass such other order or orders that may be deemed fit and proper.

8. INTERIM RELIEF:

That in light of the facts, circumstances, questions of law and grounds urged hereinabove; this Hon'ble Court may be pleased to:

a) Grant *ex - parte ad - interim* stay of the Impugned Final Order and Judgment dated 15.03.2022 passed by a Three Judge Bench of the High Court of Karnataka at Bengaluru Bench in W.P. No. 2347 of 2022; and

b) Pass such other order or orders that may be deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE HUMBLE PETITIONER DUTY BOUND SHALL EVER PRAY

DRAWN & FILED BY

[M.R. SHAMSHAD]
Advocate for the Petitioners

SETTLED BY:
Mr. Y.H. Muchhala Sr. Adv.

Drawn on: 19.03.2022
Filed on: 24.03.2022
New Delhi

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2022

IN THE MATTER OF:-
MUNISA BUSHRA ABEDI & ORS. ... PETITIONERS
VERSUS
STATE OF KARNATAKA & ORS. ...RESPONDENTS

C E R T I F I C A T E

Certified that the Special Leave Petition is confined only to the pleading before the Court/Tribunal whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents, or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the petition or to make out grounds urged in Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instructions given by the Petitioners/person authorized by the Petitioners whose affidavit is filed in support of the Special Leave Petition.

Dated: 24.03.2022

[M.R. SHAMSHAD]
Advocate for the Petitioners

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SHAHEEN J. SHAIKH MUMBAI Maharashtra Regd. No. 11117 GOVT. OF INDIA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2022

IN THE MATTER OF:
MUNISA BUSHRA ABEDI & ORS. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Munisa Bushra Abedi, aged about 59 years, daughter of Asghar Ali Abedi, R/o D/404, Hill View Towers, Surya Nagar. Vikhroli West Mumbai, -400083, Maharashtra currently at Mumbai, Maharashtra do hereby solemnly affirm as hereinunder:

1. That the Deponent is Petitioner No. 1 in the accompanying Petition hence the Deponent/Petitioner is competent to swear the present Affidavit. I am also authorized by Petitioner No. 2 and 3 to swear the present Affidavit in support of the accompanying Petition. The Petitioner is aware of the facts of the case on the basis of records and her own personal knowledge.

2. That the contents of pages B to K of Synopsis with List of Dates, paras 1 to 8 of the accompanying Special Leave Petition as well as the accompanying Interlocutory Application(s) for permission to file SLP, exemptions, etc have been drafted on my instructions and are read and understood by me and having understood the same I have to say that the same are true and correct to my personal knowledge being based on record.

3. That the Annexures P-1 to P-13 attached to this Petition are true to their respective originals.

BEFORE ME

NOTED & REGISTERED No. 04
Sr. No. 210 Page No. 70
Date 19/03/2022

SHAHEEN J. SHAIKH
NOTARY GOVT. OF INDIA
Regd. No. 11117
3/14, Sai Prasad Shopping Centre Below,
Vikhroli Court, Kannamwar Nagar No. 2,
Vikhroli (East), Mumbai - 400 083.

DEPONENT

VERIFICATION

Verified at Mumbai on this 19th day of March, 2022 that the contents of the Para No.1 are factual and contents of Para No.2 and Para No.3 of the above Affidavit are true and correct to my personal knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

NOTARY SHAHEEN J. SHAIKH MUMBAI Regd. No. 11117 NOTARIAL GOVT. OF INDIA

DEPONENT

19 MAR 2022

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2022

IN THE MATTER OF:
MUNISA BUSHRA ABEDI & ORS. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Jaleesa Sultana Yaseen aged about 54 years daughter of Md. Yousuf, R/o 11-3-694, New Mallapally, Hyderabad, Telangana-500001, presently at Telangana do hereby solemnly affirm as hereinunder:

1. That the Deponent is Petitioner No. 2 in the accompanying Petition hence the Deponent/Petitioner is competent to swear the present Affidavit. The Petitioner is aware of the facts of the case on the basis of records and her own personal knowledge.

2. That the contents of pages B to K of Synopsis with List of Dates, paras 1 to 8 of the accompanying Special Leave Petition as well as the accompanying Interlocutory Application(s) for permission to file SLP, exemptions, etc have been drafted on my instructions and are read and understood by me and having understood the same I have to say that the same are true and correct to my personal knowledge being based on record.

3. That the Annexures P- 1 to P- 13 attached to this Petition are true to their respective originals.

Jaleesa

DEPONENT

VERIFICATION

Verified at Telangana. on this 19th day of March, 2022 that the contents of the Para No.1 are factual and contents of Para No.2 and Para No.3 of the above Affidavit are true and correct to my personal knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Jaleesa

DEPONENT

ATTESTED

Syed Ahmed Hussain
B.A., LL.B., IRPM
ADVOCATE & NOTARY
Appointed by the Govt. of A.P.
8-3-3224, Ameerpet, Hyd.
O. Ms. No. 88/13

NOTARY * APPOINTED BY GOVERNMENT OF A.P. *
Syed Ahmed Hussain B.A., LL.B., IRPM # 8-3-322/K, Ameerpet, Hyd. Regd. No. 8412 NOTARY

19 MAR 2022

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) No. OF 2022

NOTARY
B. L. JAIN
JAIPUR
Regd. No. 550
GOVERNMENT OF INDIA

IN THE MATTER OF:
MUNISA BUSHRA ABEDI & ORS. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Mohammed Fazlurrahim, aged about 66 years, son of Late Mohammed Abdurrahim, is the Secretary of the Petitioner No. 3 namely All India Muslim Personal Law Board with Office at 76 A/1, Main Market, Okhla Village Jamia Nagar, New Delhi - 110025 (India), presently at New Delhi, do hereby solemnly affirm as hereinunder:

1. That I am the Secretary of the Petitioner No. 3 Organization and in terms of the By Laws thereof, I am fully competent and authorized to swear and depose this Affidavit. The Petitioner is aware of the facts of the case on the basis of records and personal knowledge.

2. That the contents of pages B to K of Synopsis with List of Dates, paras 1 to 8 of the accompanying Special Leave Petition as well as the accompanying Interlocutory Application(s) for permission to file SLP, exemptions, etc have been drafted on my instructions and are read and understood by me and having understood the same I have to say that the same are true and correct to my personal knowledge being based on record.

3. That the Annexures P-1 to P- 13 attached to this Petition are true to their respective originals.

ATTESTED
19-3-2022
NOTARY PUBLIC
GOVT. OF INDIA
JAIPUR (RAJ.)

Fazlurrahim
DEPONENT

VERIFICATION

Verified at Jaipur on this 19th day of March, 2022 that the contents of the Para No.1 are factual and contents of Para No.2 and Para No.3 of the above Affidavit are true and correct to my personal knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Fazlurrahim
DEPONENT

VERIFIED
19-3-2022
NOTARY PUBLIC
GOVT. OF INDIA
JAIPUR (RAJ.)

19 MAR 2022

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ನಡವಳಿಗಳು

ವಿಷಯ: ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿಗಳ ವಸ್ತ್ರ ಸಂಹಿತೆ ಕುರಿತು.

ಓದಲಾಗಿದೆ: 1) ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983.

2) ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: 509 ಎಸ್‌ಹೆಚ್‌ಹೆಚ್ 2013, ದಿನಾಂಕ: 31–01–2014.

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ಪ್ರಸ್ತಾವನೆ:–

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ:1ರಲ್ಲಿ ಕರ್ನಾಟಕ ಸರ್ಕಾರವು 1983ರಲ್ಲಿ ಜಾರಿಗೆ ತಂದಿರುವ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983ರಲ್ಲಿ (1–1995) ಕಲಂ 7 (2)- (5)ರಲ್ಲಿ ವಿವರಿಸಿರುವಂತೆ ಕರ್ನಾಟಕ ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲೆಗಳ ವಿದ್ಯಾರ್ಥಿ–ವಿದ್ಯಾರ್ಥಿನಿಯರು ಒಂದೇ ಕುಟುಂಬದ ರೀತಿಯಲ್ಲಿ ನಡೆದುಕೊಳ್ಳಬೇಕೆಂದು ಮತ್ತು ಯಾವುದೇ ಜಾತಿ ವರ್ಗಕ್ಕೆ ಸೀಮಿತವಾಗಿರದೇ ಸಾಮಾಜಿಕ ನ್ಯಾಯದ ಪರವಾಗಿ ನಡೆದುಕೊಳ್ಳಬೇಕು. ಪ್ರಸ್ತುತ ಕಾಯ್ದೆ ಕಲಂ–133ರ ಅಡಿಯಲ್ಲಿ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜುಗಳಿಗೆ ಈ ಬಗ್ಗೆ ಸೂಕ್ತ ನಿರ್ದೇಶನಗಳನ್ನು ನೀಡುವ ಅಧಿಕಾರವು ಸರ್ಕಾರಕ್ಕೆ ಪ್ರದತ್ತವಾಗಿರುತ್ತದೆ.

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ:(2)ರಲ್ಲಿನ ಸುತ್ತೋಲೆಯಲ್ಲಿ ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣವು ವಿದ್ಯಾರ್ಥಿಗಳ ಜೀವನದಲ್ಲಿ ಪ್ರಮುಖ ಘಟ್ಟವಾಗಿರುತ್ತದೆ. ಸರ್ಕಾರ ನೀಡುವ ಸೂಚನೆಗೆ ಅನುಗುಣವಾಗಿ ಮತ್ತು ಬಿಡುಗಡೆ ಮಾಡುವ ಅನುದಾನವನ್ನು ಸರಿಯಾಗಿ ಉಪಯೋಗಿಸಿಕೊಳ್ಳುವ ನಿಟ್ಟಿನಲ್ಲಿ ಹಾಗೂ ಮೂಲಭೂತ ಸೌಕರ್ಯಗಳನ್ನು ಅಭಿವೃದ್ಧಿಪಡಿಸುವ, ಶೈಕ್ಷಣಿಕ ಗುಣಮಟ್ಟವನ್ನು ಕಾಪಾಡುವ ದೃಷ್ಟಿಯಿಂದ ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜುಗಳಲ್ಲಿ ಅಭಿವೃದ್ಧಿ ಸಮಿತಿಗಳನ್ನು ರಚಿಸಲಾಗಿದ್ದು, ಆಯಾ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜು ಅಭಿವೃದ್ಧಿ ಸಮಿತಿಯ ನಿರ್ಣಯಗಳ ಪ್ರಕಾರ ಕಾರ್ಯನಿರ್ವಹಿಸಲು ಸೂಚಿಸಲಾಗಿದೆ.

ಯಾವುದೇ ಶಿಕ್ಷಣ ಸಂಸ್ಥೆಯ ಮೇಲ್ವಿಚಾರಣಾ ಸಮಿತಿಯು (ಸರ್ಕಾರಿ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ– ಎಸ್.ಡಿ.ಎಂ.ಸಿ, ಖಾಸಗಿ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ–ಪೋಷಕರು ಮತ್ತು ಶಿಕ್ಷಕರ ಸಮಿತಿ ಹಾಗೂ ಆ ಸಂಸ್ಥೆಯ ಆಡಳಿತ ಮಂಡಳಿ) ಮೇಲಿನಂತೆ ಸುಗಮ ಶೈಕ್ಷಣಿಕ ವಾತಾವರಣವನ್ನು ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಕಲ್ಪಿಸುವ ಸದಾಶಯದಿಂದ ಸೂಕ್ತ ನೀತಿ ಸಂಹಿತೆಗಳನ್ನು ಆಯಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಸರ್ಕಾರದ ನೀತಿಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ನಿರ್ಣಯಿಸಿ ಅಳವಡಿಸಿಕೊಳ್ಳಬಹುದಾಗಿದೆ. ಅಂತಹ ಸಮಿತಿಯ ನಿರ್ಣಯವು ಆಯಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇರುತ್ತದೆ.

ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿ–ವಿದ್ಯಾರ್ಥಿನಿಯರು ಏಕರೂಪ ಕಲಿಕಾ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಭಾಗವಹಿಸಲು ಅನುಕೂಲವಾಗುವಂತೆ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳಲಾಗಿದೆ. ಆದರೆ, ಕೆಲವು ವಿದ್ಯಾ ಸಂಸ್ಥೆಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿ ವಿದ್ಯಾರ್ಥಿನಿಯರು ತಮ್ಮ ಧರ್ಮದ ಅನುಸಾರ ಆಚರಣೆಗಳನ್ನು ಪಾಲಿಸುತ್ತಿರುವುದು ಕಂಡುಬರುತ್ತಿದ್ದು ಇದರಿಂದ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಸಮಾನತೆ ಮತ್ತು ಏಕತೆಗೆ ಧಕ್ಕೆ ಬರುತ್ತಿರುವುದು ಶಿಕ್ಷಣ ಇಲಾಖೆಯ ಗಮನಕ್ಕೆ ಬಂದಿರುತ್ತದೆ.

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ವೈಯಕ್ತಿಕ ವಸ್ತ್ರ ಸಂಹಿತೆಗಿಂತ ವಿಕರೂಪ ವಸ್ತ್ರ ಸಂಹಿತೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಷ್ಟ್ರದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಮತ್ತು ವಿವಿಧ ರಾಜ್ಯಗಳ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ಮುಂದೆ ದಾಖಲಾದ ಪ್ರಕರಣಗಳಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ತೀರ್ಪು ನೀಡಲಾಗಿರುತ್ತದೆ:

1) ಕೇರಳ ರಾಜ್ಯದ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು W.P(C) No. 35293/2018ರ ದಿನಾಂಕ:04-12-2018ರಂದು ನೀಡಲಾದ ಆದೇಶದ ಕಂಡಿಕೆ-9ರಲ್ಲಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಹೇಳಿರುವ ತತ್ವವನ್ನು ಈ ಕೆಳಕಂಡಂತೆ ವಿವರಿಸಿರುತ್ತದೆ:

"9. The Apex court in Asha Renjan & others v/s State of Bihar & others [(2017) 4 SCC 397] accepted the balance test when competing rights are involved and has taken a view that individual interest must yield to the larger public interest. Thus, conflict to competing rights can be resolved not by negating individual rights but by upholding larger right to remain, to hold such relationship between institution and students."

2) ಫಾತಿಮಾ ಹುಸೇನ್ ಸೈಯದ್ ವಿರುದ್ಧ ಭಾರತ್ ಎಜುಕೇಷನ್ ಸೊಸೈಟಿ ಮತ್ತು ಇತರರು, (AIR 2003 Bom 75) ಪ್ರಕರಣದಲ್ಲಿ ಇದೇ ರೀತಿಯಲ್ಲಿ ವಸ್ತ್ರ ಸಂಹಿತೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಾರ್ತಿಕ್ ಇಂಗ್ಲೀಷ್ ಸ್ಕೂಲ್, ಮುಂಬೈನಲ್ಲಿ ಸಮಸ್ಯೆ ಉದ್ಭವಿಸಿದ್ದು, ಸದರಿ ಸಮಸ್ಯೆಯ ವಿಚಾರಣೆಯನ್ನು ಬಾಂಬೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ, ಪರಿಶೀಲಿಸಿದ್ದು, ಈ ಶಾಲೆಯ ಪ್ರಾಂಶುಪಾಲರು ಅರ್ಜಿದಾರರಿಗೆ ಶಿರವಸ್ತ್ರ(Head scarf) ಹಾಕಿಕೊಂಡು ಅಥವಾ ತಲೆಯನ್ನು ಮುಚ್ಚಿಕೊಂಡು ಶಾಲೆಗೆ ಬರದಂತೆ ನಿರ್ದೇಶಿಸಿರುವುದು ಸಂವಿಧಾನದ ಅನುಚ್ಛೇದ 25ರ ಉಲ್ಲಂಘನೆ ಅಲ್ಲವೆಂದು ಅಂತಿಮವಾಗಿ ತೀರ್ಪು ನೀಡಿರುತ್ತದೆ.

3) ಮೇಲೆ ಹೇಳಲಾದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪನ್ನು ಅವಲೋಕಿಸಿ ಮಾನ್ಯ ಮದ್ರಾಸ್ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಸಹ ವಿ. ಕಮಲಮ್ಮ ವಿರುದ್ಧ ಡಾ.ಎಂ.ಜಿ.ಆರ್. ಮೆಡಿಕಲ್ ಯುನಿವರ್ಸಿಟಿ, ತಮಿಳುನಾಡು ಮತ್ತು ಇತರರು. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸದರಿ ವಿಶ್ವವಿದ್ಯಾಲಯವು ಮಾರ್ಪಾಡು ಮಾಡಿ ನಿಗಧಿಪಡಿಸಿದ ವಸ್ತ್ರ ಸಂಹಿತೆಯ ನಿರ್ಧಾರವನ್ನು ಎತ್ತಿ ಹಿಡಿದಿದೆ. ಇದೇ ತರಹದ ವಿಷಯವು ಮಾನ್ಯ ಮದ್ರಾಸ್ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಶ್ರೀ ಎಂ.ವೆಂಕಟಸುಬ್ಬರಾವ್ ಮೆಟ್ರಿಕುಲೇಷನ್ ಹೈಯರ್ ಸೆಕೆಂಡರಿ ಸ್ಕೂಲ್ ಸ್ಟಾಫ್ ಅಸೋಸಿಯೇಷನ್ ವಿರುದ್ಧ ಶ್ರೀ ಎಂ.ವೆಂಕಟಸುಬ್ಬರಾವ್ ಮೆಟ್ರಿಕುಲೇಷನ್ ಹೈಯರ್ ಸೆಕೆಂಡರಿ ಸ್ಕೂಲ್ ಎಂಬ ಮತ್ತೊಂದು (2004) 2 MLJ 653 ಪ್ರಕರಣದಲ್ಲಿ ಸಹ ಪರಿಗಣಿತವಾಗಿದೆ.

ಮೇಲೆ ಪ್ರಸ್ತಾಪಿಸಲಾದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ವಿವಿಧ ರಾಜ್ಯಗಳ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿನ ತೀರ್ಪುಗಳನ್ವಯ ಶಿರವಸ್ತ್ರ(Head scarf) ಹಾಕಿಕೊಂಡು ಅಥವಾ ತಲೆಯನ್ನು ಮುಚ್ಚಿಕೊಂಡು ಶಾಲೆಗೆ ಬರದಂತೆ ನಿರ್ದೇಶಿಸಿರುವುದು ಸಂವಿಧಾನದ ಅನುಚ್ಛೇದ 25ರ ಉಲ್ಲಂಘನೆ ಅಲ್ಲವೆಂದಿರುವುದರಿಂದ ಹಾಗೂ ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983 ಮತ್ತು ಅಡಿಯಲ್ಲಿ ರಚಿತವಾದ ನಿಯಮಗಳನ್ನು ಕೂಲಂಕಷವಾಗಿ ಪರಿಶೀಲಿಸಿ ಸರ್ಕಾರವು ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

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ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಇಪಿ 14 ಎಸ್‌ಹೆಚ್‌ಹೆಚ್ 2022 ಬೆಂಗಳೂರು, ದಿನಾಂಕ:05.02.2022.

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983 ಕಲಂ 133 ಉಪ ಕಂಡಿಕೆ (2)ರಲ್ಲಿ ಪ್ರದತ್ತವಾಗಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ರಾಜ್ಯದ ಎಲ್ಲಾ ಸರ್ಕಾರಿ ಶಾಲೆಗಳಲ್ಲಿ ಸರ್ಕಾರ ನಿಗಧಿ ಪಡಿಸಿರುವ ಸಮವಸ್ತ್ರವನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಧರಿಸತಕ್ಕದ್ದು. ಖಾಸಗಿ ಶಾಲೆಗಳು ತಮ್ಮ ಆಡಳಿತ ಮಂಡಳಿಗಳು ನಿರ್ಧರಿಸಿರುವಂತಹ ಸಮವಸ್ತ್ರವನ್ನೇ ಧರಿಸತಕ್ಕದ್ದು.

ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿನ ಕಾಲೇಜುಗಳಲ್ಲಿ ಆಯಾ ಕಾಲೇಜಿನ ಕಾಲೇಜು ಅಭಿವೃದ್ಧಿ ಸಮಿತಿ (CDC) ಅಥವಾ ಆಡಳಿತ ಮಂಡಳಿಯ ಮೇಲ್ವಿಚಾರಣಾ ಸಮಿತಿಯು ನಿರ್ಧರಿಸುವಂತಹ ಸಮವಸ್ತ್ರಗಳನ್ನು ಧರಿಸತಕ್ಕದ್ದು. ಆಡಳಿತ ಮಂಡಳಿಗಳು ಸಮವಸ್ತ್ರಗಳನ್ನು ನಿಗಧಿಪಡಿಸದೇ ಇದ್ದಲ್ಲಿ, ಸಮಾನತೆ ಮತ್ತು ಐಕ್ಯತೆಯನ್ನು ಕಾಪಾಡಿಕೊಂಡು ಹಾಗೂ ಸಾರ್ವಜನಿಕ ಸುವ್ಯವಸ್ಥೆಗೆ ಭಂಗ ಬರದಂತೆ ಇರುವ ಉಡುಪುಗಳನ್ನು ಧರಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದೆಂದು ಆದೇಶಿಸಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
(ಪದ್ಮಿನಿ ಎಸ್.ಎನ್.) 5/2/22
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಶಿಕ್ಷಣ ಇಲಾಖೆ(ಪದವಿ ಪೂರ್ವ)

ಇವರಿಗೆ:

1. ಸರ್ಕಾರದ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ, ಕರ್ನಾಟಕ ಸರ್ಕಾರ, ವಿಧಾನಸೌಧ, ಬೆಂಗಳೂರು.
2. ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ, ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಇಲಾಖೆ. ಬೆಂಗಳೂರು.
3. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಸಮಾಜ ಕಲ್ಯಾಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
4. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಅಲ್ಪಸಂಖ್ಯಾತರ ಕಲ್ಯಾಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
5. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಮಹಿಳಾ ಮತ್ತು ಮಕ್ಕಳ ಅಭಿವೃದ್ಧಿ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
6. ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಗಳ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ವಿಧಾನಸೌಧ, ಬೆಂಗಳೂರು.
7. ಆಯುಕ್ತರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
8. ನಿರ್ದೇಶಕರು, ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
9. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಮತ್ತು ಜಿಲ್ಲಾ ದಂಡಾಧಿಕಾರಿಗಳು.
10. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಹಣಾಧಿಕಾರಿಗಳು.
11. ಅಪರ ಆಯುಕ್ತರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಕಲಬುರಗಿ/ಧಾರವಾಡ.
12. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಂಟಿ/ಉಪನಿರ್ದೇಶಕರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ.
13. ಎಲ್ಲಾ ಜಂಟಿ / ಉಪನಿರ್ದೇಶಕರು, ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆ.
14. ಮಾನ್ಯ ಪ್ರಾಥಮಿಕ ಮತ್ತು ಪ್ರೌಢಶಿಕ್ಷಣ ಹಾಗೂ ಸಕಾಲ ಸಚಿವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ. ವಿಧಾನಸೌಧ.
15. ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿರವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ, ಉನ್ನತ ಶಿಕ್ಷಣ ಇಲಾಖೆ,
16. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿರವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ, ಪ್ರಾಥಮಿಕ ಮತ್ತು ಪ್ರೌಢಶಿಕ್ಷಣ ಇಲಾಖೆ.
17. ಸರ್ಕಾರದ ಅಪರ/ಉಪ ಕಾರ್ಯದರ್ಶಿಗಳು-1, 2 ಆಪ್ತ ಸಹಾಯಕರು.
18. ಹೆಚ್ಚುವರಿ ಪ್ರತಿಗಳು.

TRUE COPY

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Proceedings of the Government of Karnataka

Subject - Regarding a dress code for students of all schools and colleges of the state

Refer - 1) Karnataka Education Act 1983
2) Government Circular : 509 SHH 2013, Date : 31-01-2014

Preamble:-

As mentioned in the above at reference No.1, the Karnataka Education Act 1983 passed by the government of Karnataka (1-1995) Section 7 (2) (5) stipulates that all the school students studying in Karnataka should behave in a fraternal manner, transcend their group identity and develop an orientation towards social justice. Under the Section 133 of the above law, the government has the authority to issue directions to schools and colleges in this regard.

The above mentioned circular at reference No.2 underlines how Pre-university education is an important phase in the lives of students. All the schools and colleges in the state have set up development committees in order to implement policies in line with the policies of the government, utilize budgetary allocations, improve basic amenities and maintain their academic standards. It is recommended that the schools and colleges abide by the directions of these development committtees.

Any such supervisory committee in schools and colleges (SDMC in Government Institutions and Parents-Teachers' Associations and the management in private institutions) should strive to provide a conducive academic environment and enforce a suitable code of conduct in accordance with government regulations. Such a code of conduct would pertain to that particular school or college.

Various initiatives have been undertaken to ensure that students in schools and colleges have a standardized learning experience.

However, it has been brought to the education department's notice that students in a few institutions have been carrying out their religious observances, which has become an obstacle to unity and uniformity in the schools and colleges.

The question relating to a uniform dress code over individual dressing choices has come up in several cases before the honourable Supreme Court and High Courts, which have ruled as below.

1) In Para 9 of the Hon'ble High Court of Kerala's ruling in W.P (C) No. 35293/2018, date : 04-12-2018, it cites a ruling by the Hon'ble Supreme Court :

" 9. The Apex Court in Asha Renjan and others v/s State of Bihar and others [(2017) 4 SCC 397] accepted the balance test when competing rights are involved and has taken a view that individual interest must yield to the larger public interest. Thus, conflict to competing rights can be resolved not by negating individual rights but by upholding larger right to remain, to hold such relationship between institution and students."

2) In the case of Fatima Hussain Syed v/s Bharat Education Society and ors. (AIR 2003 Bom 75), in a similar incident regarding the dress code, when a controversy occurred at Kartik High School, Mumbai, The Bombay High Court appraised the matter, and ruled that it was not a violation of Article 25 of the Constitution for the principal to prohibit the wearing of head scarf or head covering in the school.

3) Subsequent to the Hon'ble Supreme Court's abovementioned ruling, the Hon'ble Madras High Court, in V. Kamalamma v/s Dr. MGR Medical University, Tamil Nadu and Ors upheld the modified dress code mandated by the university. A similar issue has been considered by the Madras High Court in the Shri. M

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Venkatasubbarao Matriculation Higher Secondary School Staff Association v/s Shri M. Venkatasubbarao Matriculation Higher Secondary School (2004) 2 MLJ 653 case.

As mentioned in the abovementioned rulings of the Hon'ble Supreme Court and various High Courts, since the prohibition of a headscarf or a garment covering the head is not a violation of Article 25 of the constitution. Additionally, in terms of the Karnataka Education Act 1983 and its rules, the government has decreed as below -

Government Order No: EP14 SHH 2022 Bengaluru, Dated : 05.02.2022

In the backdrop of the issues highlighted in the proposal, using the powers granted by Karnataka Education Act Section 133 (2), all the government schools in the state are mandated to abide by the official uniform. Private schools should mandate a uniform decided upon by their board of management.

In colleges that come under the pre-university education department's jurisdiction, the uniforms mandated by the College Development Committee, or the board of management, should be worn. In the event that the management does mandate a uniform, students should wear clothes that are in the interests of unity, equality, and public order.

By the Order of the Governor of Karnataka,
And in his name
Padmini SN
Joint Secretary to the Government
Education Department (Pre-University)

TRUE TRANSLATED COPY

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. No. OF 2022
IN
SPECIAL LEAVE PETITION (C) NO..... OF 2022

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IN THE MATTER OF:

MUNISA BUSHRA ABEDI & ORS .....PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ....RESPONDENTS

APPLICATION FOR PERMISSION TO FILE SPECIAL LEAVE PETITION

To,

The Chief Justice of India
And His Companion Judges
Of Hon'ble Supreme Court of India

Humble application of the applicant above named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners / Applicants are filing the present application praying for permission to file Special Leave Petition against the impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge Bench of the Hon'ble High Court of Karnataka, Bengaluru Bench in W.P. No. 2347 of 2022 wherein the Hon'ble High Court has dismissed the Writ Petitions wherein Government Order of Karnataka dated 05.02.2022 had been challenged in relation to right of female Muslim students to the practice of wearing *Hijab* along with the school uniform in educational institutions of the State of Karnataka.

2. That the Petitioners / Applicants were not party in the W.P. No. 2347 of 2022 but the Petitioners / Applicants have the most suitable locus in the present case to take up this issue and file the present petition with the permission of this Hon'ble Court:

   a. *Re: Petitioner / Applicant No. 1 and Petitioner / Applicant No. 2*

      It is respectfully submitted that the Petitioner / Applicant No. 1 and the Petitioner / Applicant No. 2 are practicing Muslim women who themselves wear *Hijab* in public spaces in exercise of their Constitutional rights.

      That the impugned judgment has upheld the stand of the State / Respondents that Muslim Girls cannot be permitted to join the government run school if she wears *Hijab* or covers her hair / head and neck with a piece of cloth. This judgment of the Hon'ble High Court in all likelihood can be interpreted selectively by the State and its instrumentalities and has the potential of being invoked to introduce and impose restrictions impinging on the various fundamental rights guaranteed under Articles 19 (1), 21 and 25 and which shall have a direct effect on Muslim women at large, including Muslim girl students. The impugned judgement has the ramification of closing doors to Muslim women who wear *Hijab* as a matter of their fundamental right flowing from Articles 19(1)(a) and 21 to all the government institutions / agencies and seeking employment in any institution run by the Government or semi - government entities. It does involve the issue of wider public interest. Further, the impugned judgment refers to multiple constitutional issues and it misconstrues and misapplies to reach wrong conclusions. In

the process, the judgment makes unwarranted and derogatory observations / statements offending the dignity of practicing Muslim women who wear *Hijab*.

Petitioner / Applicant No. 1 has an academic background of teaching in a semi - government Degree College in Mumbai from where she has taken voluntary retirement.

Similarly, Petitioner / Applicant No. 2 is a qualified lawyer / advocate with her deep knowledge of Islamic law and constitutional law. She is registered with Bar Council of AP / Telengana since last more than 28 years and has advised Muslim woman on various legal issues. She has a deep understanding of Islamic laws.

It is further submitted that the Petitioner / Applicant No. 1 and the Petitioner / Applicant No. 2, in addition to being practicing Muslim women, are Members of the *All India Muslim Personal Law Board* i.e., the Petitioner / Applicant No. 3 herein, whose locus has been discussed in the under mentioned submissions.

b. ***Re: Petitioner / Applicant No. 3***

That the Petitioner / Applicant No. 3, *the All India Muslim Personal Law Board* (AIMPLB) is a non - government organization constituted in 1973 to adopt suitable strategies for the protection and continued applicability of Muslim Personal Law in India, most importantly, the Muslim Personal Law (*Shariat*) Application Act of 1937, providing for the application of Muslim Personal Law to Muslims in India in their personal affairs.

i. That the Petitioner / Applicant No. 3, is a Society registered under the provisions of the Societies Registration Act, 1860 and works towards protecting Muslim personal laws, interacts with the public authorities, guides the general public about crucial issues concerning Islam, its followers and its practice in India. Petitioner / Applicant No. 3 Board has an Executive Committee of 51 members and General Body consisting of 251 members, both women and men, from all over India, comprising of *Ulema* (scholars of Islam) representing the various schools of thought in Islam, lawyers, activists and public - spirited individuals.

ii. That in the past the Petitioner / Applicant No. 3 has intervened or has been made party to actions brought before this Hon'ble Court and other Courts in India and has assisted the Courts to the best of its ability to ensure that justice, equity and above all, the ethos and ideas enshrined in the Constitution of India prevails. In the recent past, the Petitioner No. 3 has assisted the Hon'ble Supreme Court of India which are set out as under:

- Writ Petition (Civil) No. 386 of 2005 titled *'Vishwa Lochan Madan v. Union of India & Ors.'* on the issue of enforceability or lack thereof of *fatwas*.
- Civil Appeal No. 10972 of 2013 titled *'Suresh Kumar Koushal and another v. NAZ Foundation and Ors.'* on the issue of homosexuality and S. 377 of the IPC.

- Writ Petition (C) No. 118 of 2016 titled *'Shayara Bano v. Union of India and Ors.'* on the issue of Triple Talaq.
- Writ Petition (Civil) No. 472 of 2019 titled *'Yasmeen Zuber Ahmad Peerzade v. Union of India'* on the issue of women being allowed to offer Namaz in Mosques.

iii. That the issues decided by the Hon'ble High Court at Karnataka widely impacts socio - religious ethos of the Muslim community. It has widely opened the door of interference with the religious freedom guaranteed under the Constitution. It does not merely affect but it also throws wide open the doors of interference with religious freedom of individuals as well as various religious denominations by State as well as instrumentalities of the State. It throws wide open the gate for the Hon'ble Courts to interpret religious scriptures with which it is humbly submitted the Courts have no institutional capacity to do so.

3. That the Applicants submit that the impugned judgment presents an erroneous understanding of the Islamic texts particularly the primary and highest source of Islamic law i.e., the Holy Qur'an. The impugned judgment erroneously transgresses into arena of interpreting Hadith of the Prophet (peace be upon him) and has displayed its complete lack of understanding of the rules of interpretation of Al - Qur'an and the relevance of Hadith in the matter of interpretation of Al - Quran. The Hon'ble High Court seems to be unaware of and therefore failed to

notice that the Prophet (peace be upon him) of Islam during his life time was the final interpreter of Al - Qur'an. In its impugned Judgment, The High Court, curtails religious freedom and constitutional rights of Muslim women / girls.

4. The Petitioners No. 1 and 2 follow Islamic Personal Laws within the permitted limit as protected under the Constitution of India. Petitioner No. 3 is the Organization which works towards protecting Islamic Personal Law for its followers within the limits of the guarantees and liberties set-out in the Constitution of India. The grounds urged in the accompanying Special Leave Petition to protect rights of women to wear and practice *Hijab* is both on the basis of faith and belief within the religion of Islam and also on the basis of Constitutional guarantees to an individual to this effect; independent from the protection as set-out under Article 25 of the Constitution of India. Only because the right of an individual has also been pressed through Articles 14, 19 and 21 of the Constitution of India, it should not be construed that the relevance of religious beliefs and practices in Islam in any manner becomes an issue of lesser importance for a believer. The Petitioners are not only entitled to protect their rights under Article 25 but being citizens of India, without diluting the rights under Article 25, are equally entitled to assert their rights through other Articles which are in consonance with the ingredients of rights to be protected under Article 25.

5. That the High Court has erroneously arrogated the power to interpret Al - Quran and stretched its application to reach a wrong conclusion as what is 'non - essential' to religion for upholding a Government Order

which is a disguised provocation against an established practice based on religious faith which a believer considers to be an essential practice.

6. The impugned Judgment further erases and invisibles basic religious freedom and freedom of expression, agency of Muslim women, principles of equality, fraternity and actively perpetuates discrimination, communal discord and intervenes in the protected area of privacy. Moreover, the impugned Judgment legitimizes "*Hijab* ban" in educational institutions in the State of Karnataka, which goes against the very basic structure of secularism. It is submitted that the impugned judgment will lead to grave encroachment on the children of Muslim community and shall lead to a situation where a large section of Muslim Girls will be deprived from stream of general education leading them to remain in vulnerability.

7. In this back ground of the matter, it is necessary that the Petitioners / Applicants take up the issue to test the impugned Judgment dated 05.02.2022 in the judicial scrutiny before this Hon'ble Court. As already stated above the locus of the applicants herein is most suitable in the present case to take up this issue and file the present Petition with the permission of this Hon'ble Court. This Hon'ble Court, keeping in view the facts of the case, may permit the applicant to file the accompanying SLP challenging the order dated 15.03.2022 passed by the High Court of Karnataka, Bengaluru Bench in W.P. No. 2347 of 2022.

8. It is further submitted that the present case is being filed in the interest of justice, equity, constitutional principles and in bona fide interest of society at large.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: -

(a) grant permission to the Petitioners / Applicants to file the present Special Leave Petition against the impugned Judgment and Final Order dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in W.P. No. 2347 of 2022; and

(b) pass such or further order/s as may deem fit and proper in the interest of justice and equity.

FILED BY

Drawn on: 19.03.2022
Filed on: 24.03.2022

[M R SHAMSHAD]
ADVOCATE FOR THE PETITIONERS / APPLICANTS

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No. OF 2022

IN

SPECIAL LEAVE PETITION (C) NO..... OF 2022

IN THE MATTER OF:

MUNISA BUSHRA ABEDI & ORS. .....PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ....RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT/ORDER DATED 15.03.2022

TO,

THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES
OF HON'BLE SUPREME COURT OF INDIA

HUMBLE APPLICATION OF THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioners/applicants are filing the present application praying for permission to file Special Leave Petition against the impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge Bench of the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 2347 of 2022 wherein the Hon'ble High Court has dismissed the Writ Petitions wherein Government Order of Karnataka dated 05.03.2022 had been challenged in relation to right of female Muslim students to practice hijab alongwith the school uniform in educational institutions of the State of Karnataka.

2. The Applicants crave leave of this Hon'ble Court to rely upon and refer to the facts, circumstances and grounds mentioned in the main ground of accompanying Special Leave Petition which are not reproduced here for the sake of brevity.

3. That the Applicants are filing the accompanying SLP along with a downloaded copy of the Impugned Judgment/Order from the official website of the High Court of Karnataka as the Petitioners were not a party before the High Court. The Applicant undertakes that in case so directed, the petitioners/applicant shall file a certified copy.

4. This Application is *bona fide* and an order allowing this Application would meet the ends of justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(a) EXEMPT the Applicants from filing a certified copy of the Impugned Final Judgment and Order dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in W.P. No. 2347 of 2022;

(b) PASS any other order(s) or directions as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, APPLICANTS, SHALL AS IN DUTY BOUND, EVER PRAY.

FILED BY:-

NEW DELHI.
Drawn on: 19.03.2022
Filed on: 24.03.2022

[M.R. SHAMSHAD]
ADVOCATE FOR THE PETITIONERS/APPLICANTS

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

189

I.A. No. OF 2022

IN

SPECIAL LEAVE PETITION (C) NO..... OF 2022

IN THE MATTER OF:

MUNISA BUSHRA ABEDI & ORS. .....PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ....RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING THE OFFICIAL TRANSLATION OF THE ANNEXURE

TO,

THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES
OF HON'BLE SUPREME COURT OF INDIA

HUMBLE APPLICATION OF THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the petitioners/applicants are filing the present application praying for permission to file Special Leave Petition against the impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge Bench of the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 2347 of 2022 wherein the Hon'ble High Court has dismissed the Writ Petitions wherein Government Order of Karnataka dated 05.03.2022 had been challenged in relation to right of female Muslim students to practice hijab alongwith the school uniform in educational institutions of the State of Karnataka.

2. That the Petitioners state that the Annexure P-| was originally in the vernacular. However, keeping in view the paucity of time the

Applicants/Petitioners could not get the Annexure translated through the official translator and the original document has been translated by a competent person conversant with the vernacular language and the legal phraseology of the original document into the English language. Therefore, the Petitioners seek exemption from filing the official translation of the said Annexure.

3. That the Petitioners submit that it would be in the interest of justice that the Petitioners be exempted from filing the official translation of the said Annexures.

4. That the petitioners have filed the instant application *bonafide* and in the interest of justice.

PRAYER

In the facts and circumstances of the case and in the interest of justice it is most respectfully prayed that Your Lordships may graciously be pleased to:

(a) EXEMPT the petitioners/applicants from filing the official translation of the Annexure P-1;

(b) PASS such other and further order as this Hon'ble Court may deem just and proper in the premises of this case.

AND FOR THIS ACT OF KINDNESS, APPLICANTS, SHALL AS IN DUTY BOUND, EVER PRAY.

FILED BY:-

NEW DELHI.
Drawn on: 19.03.2022
Filed on: 24.03.2022

[M.R. SHAMSHAD]
ADVOCATE FOR THE PETITIONERS/APPLICANTS

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. No. OF 2022
IN
SPECIAL LEAVE PETITION (C) NO..... OF 2022

IN THE MATTER OF:
MUNISA BUSHRA ABEDI & ORS .....PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ....RESPONDENTS

APPLICATION FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS

TO,

THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES
OF HON'BLE SUPREME COURT OF INDIA

HUMBLE APPLICATION OF THE APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners / Applicants are filing the present application praying for permission to file Special Leave Petition against the impugned Judgment and Final Order dated 15.03.2022 passed by a three Judge Bench of the Hon'ble High Court of Karnataka, Bengaluru Bench in W.P. No. 2347 of 2022 wherein the Hon'ble High Court has dismissed the Writ Petitions wherein Government Order of Karnataka dated 05.02.2022 had been challenged in relation to right of female Muslim students to the practice of wearing Hijab along with the school uniform in educational institutions of the State of Karnataka.

2. That the Petitioners herein were not a party to the proceedings before the Hon'ble High Court of Karnataka and therefore certain news reports and articles could not be brought to the attention of the Hon'ble High Court

and thus the Petitioner seeks the permission of this Hon'ble Court to bring the same on record for fair adjudication of the present matter.

3. That an article published by The Wire had reported that six Muslim girl students were denied permission to enter classrooms after they refused to remove their hijab at the Pre-University College (P.U College) for Girls, Udupi.

A true copy of the article *titled "Karnataka: Six Students Stopped From Entering College in Udupi for 'Wearing a Hijab'"* dated 16.01.2022 reported in The Wire and available on https://thewire.in/education/karnataka-muslim-students-college-udupi-hijab is annexed hereto and marked as **ANNEXURE P-2** [Kindly See pages.197..to 200..].

4. That a news article published by The Indian Express ran a story stating that a state-run college in Balagadi village in Karnataka's Chikkamagaluru district decided to ban hijabs.

A true copy of the article titled "Karnataka college bans hijabs, saffron scarves inside campus to defuse tension" dated 13.01.2022 reported in The Indian Express and available on https://indianexpress.com/article/cities/bangalore/karnataka-chikkamagaluru-college-hijab-ban-7719918/ is annexed hereto and marked as **ANNEXURE P-3** [Kindly See pages.201..to 202..].

5. That various antisocial elements of the society started to attack and threaten young Muslim girls and the situation became worse. Hijab-clad Muslim girls were heckled by mobs of men wearing saffron scarves and shouting "*Jai Shri Ram*" outside educational institutions with complete impunity. ***Resultantly, more and more educational institutions started banning hijab in educational institutions:***

a. Muslim girl students were denied entry in the P.U College, Udupi.

b. Visvesvaraya Government College in Bhadravathi town, Shivamogga district, Karnataka told girl students who wear hijab to remove it in the waiting rooms and attend classes without it.

c. Muslim girl students were barred entry in hijab in Bhandarkars' Arts and Science College, Kundapura, Udupi.

d. Twelve students wearing hijab were barred from entering the classrooms of Government PU College, Byndoor.

e. Muslim girl students were barred entry in hijab in B. B. Hegde College, Kundapura.

f. Muslim girl students were barred from entering the college premises in RN Shetty Composite PU College in Kundapur in Udupi district.

g. Government PU College, Naunda imposed hijab ban on Muslim girl students. Sarasvati Vidyalaya PU College, Gangolli imposed hijab ban on Muslim girl students.

A true copy of the article titled "Udupi Hijab Row: Six Students Denied Entry for Wearing Hijab to Class, Again" dated 02.02.2022 reported in The Quint and available on https://www.thequint.com/news/india/udupi-hijab-row-six-muslim-students-denied-entry-to-classroom-again is annexed hereto and marked as **ANNEXURE P-4 [Kindly see pages.203...to 203..].**

A true copy of the article titled "Karnataka: College tells girls to attend classes without hijab" dated 03.02.2022 reported in The Times of India and available on https://timesofindia.indiatimes.com/city/hubballi/karnataka-college-tells-girls-to-attend-classes-without-hijab/articleshow/89310151.cms is annexed hereto and marked as **ANNEXURE P-5 [Kindly see pages.204...to .204..].**

A true copy of the article titled "Hijab vs saffron scarves: More colleges in Karnataka deny entry to girls wearing hijab" dated 03.02.2022 reported in Firstpost and available on https://www.firstpost.com/india/hijab-vs-saffron-scarves-more-colleges-in-karnataka-deny-entry-to-girls-wearing-hijab-10346801 is annexed hereto and marked as **ANNEXURE P-6 [Kindly see at pages 205...to 207..].**

A true copy of the article titled "One more college in Udupi entangled in hijab row" dated 04.02.2022 reported in The Hindu and available on https://www.thehindu.com/news/cities/Mangalore/one-more-college-in-udupi-entangled-in-hijab-row/article38377075.ece is annexed hereto and marked as **ANNEXURE P-7 [Kindly see at pages 208...to .211...].**

6. That The Wire had reported through one of its Articles dated 07.02.2022 stating that some Muslim girls were allowed entry in the classroom PU College, Kundapur but were made to sit separately from their non-Muslim classmates in segregation.

A true copy of the article titled "Udupi: Hijab Wearing Students Allowed Into College, Made to Sit in Separate Room" dated 07.02.2022 reported in The Wire and available on https://thewire.in/rights/udupi-hijab-wearing-students-allowed-into-college-made-to-sit-in-separate-room is annexed hereto and marked as **ANNEXURE P-8 [Kindly see at pages..212..to 215...].**

7. That a young Muslim girl was heckled on her way to her classroom by a mob of young men chanting slogans of *"Jai Shree Ram"* which was reported by The Hindu vide its article dated 08.02.2022.

A true copy of the article titled "Hijab-clad student heckled by boys wearing saffron scarves in Mandya college" dated 08.02.2022 reported in The Hindu and available on https://www.thehindu.com/news/national/karnataka/hijab-clad-student-heckled-by-boys-wearing-saffron-scarves-in-mandya-

college/article38396368.ece is annexed hereto and marked as **ANNEXURE P-9 [Kindly see at pages 216 ...to 217 ...].**

8. That in light of the events of communal disharmony the Chief Minister of Karnataka had directed that all educational institutions to be shut for three days purportedly to maintain peace and harmony in the State.

A true copy of the article titled "Violent clashes over hijab ban in southern India force schools to close" dated 09.02.2022 reported in The Guardian and available on https://www.theguardian.com/world/2022/feb/09/violent-clashes-over-hijab-ban-in-southern-india-force-schools-to-close is annexed hereto and marked as **ANNEXURE P-10 [Kindly see at pages 218 ...to 222 ...].**

9. That in Government First Grade College, Bapuji Nagar, Shimoga a saffron flag was hoisted in its premises. Stones were pelted on Muslim girl students.

A true copy of the article titled "Karnataka Hijab Row: Saffron Flag Hoisted in Shimoga College, Sec 144 Imposed" dated 09.02.2022 reported in The Quint and available on https://www.thequint.com/news/india/hijab-row-saffron-flag-hoisted-in-karnataka-college is annexed hereto and marked as **ANNEXURE P-11 [Kindly see at pages 223 ..to 227 ...].**

10. That a document, which contained the scanned copies of the college's admission ledger with details of the students, went viral subjecting these young Muslim girl students to abusive calls, messages and harassment.

A true copy of the article titled "Karnataka Hijab Row: College Leaks Addresses, Numbers of Protesting Muslim Girls" dated 09.02.2022 reported in The Quint and available on https://www.thequint.com/news/india/karnataka-udupi-college-leaks-home-addresses-of-muslim-girls-protesting-for-hijab is annexed hereto

and marked as **ANNEXURE P-12 [Kindly see at pages 228..to ..232..].**

11. That the Muslim students, teachers and staff were forced to take off their hijabs before entering educational institutions in Karnataka.

A true copy of the article titled "Staff, Students Asked to Remove Hijab at Gates as Karnataka Schools Reopen" dated 14.02.2022 reported in The Wire and available on https://thewire.in/women/staff-students-asked-to-remove-hijab-at-gates-as-karnataka-schools-reopen is annexed hereto and marked as **ANNEXURE P-13 [Kindly see at pages..233..to ..237..].**

12. That the present application is bonafide and in the interest of justice.

PRAYER

In the facts and circumstances of the present case it is most respectfully prayed that this Hon'ble Court be pleased to;

A. PERMIT the Petitioners herein to file the additional documents being Annexures P-2 to P-13; and

B. PASS any such other further Order(s) or Direction(s), as may be deemed just and proper in the premises of this case.

FOR THIS ACT OF KINDNESS THE APPLICANT DUTY BOUND SHALL EVER PRAY

New Delhi
Drawn on: 19.03.2022
Filed on: 24.03.2022

DRAWN AND FILED BY:-

[M. R. SHAMSHAD]
Advocate for the Petitioners/Applicants

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ANNEXURE-P 2

EDUCATION

Karnataka: Six Students Stopped From Entering College in Udupi for 'Wearing a Hijab'

The six students have been marked 'absent' by the college since December 31, 2021. Their parents approached the college to talk about the issue, but principal has refused to hold any discussions on the matter.

The six students have been marked "absent" by the college since December 31, 2021. Credit: Twitter@KeypadGuerilla

Karnataka: Six Students Stopped From Entering College In Udupi For 'Wearing A Hijab'

The Wire Staff

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Listen to this article: 00:00 03:06

COMMUNALISM EDUCATION RIGHTS 16/JAN/2022

New Delhi: Even after three weeks, female students at the Government Women's PU college in Udupi, Karnataka, have still not being allowed entry into classrooms for "wearing a hijab".

The six students have been marked "absent" by the college since December 31, 2021. Their parents approached the college to talk about the issue, but principal Rudra Gowda refused to hold any discussions on the matter, *The Hindustan Gazette* reported.

The CFI and the Girls Islamic Organisation (GIO) had approached the college authorities and district collect to resolve the matter, however, the students have still not been allowed entry into the classrooms.

CFI state committee member Masood told *The Hindustan Gazette* that the students were threatened and forced to write a letter saying that they are not attending classes for the last 15 days.

He said, "The principal, along with lecturers, threatened the girls that if they don't write the letter, then 'we know how to

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make you write'," adding that a student had fallen sick due to the mental torture.

College Development Committee vice president Yashpal Suvarna told *Deccan Herald* that there were more than 150 women studying in the college who were from minority communities. "None of them have raised any demands," he said.

"These girls who are members of Campus Front of India (CFI) are keen on creating controversy. The college has its own rules, regulations and disciplinary procedures. The uniform was introduced to offer an egalitarian approach to education, as there are many poor women studying in the college," he added.

If their demand is met today, they might raise another demand on conducting *namaz* on the campus, he said.

Also read: The Hijab Has Arrived: Identity in the Time of Dissent and Conditional Allies

PFI state general secretary Nasir Pasha told the newspaper that the incident has taken away the religious freedom enshrined in our Constitution, he said. "Just like how Hindu students wear a *bindi* and Christian nuns wear a headdress, Muslim students should be allowed to wear a scarf over their head," he said.

According to *The Hindu*, Udupi MLA and chairman of College Development Committee K. Raghupati Bhat on January 1 held a meeting of parents of over 1,000 students, and said that the college will continue with its uniform code, which includes a veil, as has been decided by the committee. Deputy director of pre-university department Maruthi also attended the meeting.

A parent of one of the six students told the daily that he cannot compromise on the their practices and he will admit

his daughter in another college.

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The students also told the daily that the college was preventing them from speaking in Beary and Urdu. However, the college management refuted these allegations.

(True Copy)

ANNEXURE-P3

Karnataka college bans hijabs, saffron scarves inside campus to defuse tension

201

Last month, a section of students had turned up wearing saffron scarves and asked their female Muslim classmates not to wear hijabs during classes.

By: Express News Service | Bengaluru |
Updated: January 13, 2022 3:30:13 am

The Indian EXPRESS

The degree college has around 850 students of which a quarter are Muslim.

A state-run college in Balagadi village in Karnataka's Chikkamagaluru district has decided to ban hijabs and saffron scarves on the campus. The decision was taken at a meeting with the parents of students on Wednesday.

Last month, a section of students had turned up wearing saffron scarves and asked their female Muslim classmates not to wear hijabs during classes

Principal Ananth Murthy told indianexpress.com, "The officials were part of the meeting and it was decided that Hindu students will not sport saffron scarves and Muslim girl students will not wear

hijabs but they can wear a shawl to cover their heads. If anyone violates the rule, they would be dismissed from the college."

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The degree college has around 850 students of which a quarter are Muslim. A faculty member, who did not reveal his name, said some people were trying to instigate hatred.

Notably, most government-run degree colleges in the state do not have uniforms though the one in Balagadi is an exception.

In 2018, the college had faced the same issue and the rule was brought. An officer working in the higher education department said that the issue of dress code "has cropped up in recent years."

Campus Front of India (Karnataka) state secretary Syed Sarfaraz Gangavathi welcomed the decision of the college authorities. "The Constitution allows the wearing of hijab or saffron shawls but it should not be instigated by anyone or politically motivated," he said.

Former National Secretary of Akhil Bharatiya Vidyarthi Parishad (ABVP) Harsha Narayan said that schools and colleges should be kept away from religious practices. "We are ready to join any organisation (including Campus Front of India) to keep away religious practices from schools and colleges," he added.

Recently, the principal of a government PU college In Udupi district stopped Muslim girls from entering the campus as they were wearing hijabs. However, the latter were allowed entry after they approached the deputy commissioner of Udupi, Kurma Rao, stating that their constitutional rights were being violated.

ANNEXURE-P/4

Udupi Hijab Row: Six Students Denied Entry for Wearing Hijab to Class, Again

The incident occurred on World Hijab Day.

THE QUINT

INDIA

Published: 02 Feb 2022, 7:34 PM IST

2 min read

203

Six students on Tuesday, 1 February, were denied permission to enter a classroom after they refused to remove their hijab at the government Pre-University College in Udupi, Karnataka, *Times of India* reported.

The Muslim girls have been resisting the school policy, which disallows hijabs in classrooms, and not attending classes to mark their protest.

On Tuesday, despite staff instructions to vacate the campus, the Muslim girls sat in the campus at least till noon. Media entry was reportedly banned in the campus.

The incident also occurred on World Hijab Day.

"We will fight for this cause legally. At the meeting held yesterday, we did not agree to attend classes without the hijab. We have tried all possible ways to convince the authorities," one of the students told *Times of India.*

The students have asserted that wearing a hijab is a fundamental right guaranteed in the Constitution and nobody can take away that right, *Deccan Herald* reported.

The PUC at the coastal Karnataka town was closed last week because of a COVID outbreak. On 31 December 2021 too, the girls had attempted to attend classes wearing their hijabs, but had been told that they could not enter their classrooms with them, and directed to take online classes.

"We are practising Muslims, and the *hijab* is a part of our faith. Along with that, we are also students with aspirations for a career and a good life. Why are we suddenly expected to choose between our identity and our education? That isn't fair at all," one of the students, Aliya Assadi, had told **The Quint**.

Meanwhile, the National Human Rights Commission (NHRC) on Thursday, 27 January, issued a notice to the Karnataka government over the controversy.

(With inputs from Deccan Herald and Times of India.)

THE TIMES OF INDIA

ANNEXURE-P5

Karnataka: College tells girls to attend classes without hijab

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TNN | Feb 3, 2022, 05.04 AM IST

HUBBALLI: A state-run college in Bhadravathi town, Shivamogga district, has told girl students who wear hijab to remove it in the waiting rooms and attend classes without it from Thursday.

Principal of Visvesvaraya Government College, Bhadravathi, MG Umashankar said he had discussed the issue with the students and their parents. "The issue has been resolved. They will not wear hijab in class," he stated.

The move by the college authorities came after a section of students came to college wearing saffron scarves and asked their Muslim classmates not to wear hijab during classes. State-run colleges in Karnataka have a uniform code.

The incident comes within a fortnight of students at a Chikkamagaluru college wearing saffron shawls to mark their protest against Muslim girls wearing hijabs on campus.

A few students had been demanding that the college administration ensure students do not wear hijab on campus despite college rules specifying that students do not have to follow a code on uniforms (in this particular college). On Tuesday and Wednesday, many students wore saffron shawls and scarves on campus and staged a dharna against the practice.

ANNEXURE-P/6

Hijab vs saffron scarves: More colleges in Karnataka deny entry to girls wearing hijab

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On Wednesday, more than 100 boys arrived at the Government PU College in Kundapur wearing saffron scarves to protest against Muslim students wearing hijab. A day later the college authorities shut the door and denied entries to students who were wearing hijab

FP Staff | February 03, 2022 21:47:43 IST

Hijab vs saffron scarves: More colleges in Karnataka deny entry to girls wearing hijab

Representational Image. ANI

A month after students wearing hijab were barred from entering the government college in Karnataka's Udupi, more Muslim girls were denied entry at Kundapur's Pre-university college on Thursday.

According to news agency *IANS*, the principal of the PU College told the students that as per the government's order and the college's guidelines, they will have to come in uniform to attend classes.

This has come a day after male students of Bhandarkar's college wore saffron shawls to protest against Muslim students wearing hijab.

This is the third time in the last one month that girl students wearing hijab were denied entry to colleges.

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Let's take a look at what is the issue and why hijab-wearing students are not being allowed to attend classes:

What happened at Udupi Girls' College

– On 1 January, 2022, the management of the government pre-university college denied entry to six Muslim students for wearing hijab, stating it was against the prescribed norms of the college.

– One of the students, Resham Farooq, filed a petition in the HC saying the students' right to wear a hijab is a fundamental right guaranteed under Article 14 and 25 of the Constitution and is an essential practice of Islam.

– As per a report by *India Today*, a meeting was held between students, parents, government officials and the college management on 19 January. However, no conclusion was reached in the meeting.

– The stalemate between the girl students and the college management has continued as they were again denied entry on 1 February, as per a report by *The Quint*.

Hijab row spills over to more colleges

– At least two more colleges of Karnataka appear to have taken the anti-hijab stance.

– The administration of Sir MV Government College in Shivamogga's Bhadravathi has told girl students to remove their hijabs in the waiting room and attend the classes without it, the *Times of India* reported.

– The college administration made the decision a day after a group of students wearing saffron shawls protested against their Muslim classmates who wore hijab in the classrooms.

– On Wednesday, more than 100 boys arrived at the Government PU College in Kundapur wearing saffron scarves to protest against Muslim students wearing hijab.
A day later the college authorities shut the door and denied entries to girl students who were wearing hijab.

– In January, a state-run college in Balagadi village in Karnataka's Chikkamagaluru district decided to ban hijabs as well as saffron scarves on the campus after a meeting held with both sides.

Also read: Opinion | On 'Hijab Day', the only choice is to drop the cloth for 'No Hijab Day'

Solution?

The state government has set up a committee to decide if students should be allowed into the classroom wearing hijab as part of the uniform.

The government has said that until the committee's report is submitted the students can only attend classes without hijab.

With inputs from agencies

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THE HINDU

ANNEXURE-P-7

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MANGALURU

One more college in Udupi entangled in hijab row

Special Correspondent

MANGALURU FEBRUARY 04, 2022 17:46 IST
UPDATED: FEBRUARY 04, 2022 17:46 IST

This is the fifth college in the coastal district to witness a controversy over dress code in the last month

The controversy over wearing hijab in classrooms touched yet another college in Udupi district on February 4. Twelve students wearing hijab and 150 boys with saffron shawls were barred from entering the classrooms of Government PU College, Byndoor. The principal insisted that they wear the proper uniform.

This is the fifth college in Udupi district – three in Kundapur, one in Udupi and one in Byndoor – to witness a controversy over wearing the hijab.

classrooms, stating that it is their religious right, and some Hindu boys countering by wearing

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THE HINDU

The matter has reached the Karnataka High Court after the Government Pre University College for Girls in Udupi and Government Pre University College in Kundapura denied entry to girls wearing hijab.

The row has been spreading to other colleges. On February 3, some boys entered the campus of Bhandarkar's College in Kundapura wearing saffron shawls, insisting that girls should not be allowed to wear hijab in classrooms. The college allowed the boys inside the college only after they removed the shawl and the management also instructed girls to follow the dress code when they are in classrooms, on February 3 and 4.

Around 30 students of Government PU College in Kundapura were stopped from entering the college as they sported hijab, on February 3 and 4. B.B. Hegde College in Kundapur, which had allowed both students wearing hijab and shawls to attend classes on February 3, did not allow entry to either group on February 4.

The controversy has arisen as the State Government has so far maintained that uniform in not compulsory in government colleges, but some college development committees, which are headed by local MLAs, are insisting on a dress code. An expert committee has been constituted by the government to take a look at the dress code.

Month ago

Though this is not the first instance of a controversy over hijab in coastal Karnataka, this time around, it started on December 31 after six students of Old Government PU College for Girls in Udupi protesting, demanding permission to wear hijab in the classroom.

college with saffron shawls, including at Pompei College on the outskirts of Mangaluru where

THE HINDU

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Bhadravati in Shivamogga district.

Sensitive issue

Deputy Leader of Congress Legislature Party in Karnataka Legislative Assembly U.T. Khader said the issue should be addressed at the college level. "These are sensitive issues. They need to be resolved by the college management and parents concerned," he said.

Communist Party of India (Marxist) Udupi district secretary Balakrishna Shetty said the hijab issue has being used byBharatiya Janata Party to gain support among voters who are unhappy over the State and Central Government's inaction on ir flation, unemployment and other pressing issues.

Regretting politicisation of hijab, Haji Abdul Rasheed, president of the old Sayyid Muhammed Shareeful Madani Dargah in Ullal, which runs over 10 educational institutions, said such issues should not enter educational institutions where people of all communities come to learn.

Tarnishing image

The BJP's Backward Morcha's national general secretary Yashpal Suvarna, who is also vice president of college development committee of Government PU College for Girls in Udupi, said in a statement on February 4 that Left-wing organisations are 'creating the hijab row' and trying to benefit from polarisation. "This is an organised way to tarnish the image of the coastal region, which has made progress on the education front," he said.

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THE HINDU

ANNEXURE-P 8

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Udupi: Hijab Wearing Students Allowed Into College, Made to Sit in Separate Room

The decision has sparked concerns about segregation.

A photo of the Udupi college. Credit: Twitter@KeypadGuerilla

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The Wire Staff

Listen to this article: 00:00 02:53

EDUCATION RIGHTS 07/FEB/2022

New Delhi: The Government PU College in Kundapur in Udupi on Monday allowed students in hijab to enter the college, but were asked to go to a "separate room", sparking concerns about segregation.

Several government schools in Udupi have barred students wearing the hijab or burqa from entering the college. Recently, the BJP government has passed an order asking students to wear only uniforms, despite the fact that many Muslim girl students have been wearing hijab (headscarves) for many years.

According to news agency PTI, the principal of the Government PU College in Kundapur spoke to the Muslim girl students who came wearing hijabs and explained to them the government's order. The students insisted on wearing the headscarves, after which they were asked to go "to a separate room arranged for them".

According to reports, the principal said this was to "prevent crowding near the gate" and they would not be allowed to attend classes.

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Hindu students have been wearing saffron shawls to 'protest' against Muslim students who were wearing hijabs. A group of students studying at Venkataramana College in Kundapur came in a procession to the college on Monday wearing saffron shawls. They were prevented from entering the premises by the college principal and the police personnel present there.

The students said they will wear the shawls if hijab-wearing girls were allowed in classes. They agreed to enter the classes removing their shawls only after the principal assured them that no hijab-wearing students will be allowed to enter classrooms.

At the Kalavara Varadaraj M Shetty Government First Grade College in Kundapur, students in hijab were sent home, according to NDTV.

The TV channel reported that with the Karnataka high court set to hear a plea on the issue on Tuesday, two colleges declared Monday a holiday. Five women from a government pre-university college in Udupi have filed the plea, questioning the restriction on hijab.

The issue began last month at the Government Girls PU college in Udupi district, when six students were barred from classes for wearing the hijab. Right-wing groups in the region have long objected to wearings hijabs in school.

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Former Karnataka chief minister Siddaramaiah, a Congress leader, has slammed the BJP and Rashtriya Swayamsevak Sangh, saying they are stoking communal tensions by making hijab an issue.

"The constitution has given the right to practice any religion which means one can wear any clothes according to their religion. Prohibiting 'Hijab-wearing students from entering school is a violation of fundamental rights," he said.

ALSO READ

ANNEXURE - P.9

KARNATAKA

Hijab-clad student heckled by boys wearing saffron scarves in Mandya college

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SPECIAL CORRESPONDENT

MYSURU, FEBRUARY 08, 2022 15:20 IST

The girl later made a video complaining about the treatment meted out to her by the boys wearing saffron scarves before making her way to the classroom

With the controversy over hijab intensifying across Karnataka, a girl arriving at a college in Mandya clad in hijab was heckled by a group of boys wearing saffron scarves and shouting *Jai Sri Ram*, on February 8.

The girl was walking towards the classroom after parking her two-wheeler when a group of boys began waving saffron scarves at her. The girl in hijab, as seen in videos that have gone viral, raises her hand in response to the sloganeering directed at her by the boys.

She is later seen in a video complaining about the treatment meted out to her by the boys wearing saffron scarves before making her way to the classroom.

The incident took place in PES College of Arts, Science and Commerce situated on Mysuru-Bengaluru highway.

Inspector General of Police (Southern Range) Praveen Madhukar Pawar said the incident in Mandya was part of the controversy that is gripping the rest of Karnataka. He denied that there was any tension in the college, and added that the police will ensure that there is no threat to peace.

Violent clashes over hijab ban in southern India force schools to close

ANNEXURE-P-10

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Unrest triggered when Karnataka state came down in favour of rightwing Hindu demands for headscarf ban

Hannah Ellis-Petersen *South Asia correspondent*

Wed 9 Feb 2022 14.44 GMT

The Indian state of Karnataka has shut its schools for three days after the regional government backed schools imposing a ban on hijabs, leading to widespread protests and violence.

The issue began in January, when six female Muslim students staged a weeks-long protest after they were told to either remove their headscarves or stop attending class at a government college in the district of Udupi.

Last week, other colleges in the state began to enforce bans after some Hindu students, backed by rightwing Hindu groups, protested that if hijabs were allowed in classrooms, they should be allowed to wear saffron shawls. Saffron is the colour that has become commonly associated with Hindu nationalism.

On Saturday, in an apparent backing of schools' right to impose a ban, the Karnataka state government directed colleges to ensure that "clothes which disturb equality, integrity and public law and order should not be worn".

Muslim students have argued that their right to freedom of religion is being violated, and have taken the issue to state high court. The students have argued that "religious apartheid" is being imposed in some colleges where women in a hijabs are being allowed to enter but are being kept in separate classrooms.

The issue has proved highly inflammatory. At some colleges, Muslim students have been aggressively heckled, while in others the protests between students turned violent, prompting police to charge at crowds and fire into the air.

New city, old schism: Hindu groups target Gurgaon's Muslim prayer sites

Read more

On Tuesday, the state chief minister Basavaraj S Bommai suspended schools and colleges for three days and urged students and teachers to "maintain peace and harmony".

Karnataka is run by the Hindu nationalist Bharatiya Janata party (BJP), which governs at a national level too. Under its watch there has been a rising tide of anti-Muslim violence and sentiment across India, where 12% of the population is Muslim. The BJP state chief in Karnataka, Nalin Kumar Kateel, has said banning the hijab would ensure that classrooms did not become "Taliban-like".

Rahul Gandhi, leader of the opposition Indian National Congress party, was highly critical. "By letting students' hijab come in the way of their education, we are robbing the future of the daughters of India," he said. "Prohibiting hijab-wearing students from entering school is a violation of fundamental rights."

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The situation also drew condemnation from the Nobel peace prize winner Malala Yousafzai, who said the situation was "horrifying" and called on Indian leaders to stop the "marginalisation of Indian women".

Muslim students at Dr BB Hegde College in Udupi described how they had turned up to classes last Thursday and found they were barred entry by a large group of men, including fellow sti who were wearing saffron shawls. The group had demanded the Muslim students rer heir hijabs.

14:32

ve jihad: India's lethal religious conspiracy theory – video

By Friday, the nine Muslim female students – out of more than 1,000 enrolled in the college – had been banned from entering through the school gates in a veil. The principal informed the women that it was a government order and that they must go to the bathroom to remove their hijabs or they could not attend class.

After the girls refused to remove their headscarves, the gates of the school were locked to prevent them entering and several police officers were called.

Rabiya Khan, a student at the college, said the school's leadership had come under pressure from rightwing Hindu groups. "The Hindutva [hardline Hindu nationalism] elements don't have a problem with the hijab, they have problem with our whole religious and cultural identity," she said.

Even though many Hindu students in their classes had privately voiced support for their right to wear a hijab, they were keeping quiet because they were fearful of the actions of vigilante groups, said Khan.

As the row erupted and she was sent home from school, Khan's parents told her to remove the hijab so at least she could still continue getting an education, with her crucial exams just two months away.

"But I told them that if we give up, it will boost the morale of communal elements and create problems for the Muslim students in the future," Khan said. "We have to make sacrifices and stay strong." Khan emphasised that the Muslim students had never voiced any objection to Hindu students wearing saffron shawls.

Saniya Parveen, 20, another Muslim student at the college, said she had worn a hijab to college for three years with no objections, and that Muslims and Hindus had always studied together side-by-side peacefully. Parveen said she and her fellow Muslim students were anxiously waiting for the outcome of the court order to find out whether they would be able to return to their studies.

"I hope we will be allowed to attend classes in hijab," she said. "It is our religious compulsion and a constitutional right; we are not going to surrender."

In Bhandarkars' Arts and Science College in Udupi district, where a hijab ban was also enforced, one student spoke of her despair at Muslim students being made to feel like "beggars at the college gates".

"It is humiliating," she said. "We used to feel so safe inside the campus and never felt we were in any way different from our Hindu classmates. Suddenly we are being made to feel like outsiders. For the first time we were made to realise that we were Muslims and they are Hindus."

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In a statement, the national spokesperson for Vishva Hindu Parishad, one of the rightwing groups at the forefront of the anti-hijab protests, termed the hijab row "a conspiracy to propagate jihadi terrorism" and said that Muslim students were attempting "hijab jihad" in college campuses.

Apoorvanand, a professor of Hindi at the University of Delhi, said the controversy was part of a larger project whereby "Muslim identity markers are being declared as sectarian and undesirable in public spaces".

"It is telling Muslims and non-Hindus that the state will dictate their appearance and their practices," he said.

On Monday, some students in hijabs were allowed into the government pre-university college in Udupi but were forced to sit in segregated classrooms. "We were made to sit in a separate room and no teacher came to teach us," said one student. "We were just sitting there like criminals."

ANNEXURE – P-11

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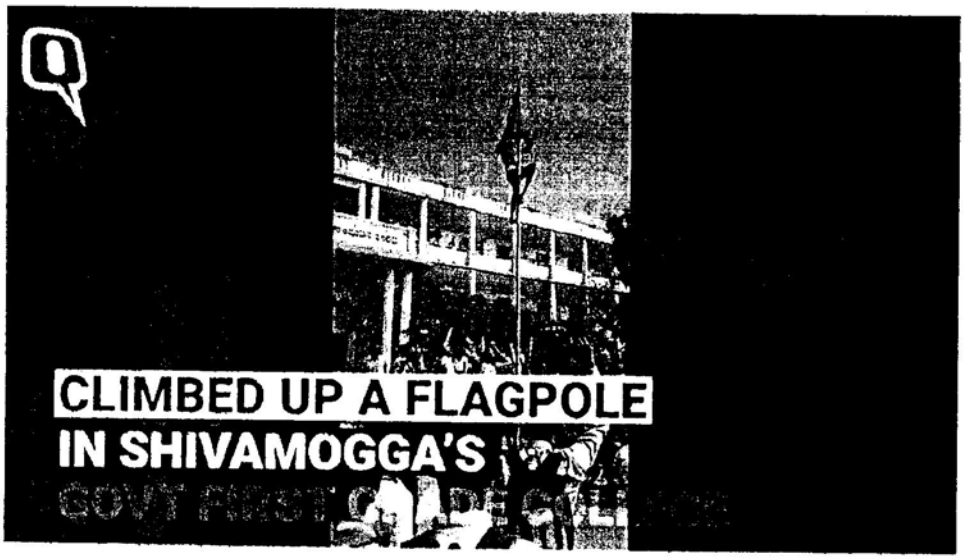

Karnataka Hijab Row: Saffron Flag Hoisted in Shimoga College, Sec 144 Imposed

This comes as protests erupt in Karnataka against the wearing of Hijab in schools and colleges

THE QUINT

Updated 09 Feb 2022, 11:27 AM IST

INDIA

Video Producer: Mayank Chawla

Video Editor: Mohd. Irshad Alam

Tension prevailed in the Government First Grade College, Bapuji Nagar, in Karnataka's Shimoga after a saffron flag was hoisted in its premises on Tuesday, 8 February. Shimoga SP BM Laxmi Prasad, however, has said that the flag was later removed by those who had hoisted it.

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As per the visuals that have emerged since, the flag was hoisted by a student who was among a group of saffron-clad protestors, demonstrating against the wearing of hijab.

Visuals of the incident show a student climbing the flag pole at the college campus and hoisting a saffron flag, as a group of students, wearing saffron scarfs cheer him on.

The incident triggered violence in the campus, and police was deployed amidst the chaos. Stone pelting and lathi-charge ensued thereafter, and in Shimoga, eight students were detained.

As many as 20 people have been detained and, as a precautionary measure, the police has imposed Section 144 of Criminal Procedure Code in the area for 8 February and 9 February.

Also Read

Hijab Row: Karnataka HC Calls for Peace, Says It 'Won't Go by Emotions'

Some reports also claimed that the saffron flag was hoisted in place of the national flag. However, refuting those reports, the Shimoga SP said:

"There was a report that the national flag was lowered and in place of that a saffron flag was put up but there was no national flag on the poll. Only a saffron flag was

The SP was also quoted by ANI as saying that there were many incidents of stone pelting and "clashes between two groups of students in Shimoga district". These, as per the SP took place majorly within city limits and initially in a government degree college.

"Some outside elements pelted stones, we'll be making arrest very shortly," he further added.

SP BM Laxmi Prasad also said that they have registered three FIRs in the matter.

Further, the SP credited the police with having behaved very patiently, saying that th was done "because these are all student crowd."

"...we'll continue to do the same," he said, however adding: "if any external elements are found we'll take very strict legal action."

Row Sparks Protests in Davangere, Udupi, Bagalkote

Meanwhile, as tensions escalated in education institutions of the state, several donning saffron scarves resumed their protests against the Hijab.

In Davangere, students and protestors were lathicharged, and sprayed with tear gas as the law and order situation in the are deteriorated. Section 144 was also consequently imposed in the region.

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Other districts in the state, such as Udupi, Hassan, Mandaya, Chitradurga, and Hubba also reportedly saw protests and confrontations between those sporting saffron scarfs and other students over the dress code.

In Bagalkote, protestors were lathi-charged upon as protests turned violent, and 18 students were detained in Raichur amidst the demonstartions.

Visuals of hooliganism emerged online later on Tuesday too, as a mob of 'protestors' chanted 'Jai Shri Ram' outside a classroom, banged on the door and proceeded to barge in to the room.

The visual captures the mob forcefully entering the room in the presence of a teacher, while a class is underway.

The tensions have been on the rise since December, when the Government Girls PU college in Udupi barred six muslim girls from entering the class in their hijabs.

Chief Minister Basavaraj Bommai on Tuesday, ordered the closure of all high schools and colleges for the next three days in the state, amid the ongoing tensions.

(With inputs from ANI.)

(TRUE COPY)

Karnataka Hijab Row: College Leaks Addresses, Numbers of Protesting Muslim Girls

A document, which has scanned copies of the college's admission ledger with details of the students, has gone viral.

NIKHILA HENRY

Published: 09 Feb 2022, 9:31 PM IST

ANNEXURE-P-12

INDIA

4 min read

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Aliya Assadi has been getting abusive phone calls through the day on Wednesday, 9 February. The 17-year-old realised a few hours into the day that her personal details – including phone numbers, parents' names, and home address – were shared on Whatsapp groups buzzing in Udupi, Karnataka.

Assadi is one among the six Muslim students of Udūpi's Government Pre-University College for Girls, who have been at the forefront of the protests to continue wearing the hijab in Karnataka's educational institutions.

On Wednesday, the admission forms of all the six students were leaked from the pre-university college. **The Quint** has accessed the online message which identified the girls by their names and photographs.

The message, a pdf document, had scanned copies of admission forms from the college's ledger, indicating that the leak came from within the institution.

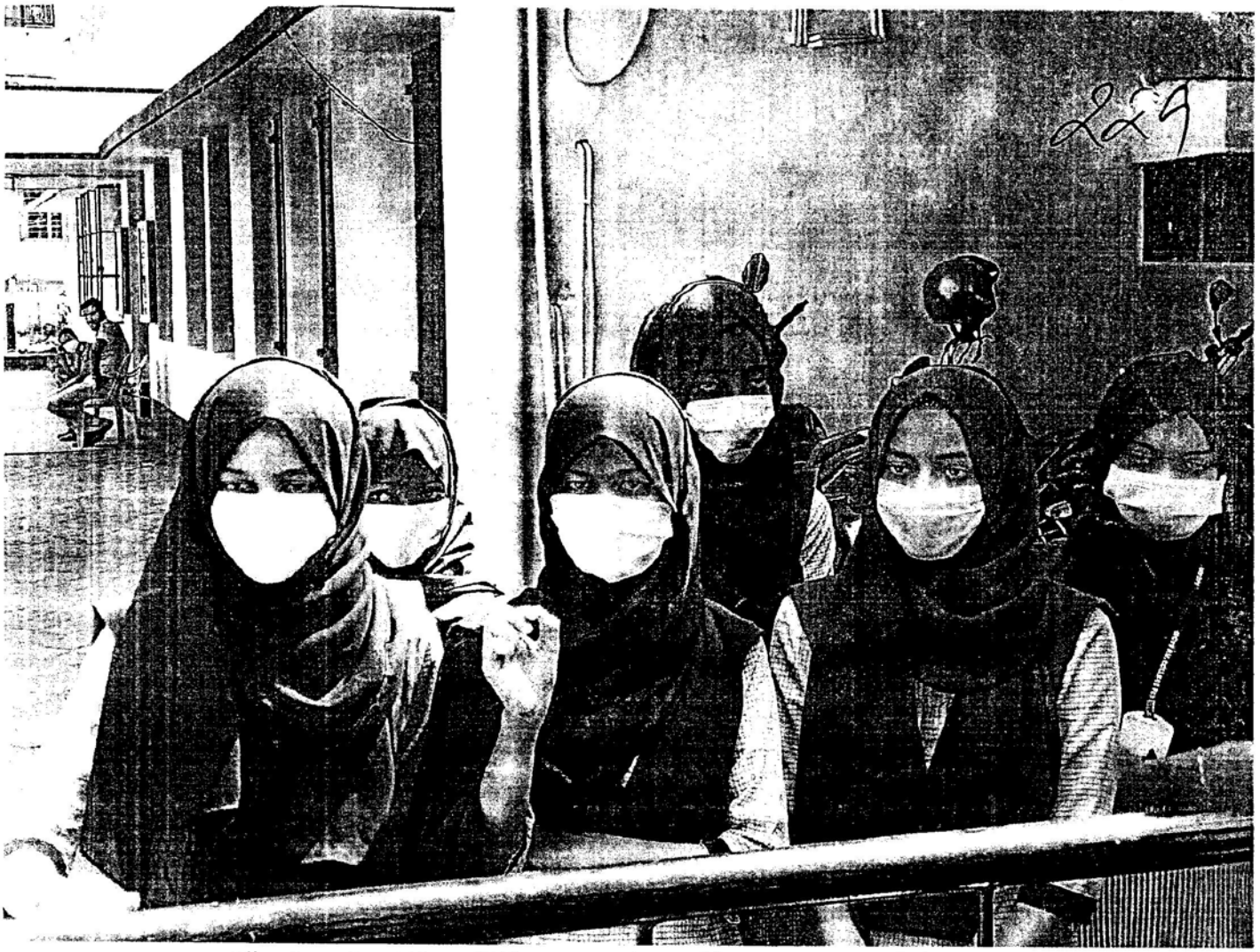
The chairman of the College's Development Committee (CDC) is Udupi's BJP MLA Raghupathi Bhat, who has been maintaining since December 2021 that Muslim students in hijab are not allowed inside classrooms. The admission documents were submitted only to the college, the Muslim students clarified to **The Quint.**

Also Read

Karnataka Hijab Row: Saffron Shawls Make Muslim Girl Students Stay Home in Udupi

'Will Our Homes Be Targeted?'

When **The Quint** spoke to Aliya Assadi, she was wearing a burqa, unlike the many times she had addressed the media in hijab.



Aliya Assadi and Hazra Shifa, among others, address a press meet in in January.

"I am not comfortable showing my face anymore. Already everyone knows how I look and where my home is. What if someone targets me?" she asked.

Hazra Shifa, another student of the same college who has been fighting for her right to keep wearing the hijab, said, "Even my parents are receiving calls from unknown numbers. I have asked them not to attend calls." The students demanded the college management to explain how confidential details reached the public.

Assadi said, "I love snakes hence I want to be a wildlife photographer. Now I think no one cares about my ambition. Why else will they target us so much?" She accused the BJP MLA Raghupathi Bhat of giving a free hand to the college authorities and to the students sporting saffron shawls.

"He made our fight for hijab communal in nature, by supporting the saffron scarf protests. He instigated the students to wear saffron shawls. And now he has made, not just the college, but also our homes unsafe," Assadi accused.

Shifa said she wants to be a doctor, or even a radiologist. "I want this to end. I want to just study and become someone in life," she said.

When **The Quint** reached out to the college authorities, they refused to comment on the leaked data.

Also Read

'Why Did She Provoke?' Karnataka Min Blames Defiant Muslim Girl Heckled by Mob

Mark Sheets & Information on Parents' Income Used to Discredit Muslim Girl Students

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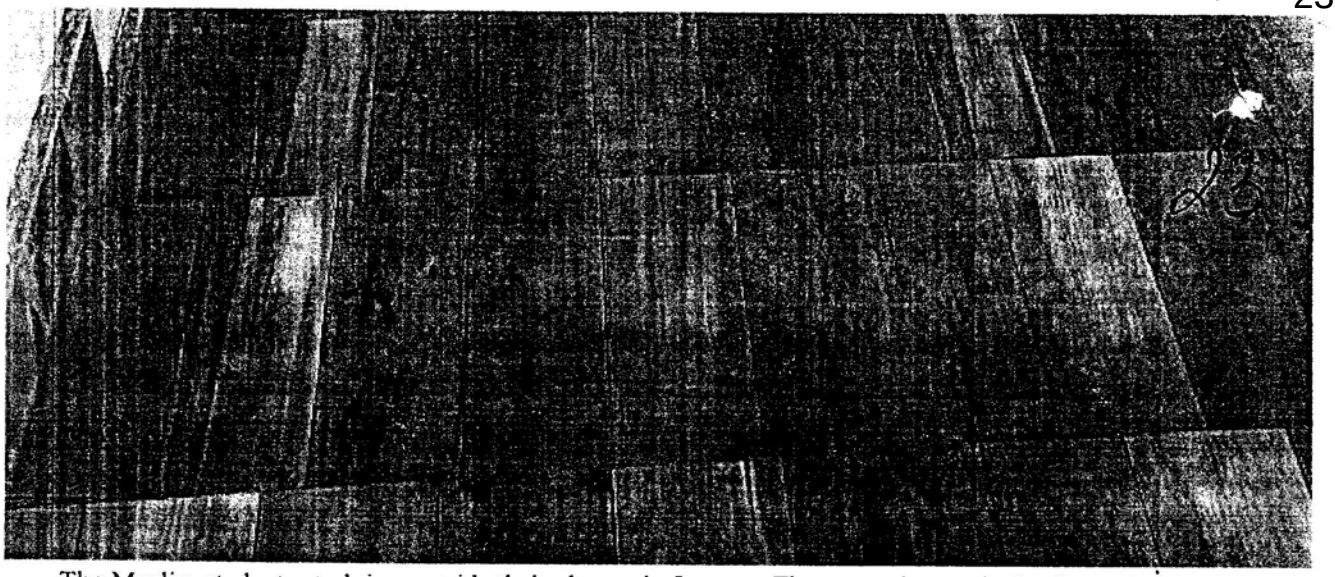
The document which is currently doing the rounds also has the copies of the mark sheets of the protesting students. While all of them had secured over 60 percent marks in their Class X board examination, they are now being targeted for being poor performers, said Assadi. "They are circulating a fake assessment that we have fared poorly in Class X. Why are they not worried about us losing classroom learning now?" Assadi asked. Pre-University examinations are expected to be held in April this year.



The Muslim students studying outside their classes in January. They were later asked to leave the campus.

"We are not allowed into our class even though the examination is scheduled to be held within two months," Shifa said.

On Wednesday, Karnataka High Court referred the hijab case, that is based on a writ petition filed by Resham, one of Udupi's protesting Muslim students, to a larger bench.

Meanwhile, contrary to claims, **The Quint** found that some of the students had secured high scores in their Class X. For example, Muskan Zainab had secured 87.52 percent in Class X. Resham had 80 percent in social science and 67.52 percent overall. Aliya Assadi scored 83 percent in social science and 66.72 percent overall.

The document also had details of the students' parental incomes.

"My father is an auto driver. First they blamed me for being affluent. Now they say that I am poor and am a troublemaker," Assadi said. Students whose parental incomes were less than Rs 1 lakh per annum were targeted specifically in Whatsapp forwards. "They call us paid girls. We are doing this for our faith nor for money," said Shifa.

Also Read

Hijab Row: Karnataka HC Calls for Peace, Says It 'Won't Go by Emotions'

Long List of Losses

The students said that the hate campaign has disturbed them mentally. Over the last few days, they have lost a lot while fighting for their right to wear the hijab, they said.

"The first thing I lost was my mental peace. We are mentally harassed and tortured...I lost time, giving a lot of media bites. I am also nervous. It has been really tough," said Assadi. The student says she has been weighing her words every time she speaks publicly, to avoid further controversy. But with the data leak from college, her life has become even tougher.

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Protests for Hijab in Udupi

(Photo: Nikhila Henry)

She has lost her friends in the process. "I lost many of my non-Muslim friends because of this issue. I do not know who made them oppose us. But I hope this will not last for long," Assadi said.

Shifa said, "My non-Muslim friends have started hating us." Whenever she tries to study, she finds it difficult to concentrate, she added.

In the fight for hijab, perhaps, losing peace at home has been the worst of losses that the students have endured. "I have lost a lot. But I want to make my parents proud. I have a lot of ambitions," said Shifa.

Also Read

Karnataka Hijab Row: Saffron Flag Hoisted in Shimoga College, Sec 144 Imposed

(At The Quint, we are answerable only to our audience. Play an active role in shaping our journalism by becoming a member. Because the truth is worth it.)

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Staff, Students Asked to Remove Hijab at Gates as Karnataka Schools Reopen

Several on Twitter pointed to the public humiliation of Muslim girls and women who had to remove articles of clothing on the street. Others noted how a section of students were missing classes.

Students in Shimoga walk away from their school after refusing to take off the hijab. Photo: Video screengrab/Twitter/@NikhilaHenry

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The Wire Staff

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COMMUNALISM EDUCATION LAW RELIGION RIGHTS WOMEN 14/FEB/2022

New Delhi: As high schools reopened in Karnataka on Monday, February 15, tweets from across the state have surfaced, showing students and teachers allegedly being forced to remove their burqas and hijabs.

All educational institutions in Karnataka had been shut since last Wednesday, February 9, after a pre-university college's decision to bar girl students in hijabs from entering the classroom led to protests and counter-agitations across the state, and later, India.

The Karnataka high court, in its interim order pending consideration of all petitions related to the hijab row, had restrained all students from wearing saffron shawls, scarves, hijab and any religious flag within the classroom.

On Monday, high schools were reopened amidst Section 144 of the Criminal Procedure Code imposed in areas of Udupi, Dakshina Kannada and Bengaluru. In places, enforcement of this order led to scenes that were captured on video.

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The news agency *ANI* has tweeted a video purportedly showing a teacher asking students to remove their hijab before entering the school in Mandya town of Mandya district. An altercation is seen, in which, according to *ANI*, a parent is heard requesting the teacher to allow students into the classroom so that they can take their hijab off after that. "But they are not allowing entry with hijab," the parent purportedly says.

The discussion takes place in Kannada and the translation is ANI's.

Journalists Deepak Bopanna also tweeted videos from the same Mandya school, showing how teachers and staff too were forced to take off their hijabs before entering the school.

Journalist Imran Khan tweeted that Mandya district administration had issued instructions to schools to not allow teachers in with the hijab, mandating that the hijab must be removed at the gate itself.

The videos show women, purportedly members of staff, complying with the order.

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Several on Twitter pointed to the public humiliation that Muslim girls and women were being made to go through.

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Journalist Nikhila Henry tweeted a video from Shimoga noting that students left the campus after refusing to take off their hijab. Henry observed how the Karnataka high court order against religious clothing has led to Muslim students thus missing classes.