Diary No. 21273 of 2022

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

(AGAINST THE IMPUGNED FINAL ORDER AND JUDGMENT DATED 15-03-2022 PASSED BY THE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION NO. 2347/2022.

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

WITH PRAYER FOR INTERIM RELIEF

PAPER BOOK

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I.A. NO. _____ OF 2019	AN APPLICATION FOR PERMISSION TO FILE SLP
I.A. NO. _____ OF 2019	AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER
I.A. NO. _____ OF 2019	AN APPLICATION FOR CONDONATION OF DELAY IN FILING THE SLP
I.A. NO. _____ OF 2019	AN APPLICATION FOR EXEMPTION FROM FILING ORIGINAL AFFIDAVIT & VAKALATNAMA

ADVOCATE FOR THE PETITIONERS: FAUZIA SHAKIL

PROFORMA FOR FIRST LISTING

Section:

	Central Act: (Title)	N.A
	Section:	NIL
	Central Rule: (Title)	N.A
	Rule No (S):	N.A
	State Act: (Title)	N.A
	Section:	N.A
	State Rule: (Title)	N.A
	Rule No (S):	N.A
	Impugned Interim Order: (Date)	N.A.
	Impugned Final Order/Decree: (Date)	02-05-2018
	High Court: (Name)	_____
	Name of Judges:	1. _____ 2. _____
	Tribunal/Authority: (Name)	N.A

1.	Nature of Matter:	Civil
2.	a) Petitioner No. 1:	ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION
	b) Email I'D:	N.A
	c) Mobile Phone No.	N.A
3.	a) Respondent No. 1:	STATE OF KARNATAKA
	b) Email I'D:	N.A
	c) Mobile Phone No.	N.A

4.	a) Main Category Classification:	
	b) Sub classification:	
5.	Not to be listed before:	N.A
6.	(a) Similar/Pending matter: (b) Similar matter disposed of	SLP (C) No. ____ of 2022 No Similar matter disposed
7.	Criminal Matters: a) Whether accused/convict has surrendered:	N.A
	b) FIR No: P.S. Case No. N.A	Date: N.A
	c) Police Station:	N.A
	d) Sentence Awarded:	N.A
	e) Sentence Undergone or period of detention undergone:	N.A
8.	Land Acquisition Matters: 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 effect:	N.A
10.	Special Category (first petitioner/appellant only):	N.A
11.	Vehicle No:	N.A

Date: 11-07-2022

AOR for petitioner(s)
Name: fauziashakil@gmail.com
Registration No. 2429
Email: fauziashakil@gmail.com

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IN THE SUPREME COURT OF INDIA
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(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

[(AGAINST THE IMPUGNED FINAL ORDER AND JUDGMENT DATED 15-03-2022 PASSED BY THE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION NO. 2347/2022.]

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petitioner is not within time.
2. The petition is barred by time as there is a delay of _____ days in in filing the same against order dated 24-02-2022 in WRIT PETITION NO. 2347/2022.
3. There is delay of _____ days in refilling the petition and an petition for condonation of delay of _____days in refilling has been filed.

NEW DELHI
DATED: 12-07-2022 BRANCH

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SYNOPSIS AND LIST OF DATES

The Petitioners are filing the present SLP seeking leave to challenge the final Judgement and Order dated 15.03.2022 ("**Impugned Judgement**") passed by the Hon'ble High Court of Karnataka at Bengaluru ("**High Court**") dismissing a batch of petitions (Writ Petition No. 2347 of 2022 and others) concerning, *inter alia,* the constitutional validity of Government Order (EP 14 SHH 2022) dated 05.02.2022 ("**Impugned GO**"), which effectively banned the wearing of *hijabs* in schools.

At the very outset, it bears noting that the present Petitioners had filed a Public Interest Litigation ("**PIL**") challenging the Impugned GO before the High Court on grounds of it being opposed to women's fundamental right to education, and violative of women's right to privacy, agency, choice and dignity. The Impugned GO was also challenged as being in violation of rights expressly protected under Articles 14, 15, 19(1)(a), 21, 25 and 29(2) of the Constitution. The Petitioners' writ petition in Writ Petition No. 3821 of 2022 was dismissed vide order dated 24.02.2022 on supposed technical grounds, without hearing it on merits despite serious questions of constitutional validity being

raised in the Petition. The Petitioners have challenged the same order by way of a separate Special Leave Petition which, at the time of filing the present petition, is pending for listing before the Registry of this Hon'ble Court.

Subsequent to the High Court dismissing the Petitioners' petition on 24.02.2022, the High Court, vide the Impugned Judgment, dismissed a batch of petitions (Writ Petition No. 2347 of 2022 and other connected petitions) which had challenged the constitutional validity of the Impugned GO. Some of the issues raised by the present Petitioners in the aforementioned PIL (but were not heard on merits) have been adjudicated upon by the High Court in the Impugned Judgement. The Impugned Judgement suffers from grave errors of law and fact and fails to address essential concerns regarding the constitutionality of the Impugned GO – which includes a mischaracterization of the issue in dispute. The Impugned Order is in gross error for proceeding on the assumption that the wearing of the *hijab* by girl-students and the prescription of a school uniform are mutually exclusive.

It is submitted that the Impugned Judgement, by dismissing the challenge to the Impugned GO, has had the effect of singling out

Muslim girl students who choose to express their belief and faith by way of wearing a *hijab* from accessing their constitutional right to education.

This has had a cascading effect on the safety and security of *hijab* wearing women both inside and outside of educational institutions as they are being subjected to harassment and abuse. This harassment and abuse (which is well documented, and to which the Petitioners crave leave to refer to, when required) has only added to the deprivation of rights of *hijab* wearing school students.

The Petitioner No. 1 i.e. All India Democratic Women's Association was founded in the year 1981 and currently bears a pan India membership of more than one crore. The core objective of Petitioner No. 1 organization is to strive to unite women and widen their participation in the struggles against authoritarianism, communalism, separatism and other divisive forces and uphold democracy, secularism and national integration, amongst others.

The Karnataka chapter of the Petitioner No. 1 – *Janawadi Mahila Sanghatane* - has a membership of one lakh women which

includes women belonging to all minorities and classes. The Petitioner No. 1 and its affiliates deal with issues of discrimination against marginalized and poor women including those belonging to the minorities and SC and ST communities. It has ceaselessly fought for reforms in laws concerning women including dowry and rape laws from early 1980s onwards. It has fought for setting up institutions like the National Commission for Women for furthering women's right and for getting rid of the discrimination against them. It has fought for victims of domestic violence and sexual harassment. Petitioner No. 1's members have participated in various governmental bodies dealing with women's issues and have also helped victims of violence in court and with the police. It had vigorously campaigned for the ban of *Triple Talaq*. The Petitioner No. 1 has also engaged in various Public Interest Litigations seeking redressal against laws that discriminate against women, including urging for marital rape to be criminalised.

Petitioner No. 2 above named has been a member of AIDWA, Karnataka for the past 20 years. As a part of the organisation, she has taken active measures in bringing to light the issues of

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marginalised women. The Petitioner No. 2 is woman from the Muslim community and has three school-going daughters. She is deeply concerned about the impact of the Impugned GO on the fundamental right of education. Further, she fears of the safety of her daughters in light of the communal polarization triggered since the notification of the Impugned GO.

The backdrop of the events leading up to the passing of the Impugned Judgement are as follows:

i. A Pre-University College in Udupi imposed a ban on girls wearing headscarves entering the college campus, even though the college had no such rules against the wearing of a headscarf. Six students of the Pre-University College in Udupi were prevented from entering campus. The students staged a protest on 31.12.2021, claiming the college did not allow them to attend classes for the past 15 days.

ii. The Member of Legislative Assembly ("**MLA**") in Udupi who is also the head of the college's development committee, held a meeting with parents and other stakeholders and reportedly directed the students to follow

the college's 'dress code' (which purportedly prohibited the wearing of hijab) in the classroom.

iii. The events as mentioned above led to a group of boys at the Government Pre-University College in Kundapur going to college sporting saffron shawls in protest against some girls attending classes wearing hijab.

iv. Thereafter, the MLA of Kundapura held a meeting with parents and asked students to comply with the 'dress code' of the college, implying that the students ought not wear a *hijab* till the government takes a final decision on the issue. In retaliation to girls wearing *hijab*, several Hindu boys turned up wearing saffron shawls. Ever since, there have been reports in the media of groups of saffron shawl clad men heckling and harassing women in hijabs both in educational institutions as well as outside of them. Further, there were reports of students wearing hijabs being made to sit in separate classrooms, and on 08.02.2022, a video from Mandya showed a group of men in saffron shawls heckling and harassing a woman wearing a hijab. All of the above was widely reported in the newspapers.

v. In the midst of these circumstances, the Impugned GO was issued on 05.02.2022. The Impugned GO provides as follows:

a. In its preambular / introductory portion, that prohibiting the covering of heads with cloths or wearing of headscarves in schools would not be in violation of Article 25 of the Constitution.

b. That the Impugned GO is being issued in furtherance of Section 133(2) of the Karnataka Education Act, 1983 ('**Act**').

c. That the supervisory committee of educational institutions can adopt appropriate policy codes in accordance with government policies in order to provide a better educational environment for students.

d. It is mandatory that all students in government schools in the state and in private schools wear uniforms, as determined by the respective college development committee or the governing body's supervisory committee.

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e. If no such rules are prescribed, students are required to wear clothing which promotes equality and unity and does not disrupt public order.

Aside from being motivated by unconstitutional and majoritarian aims (as is seen from the preambular / introductory portion contained within) the Impugned GO is a violation of women's and girls' fundamental right to education and free access to educational institutions. The Impugned GO is a gross violation and an affront to women's right to privacy, dignity, agency and choice and is also in the face of the right to free speech and expression through attire. Further, the Impugned GO is evidently discriminatory against women who wear headscarves and Muslim women who may do so for reasons of conscience and faith, in addition to other factors that may inform such choice. The Impugned Judgement has failed to acknowledge that the Impugned GO is squarely in violation of Articles 14, 19(1)(a), 21, 21A, 29(2) apart from Article 25 of the Constitution.

The Impugned GO, which the Impugned Judgement has incorrectly sustained, is bad in law, for the reasons that:

i. The Impugned Judgement fails to set aside the Impugned GO which is violative of the fundamental right of Muslim female students to education and free access to educational institutions. Further, the Impugned Judgement ignores that fact that the Impugned GO is in complete contravention to Article 21A of the Constitution and unconstitutionally impinges the fundamental right to education of a singular group of individuals- Muslim girls who choose to wear the *hijab*.

ii. The Impugned Judgement has failed to advert to the Impugned GO's impact upon the constitutionally guaranteed rights of privacy, dignity and agency by determining them to be 'derivative rights' in the context of 'qualified public spaces' such as schools and prisons. It is submitted that the right to privacy is not a derivative right but a right which flows from the rights expressly stated under Article 19 and Article 21 of the Constitution. Further, the Impugned Judgment has failed to acknowledge that the Impugned GO violates the right to privacy, dignity and agency as guaranteed under Article 21 of the Constitution

and that the wearing of hijab is not merely a religious right but cultural practice and matter of choice, agency, and dignity protected under Article 21 of the Constitution.

iii. The High Court in the Impugned Judgment has failed to recognise that the wearing of *hijab* is protected symbolic speech and a constitutional right under Article 19 of the Constitution. It is submitted that this Hon'ble Court has time and again held that Article 19(1)(a) of the Constitution includes not just verbal, but also non-verbal speech.

iv. It has been specifically held by this Hon'ble Court in **Navtej Johar v. Union of India (2018) 10 SCC 1** and **NALSA v. Union of India, (2014) 5 SCC 438**, that expression of identity through clothes is a key aspect of a person's fundamental right to expression and autonomy under Article 19 of the Constitution. It is trite law that rights guaranteed under Article 19 can only be curtailed based on the reasonable restriction provided under Article 19(2) of the Constitution. By prohibiting the wearing of head scarves, the Impugned GO restricts the rights

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guaranteed under Article 19 and 21 of the Constitution. It is pertinent to note that the rights guaranteed under Article 19 and 21 of the Constitution can only be curtailed within the confines of reasonable restrictions prescribed by law. The Impugned Judgment upholds the Impugned GO though no protection under Article 19(2) of the Constitution is available to it.

v. The High Court in its Impugned Judgement acknowledges that the right under Article 25 can only be restricted on grounds of public order, public health or public morality, or for protections of other rights under Part III of the Constitution, but fails to identify as to how the restrictions contained in the Impugned GO fall within the confines of public order, public health or public morality.

vi. The Impugned Judgement is bad in law as it fails to address the direct and indirect discrimination meted out to members of a specific religion and sex. The Impugned GO is in contravention of the right guaranteed under Article 14 and Article 15 of the Constitution as it directly and indirectly discriminates against women who choose to wear *hijabs*. The only mention that the Impugned GO

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contains of a religious practice is that of students covering their heads with a cloth or a head scarf which is a targeted reference to the practice of Muslim women wearing the *hijab*. It is for this reason alone that the Impugned GO inflicts direct discrimination upon a particular religion and sex, and falls foul of the equal protection clause of Article 14 of the Constitution as well as the protection against discrimination guaranteed under Article 15 of the Constitution.

vii. The Court in the Impugned Judgment has ignored the fact that the Impugned GO is not aligned with the actual purpose of the Act. The Impugned GO is liable to be quashed as it is issued *ultra vires* the Act. It is submitted that the Statement of Objects of the Act is clear that the same was enacted for improving educational institutions, raising the standards of education and for harmonious development of the mental and physical capabilities of the students, within the State of Karnataka. Further, the Act also aims to regulate education in the State in a manner that is secular, inclusive of all communities, sensitive to

religious and other differences, accommodating of religious and other difference. Also, Section 39 of the Act clearly prohibits any discrimination based on religion. The Impugned GO is in complete contradiction of the aims and objects with which the Act was enacted as the same in discriminatory against the women belonging to the Muslim community. Further, the Impugned Judgment has erred in upholding the Impugned GO as the provision under which the same was issued i.e. Section 133(3) of the Act, only permits the State Government to issue directions to educational institutions under three specific circumstances – i.e. (i) carrying out the purposes of the Act; (ii) to give effect to any of the provisions contained in the Act; or (iii) of any rules or orders made thereunder. The government has no power under the Act to directly or indirectly authorise the banning of the *hijab* and thus the Impugned GO is *ultra vires* the Act.

viii. The Impugned Judgement fails to advert to the Petitioners' argument of violation of the Impugned GO being violative of the doctrine of proportionality. It is submitted that restriction on any fundamental rights guaranteed by the

Constitution is to be tested on the parameters of proportionality. This Hon'ble Court in the case of **Modern Dental College v State of MP, (2016) 7 SCC 353**, has observed that any infringement of a fundamental right has to pass the test of proportionality which includes the following: (i) pursues a proper purpose; (ii) through means that are suitable and (iii) necessary; and (iv) that the benefit from the impugned measure outweighs the harm caused due to the restriction or infringement of the right. The Impugned GO is bad in law as (i) it does not achieve any compelling government interest; (ii) it is not the least restrictive means for achieving the supposed interest; and (iii) it goes against the purpose with which the Act was enacted.

ix. The Impugned Judgment is bad in law as it upholds the Impugned GO even though the same is vague and arbitrary. It is submitted that the implementation of the Impugned GO and the prohibition on clothing which disrupts 'public order' being extended to prohibit the wearing of hijabs additionally belies logic. It is submitted that the Impugned GO is based on the assumption that

students' religious practices should be curtailed goes against the inclusive and secular purposes of the Act and is a wholly irrelevant consideration.

In view of the aforesaid it is most humbly submitted that this is a fit case for this Hon'ble Court to interfere in exercise of its discretionary jurisdiction under Article 136 of the Constitution.

Hence, the present Special Leave Petition.

LIST OF DATES

Date	Particulars
December 2021	Six girl students of Govt. PU College Udupi were restricted from attending classes while wearing a headscarf or hijab.
31.12.2021	The six girls restricted from attending classes staged a protest at the gate of the college and continued to do so.

January 2022	The MLA in Udupi, who heads the college's development committee, held a meeting with parents and other stakeholders and reportedly told students to follow the college's "dress code". a group of boys at the Government Pre-University College in Kundapur went to college sporting saffron shawls in protest against some girls attending classes wearing hijab. In retaliation to girls wearing hijab, several Hindu boys have been turning up wearing saffron shawls. Ever since, there have been reports in the media of groups of saffron shawl clad men heckling and harassing women in hijabs. There have been reports of students wearing hijabs being made to sit in separate classrooms.
05.02.2022	The Impugned GO was issued.

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A True translated copy of Government Order (EP 14 SHH 2022) dated February 5th, 2022 issue by the Govt of Karnataka is annexed herewith as **ANNEXURE P-1 (At Page No. _____ to _____).**

07-02-2022 News Report dated 09-02-2022 was published by the Economic Times Newspaper.

A True Copy of news dated 07-02-2022 published by the Economic Times newspaper is annexed herewith as **ANNEXURE P-2 (At Page No. _____ to _____).**

09-02-2022 News Report dated 09-02-2022 was published by the Hindu Newspaper.

A True Copy of the news published by the Hindu dated 09-02-2022 is annexed herewith as

ANNEXURE P-3 (At Page No. _____ to _____).

09-02-2022 News Report dated 09-02-2022 was published by the Hindu Newspaper.

A True Copy of the news published by the Hindu dated 09-02-2022 is annexed herewith as **ANNEXURE P-4 (At Page No. _____ to _____).**

09-02-2022 Statement was issued by the Petitioner i.e. All India Democratic Association.

A True Copy of statement dated 09-02-2022 issued by the Petitioner i.e. All India Democratic Association is annexed herewith as **ANNEXURE P-5 (At Page No. _____ to _____).**

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NIL	Statement was issued by the Petitioner i.e. All India Democratic Association alongwith other women's rights organization. A True Copy of statement issued by the Petitioner i.e. All India Democratic Association alongwith other women's rights organization is annexed herewith as **ANNEXURE P-6 (At Page No. _____ to _____).**
08.02.2022	A video from Mandya showing a group of men in saffron shawls heckling and harassing a woman wearing a hijab is circulated.
17.02.2022	Petitioners file WP (PIL) No. 3715 of 2022 before the High Court of Karnataka challenging the Impugned GO dated 05.02.2022.
24.02.2022	Vide its Order in Writ Petition No. 3821 of 2022, the High Court of Karnataka dismissed the

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	Petitioners' petition on technical grounds *viz.* maintainability.
15.03.2022	Vide its order in Writ Petition No. 2347 of 2022, the High Court dismissed the Petitioners' petition and upheld the Impugned GO dated 05.02.2022.
11-07-2022	Hence, the present Special Leave Petition.

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

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[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*

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[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*

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[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

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[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

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[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

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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 ...throughout 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

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[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

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[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,

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* 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

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* *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*:

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> *"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

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[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

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[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'

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[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..."

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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

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[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

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[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...".*

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[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

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

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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

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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

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[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.

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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

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[87] AIR 1952 SC 16

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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 *religious clothing and personal*

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[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.

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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

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[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

// TRUE COPY //

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

WITH PRAYER FOR INTERIM RELIEF

(AGAINST THE IMPUGNED FINAL ORDER AND JUDGMENT DATED 15-03-2022 PASSED BY THE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION NO. 2347/2022.

POSITION OF PARTIES

WRIT PETITION NO. 2347/2022

S. NO.	PARTICULARS	**BEFORE THE HIGH COURT**	**BEFORE THIS HON'BLE COURT**
1.	ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION THRU ITS PRESIDENT, J – 129, 1ST FLOOR, 10TH A CROSS, LAKSMINARAYANAPURA, BENGALURU – 560021	NOT A PARTY	PETITIONER NO. 1
2.	SMT. SHAMEEM, W/O. SARDAR, AGED ABOUT 4 YRS, RESIDENT AT 205, VIJNAPURA, KOTHUR,	NOT A PARTY	PETITIONER NO. 2

AMBEDKAR NAGARA, NEAR GOVERNMENT HIGH SCHOOL, BENGALURU – 560016, KARNATAKA

VERSUS

1.	STATE OF KARNATAKA REPRESENTED BY THE PRINCIPAL SECRETARY, DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION M/S BUILDING BANGALORE- 560 001	RESPONDENT NO. 1	RESPONDENT NO. 1
2.	GOVERNMENT PU COLLEGE FOR GIRLS BEHIND SYNDICATE BANK NEAR HARSHA STORE UDUPI KARNATAKA- 576101 REPRESENTED BY ITS PRINCIPAL	RESPONDENT NO. 2	RESPONDENT NO. 2
3.	DISTRICT COMMISSIONER UDUPI DISTRICT MANIPAL AGUMBE - UDUPI HIGHWAY ESHWAR	RESPONDENT NO. 3	RESPONDENT NO. 3

	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.	RESPONDENT NO. 4	RESPONDENT NO. 4
5.	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	RESPONDENT NO. 5

(Respondent No. 1 to 4 are Contesting and Respondent No. 5 is Proforma)

TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

PETITIONS UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA AGAINST THE IMPUGNED FINAL ORDER AND JUDGMENT DATED 15-03-2022 PASSED BY THE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION NO. 2347/2022.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners are filing the present SLP seeking leave to challenge the final Judgement and Order dated 15.03.2022 ("**Impugned Judgement**") passed by the Hon'ble High Court of Karnataka at Bengaluru ("**High Court**") dismissing a batch of petitions (Writ Petition No. 2347 of 2022 and others) concerning, *inter alia,* the constitutional validity of Government Order (EP 14 SHH 2022) dated 05.02.2022 ("**Impugned GO**").

1A. At the very outset, it bears noting that the present Petitioners had filed a Public Interest Litigation (**"PIL"**) challenging the Impugned GO before the High Court on grounds of it being opposed to women's fundamental right to education, and violative of women's right to privacy, agency, choice and dignity. The Impugned GO was also challenged as being in violation of rights expressly protected under Articles 14, 15, 19(1)(a), 21, 25 and 29(2) of the Constitution. The Petitioners' writ petition was dismissed without considering the merits and serious questions of constitutional concern raised in the Petition vide order dated 24.02.2022 in Writ Petition No. 3821 of 2022. The Petitioners have challenged the same order by way of a separate Special Leave Petition which, at the time of filing the present petition, is pending for listing before the Registry of this Hon'ble Court.

Hence, it is imperative that this Hon'ble Court exercises its discretionary jurisdiction under Article 136 of the Constitution and sets right the error in law committed by the High Court in the Impugned Orders.

2. QUESTIONS OF LAW:

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

A. Whether the Impugned GO, which effectively bans the wearing of headscarves and *hijab* in schools, is beyond the scope of and ultra vires the Act?

B. Whether the High Court has erred in not setting aside the Impugned GO for the same being in violation of the fundamental right to education and free access to education of a singular group of citizens identified by their gender and sex?

C. Whether in view of the past precedents of this Hon'ble Court, the High Court has failed to acknowledge that the Impugned GO violates the fundamental right to privacy, dignity and agency?

D. Whether the High Court has erred in determining the rights of privacy, dignity and agency to be 'derivative rights', thereby reducing the scope of constitutional protections afforded to the same?

E. Whether the High Court has erred in upholding the Impugned GO, as the same is unconstitutional because it has failed to acknowledge that wearing a hijab/ head scarf is protected symbolic speech and a constitutional right under Article 19 of the Constitution?

F. Whether the High Court erroneously upheld the Impugned GO as it restricts the rights granted under Article 19 of the Constitution without adherence to the limited scope of restrictions provided under Article 19(2) of the Constitution?

G. Whether in view of the observation that there is no nexus between wearing of *hijab* and the prevailing law and order situation, the High Court has failed to strike down the Impugned GO which unreasonably restricts the Freedom of Conscience and Religion of Muslim Girl students under Article 25 of the Indian Constitution?

H. Whether the Impugned Judgement is bad in law as it fails to address the direct and indirect

discrimination meted out to members of a specific religion and sex *viz.* women who choose to wear a headscarf or *hijab*?

I. Whether the Impugned Judgement fails has failed to appreciate the doctrine of proportionality in the context of the ban imposed by the Impugned GO?

J. Whether the Impugned Judgment has erred in upholding the Impugned GO for the same being bad in law as it is vague and arbitrary to the extent it bans wearing of hijab in educational institutions on the grounds of public order?

K. Whether the Impugned Judgment unsustainably upholds the Impugned GO which violates the rights guaranteed under Article 14 and 15 of the Constitution as it directly and indirectly discriminates against women who choose to wear hijab?

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

That the Petitioners states that no other petition seeking leave to appeal has been filed against the impugned final Judgment and Order dated 15.03.2022 in Writ Petition No. 2347 of 2022 passed by the High Court of Karnataka at Bengaluru.

4. DECLARATION IN TERMS OF RULE 5:

That the Annexure P- 1 to P- 6 produced along with the SLP are true copies of the pleadings/ documents which formed part of the record of the case in the Court/ Tribunal below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS:

Leave to appeal is sought for on the following amongst other grounds:

The Impugned Judgement fails to set aside the Impugned GO which is violative of the fundamental right of Muslim female students to education and free access to educational institutions

A. Because the Impugned Judgement is unsustainable on facts and in law.

B. Because the Impugned Judgement notes the Petitioners' contention that proscribing hijab in educational institutions, "*violates the right to education since entry of students with hijab to the institution is interdicted*" but fails to address the impact of the Impugned GO on the right of Muslim girls who are expressing their faith and belief by wearing the hijab in its analysis.

C. Because the Impugned Judgement ignores that fact that the Impugned GO is in complete contravention to Article 21A of the Constitution and unconstitutionally impinges the fundamental right to education of a singular group of individuals- Muslim girls who choose to wear the hijab. The Right to Education having been recognized as a fundamental right by the 86th Constitutional Amendment, under Article 21-A of the Constitution, it would be anathema to the girl child's or a woman's right to education to pit the choice of wearing a headscarf against the fundamental right to education. The Impugned GO by

banning the wearing of headscarves in educational institutions deprives female students' free access to educational institutions. The constitutional aim of ensuring that every girl child and woman, irrespective of how they choose to express their belief and faith, must have free and unimpeded access to education would significantly prevail over any specious interest that the state may harbour in enforcing a regime of uniforms that bans headscarves/ hijabs, and thereby infringing upon the right to education of a large number of Muslim students who wear a headscarf as a matter of choice, conscience, and as a social attire. Headscarves and hijabs have been worn for several years without causing any detriment to public order, they have been worn in schools in Karnataka even before and after the promulgation of the Act, and for over three decades since, without causing any impediment to the students' pursuit of education. Evidently, there have not been any accentuating circumstances since, that has required the wearing of hijabs to be altogether banned.

D. Because, the Hon'ble High Court of Kerala in **Amnah Bint Basheer v. CBSE, AIR 2016 Ker 115** has recognised that reasonable accommodations may be made to ensure that Muslim women's right to education is not held hostage to them giving up their faith. The Hon'ble High Court of Kerala, recognising that the right to wear a headscarf is protected under Article 25 of the Constitution, demonstrated what a constitutionally minded court ought to do. In the aforementioned case, a Muslim female candidate was offended by the Central Board of Secondary Education ("**CBSE**") dress code stipulating short sleeves for women and no head covering which was prescribed for the examination, on the grounds that it violated her fundamental rights under Article 25 of the Constitution. The Hon'ble High Court of Kerala upheld her objection since the CBSE directive was to prevent the smuggling in of materials to cheat and was not connected to public order or morality. However, by the time the Hon'ble Single Judge's judgment could be heard in appeal, CBSE had accommodated the requirement of students such as the petitioner therein and required that the students wearing

long sleeves and headscarves must report to the exam centre well in advance to undergo a check and permit the authorities to eliminate possibilities of malpractice during the examination. Clearly, the Hon'ble High Court of Kerala balanced interests and ensured that no student was made to suffer the deprivation of education on account of their beliefs and expression.

E. Similarly, the case in **Nadha Raheem v. CBSE, 2015 SCC OnLine Ker 21660** concerned two female students belonging to Muslim community contending that the dress code prescribed by the CBSE of wearing half sleeve kurta/salvar would prejudice them, insofar as their religious custom mandates them to wear a head scarf and also full sleeve dresses. The Hon'ble Kerala High Court observed that "*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.*" The matter was disposed of by directing that the concerned students present themselves well in

advance of the exam commencement time to subject themselves for necessary checks to rule out the possibility of any malpractice. The Hon'ble High Court of Kerala also opined that the CBSE ought to issue a circular instructing the invigilators to ensure that religious sentiments be not hurt and at the same time discipline be not compromised.

F. Because, contrary to the result in the two decisions cited above, in the case of the Impugned GO there is no accommodation made in respect of girl students who may choose to wear a headscarf or a hijab.

G. Because, the Impugned Judgement fails to engage with the fact that reasonable accommodations were possible, which were not explored, thereby vitiating the Impugned GO. It is submitted that the Impugned Judgement incorrectly applies the principle of reasonable accommodation to conclude that wearing of hijab of structure & colour that suit to the prescribed dress code would 'result in social-separateness' and offend the feeling of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion

and faith. In placing the requirement of a uniform at a high pedestal, the Impugned Judgement effectively ousts any possibility of reasonable accommodation by concluding that "*prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to.*" By doing so, the Impugned Judgement places a primacy on the requirement of a uniform with no accommodation for the belief and faith of students, which has a cascading effect on denying the right to education to Muslim girls choosing to wear the hijab.

H. Because, the Impugned Judgement incorrectly relies upon the judgement of the High Court in **Master Manjunath v. Union of India, ILR 2019 KAR 5013** to state that adherence to dress code is mandatory for students – further implying that such a code would not allow for reasonable accommodation in favour of the faith or beliefs of the students. The aforesaid judgement is on the limited point of provision of two sets of the prescribed uniforms to students in light of the positive obligation upon the state to ensure that, "*no child shall be liable to pay any amount*

of fee or charges or expenses which may prevent him or her from pursuing or completing the elementary education" under Section 3(1) and Section 3(2) of the Right of Children to Free and Compulsory Education Act, 2009.

I. Therefore, on this ground alone the Impugned Judgment ought to be set aside by this Hon'ble Court as the Impugned Judgment failed to set aside the Impugned GO which is violative of the fundamental right of Muslim female students to education and free access to educational institutions.

The Impugned Judgement sustains the Impugned GO which violates constitutionally guaranteed rights of privacy, dignity, and agency

J. Because, the Impugned Judgement has failed to advert to the Impugned GO's impact upon the constitutionally guaranteed rights of privacy, dignity and agency by determining them to be 'derivative rights' in the context of 'qualified public spaces' such as schools and prisons. It is

submitted that the right to privacy is not a derivative right but a right which flows from the rights expressly stated under Article 19 and Article 21 of the Constitution. This view has been taken by this Hon'ble Court in **K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1**, the relevant extract is provided below:

> *"416. ...In the case of privacy, the case for judicial enumeration is especially strong. It is no doubt a fair implication from Article 21, but also more. Privacy is a right or condition, "logically presupposed" [Laurence H. Tribe And Michael C. Dorf, "Levels Of Generality in the Definition of Rights", 57 U Chi L Rev 1057 (1990) at p. 1068.] by rights expressly recorded in the constitutional text, if they are to make sense.* ***As a result, privacy is more than merely a derivative constitutional right. It is the necessary and unavoidable logical entailment of rights guaranteed in the text of the Constitution.***

417. Not recognising character of privacy as a fundamental right is likely to erode the very substratum of the personal liberty guaranteed by the Constitution. The decided cases clearly demonstrate that particular fundamental rights could not have been exercised without the recognition of the right to privacy as a fundamental right. ***Any derecognition or diminution in the importance of the right to privacy will weaken the fundamental rights which have been expressly conferred.***"

(emphasis supplied)

K. The Petitioners further submit that wearing or not wearing of a headscarf or hijab by women is a matter of their individual right to privacy, agency, and dignity. The exercise of such choice or agency is neither a result of religious injunction nor executive prohibition. The wearing of a headscarf being a social and cultural practice and a matter of choice, agency, and dignity- it is protected under Article 19 and Article 21 of the Constitution.

L. The Impugned GO seeks to restrict the rights guaranteed under Article 19 and 21 of the Constitution. It is pertinent to note that the rights guaranteed under Article 19 and 21 of the Constitution can only be curtailed within the confines of reasonable restriction. This Hon'ble Court in **K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1** has observed that any restriction on the right to privacy as guaranteed under the Constitution has to pass the test of reasonableness. The relevant extract of the aforementioned judgment is provided below:

> ***"526.*** *But this is not to say that such a right is absolute.* ***This right is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. However, when it comes to restrictions on this right, the drill of various articles to which the right relates must be scrupulously followed.*** *For example, if the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained*

under Article 21 read with Article 14 if it is arbitrary and unreasonable; and under Article 21 read with Article 19(1)(a) only if it relates to the subjects mentioned in Article 19(2) and the tests laid down by this Court for such legislation or subordinate legislation to pass muster under the said article. ***Each of the tests evolved by this Court, qua legislation or executive action, under Article 21 read with Article 14; or Article 21 read with Article 19(1)(a) in the aforesaid examples must be met in order that State action pass muster.*** *In the ultimate analysis, the balancing act that is to be carried out between individual, societal and State interests must be left to the training and expertise of the judicial mind."*

(emphasis supplied)

M. Because, the Impugned Judgement has incorrectly concluded that:

"...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."

N. Because, the Impugned GO is a violation of a woman's (who chooses to wear a hijab or headscarf) right to privacy. This Hon'ble Court in **KS Puttaswamy v. Union of India (2017) 10 SCC 1**, has held *"Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture.* ***While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public***

arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. *Privacy attaches to the person since it is an essential facet of the dignity of the human being"*

(emphasis supplied)

O. It was further held that the right to privacy includes an individual right to take crucial decisions which finds expression in the human personality. The relevant extract of the **KS Puttaswamy v Union of India (2017) 10 SCC 1**, is provided below:

> "298. *Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the*

individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture."

(emphasis supplied)

P. Because, it is submitted that denying students their choice to wear a headscarf while pitting that right against the right to access education is a gross violation of the right to privacy, agency, choice and access to education. There is no material presented by the Respondent No. 1 as to what compelling reason there may be to deny the women who choose to wear a headscarf their right to exercise protected fundamental rights – education being primary among them.

Q. Because, it is further submitted that insofar as the right to dignity is concerned this Hon'ble Court in the case of **Navtej Johar v. Union of India (2018) 10 SCC 1** has authoritatively held that dignity is a human right on the international front. The Apex Court specifically observed that *"dignity is an inseparable facet of every individual that invites reciprocative respect from others to every aspect of an individual, for without the right to dignity, every other right would be rendered meaningless."* It is in this context that the Petitioners specifically urge their choice of clothing, which has long standing deep cultural, social and conscientious significance, is a matter of dignity. Therefore, any abridgment of this right, which is itself an abridgement of rights guaranteed under Article 21 of the Constitution, is permissible only through a procedure laid down by law, where such law itself is fair, just and reasonable.

R. Because, in the Impugned Judgment, the High Court has failed to acknowledge that there is no evidence of any harm that is caused by the wearing of the hijab. It is

submitted that the constitutional protection of fundamental right to privacy is available to individuals in all places, including public places such as schools and colleges. Further, the High Court failed to demonstrate how a substantive right to privacy transforms into a derivative right when it comes to public spaces such as schools and colleges and why it does not enjoy the same constitutional protections. The High Court has not demonstrated as to what mischief requiring correction is being set right by the Impugned GO. In the absence of this, there can be no abridgment of a woman's right to agency, choice, liberty and dignity, and of course, the freedom of conscience and right to religion. Thus, the Impugned Judgement is liable to be set aside by this Hon'ble Court.

The Impugned Judgement incorrectly sustains the Impugned GO which fails to acknowledge that wearing a hijab/ head scarf is protected symbolic speech and a constitutional right under Article 19 of the Constitution:

S. Because, Article 19(1)(a) of the Constitution has been judicially recognised to include not just verbal, but also non-verbal speech. It is submitted that this Hon'ble Court has held that people express identity through clothes. Any conduct which communicates an intimate aspect of a person's identity or expression of conscience is symbolic speech. This Hon'ble Court in **Navtej Singh Johar v. Union of India (2018) 10 SCC 1** has recognised that expression of identity through clothes is a key aspect of a person's fundamental right to expression and autonomy. In relying on this, the Courts have recognised that the freedom of expression guaranteed under Article 19(1)(a) of the Constitution includes the freedom to express identity through various means including clothing. Restrictions that are placed by the state on such speech would amount to violation of the fundamental right of free speech and expression. It is submitted that clothing as a means of expressing one's identity was recognised and protected under Article 19(1)(a) by the Supreme Court in **NALSA v. Union of India, (2014) 5 SCC 438**. The protection under Article 19(1)(a) is not restricted to verbal speech but

also covers forms of expressing one's identity. Relevant extract from **NALSA v. Union of India, (2014) 5 SCC 438,** is provided below:

> *"**70.2.** In Doe v. Yunits [2000 WL 33162199 (Mass Super Ct 2000)] , the Superior Court of Massachusetts, upheld the right of a person to wear school dress that matches her gender identity as part of protected speech and expression and observed as follows:*
>
> > *"by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender.* ***In addition, plaintiff's ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff's expression is not merely a personal preference but a necessary***

symbol of her identity". **(emphasis supplied)**

71. The principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing, etc."

(emphasis supplied)

T. Because, the hijab is a means of expressing religious identity that individuals can choose. Once the freedom is recognised under Article 19(1) (a) of the Constitution, any restriction on it would have to be in compliance with the provisions of Article 19(2) of the Constitution. There are very specific grounds on which reasonable restrictions can be imposed under Article 19(2) of the Constitution and the basis for the actions by the state or the schools/ colleges

clearly do not satisfy any of the grounds in that constitutional provision.

U. Because, the Impugned Judgement fails to test the reasonableness of the restrictions imposed upon the freedom of symbolic speech of girl students by erroneously concluding that such freedom would entail a complete departure from the requirement of wearing school uniforms. In this regard, the Impugned Judgment states that,

> *"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 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."*

V. Because, as is evident from the Impugned GO, none of the reasonable restrictions carved out in Article 19(2) of the Constitution have either been invoked or are applicable to it. Thus, the Impugned Judgement is liable to be set aside by this Hon'ble Court.

The Impugned Judgement fails to acknowledge that the reasonable restrictions set out in Article 19(2) of the Constitution are ex facie not applicable and have not been made out by the Respondent-State, and nevertheless upholds the Impugned GO

W. Because, Article 19(1)(a) of the Constitution has been judicially recognised to include not just verbal, but also non-verbal speech. This Hon'ble Court already has held that persons express identity through clothes. It has been recognised that expression of identity through clothes is a key aspect of a person's fundamental right to expression and autonomy.

X. Because, in the past, Courts in constitutional democracies like the United States of America have had to deal with

questions of whether students' rights of expression could be hindered/ impaired/ surrendered on their choice to enrol in a school. In these cases, the Supreme Court of the United States of America found that neither students nor teachers shed their constitutional rights of freedom of expression at the schoolhouse gate. In the Indian scenario, a similar balancing exercise that is required by Article 19(2) of the Constitution: this prescribes that any interference with rights guaranteed under Article 19(1) of the Constitution may only be restricted if such restrictions are (i) reasonable; (ii) and are required in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Y. Because, in the present case, the Impugned GO seeks to justify the restrictions on the grounds of *'sarvajanika suvyavasthe'*, which (in the Constitution) translates to 'public order'. However, in oral arguments before the High Court in a connected matter, the State suggested that the

import in the Impugned GO is not 'public order'. Thus, by the Respondent state's own case, the restrictions are not justified by any of the exceptions set out in Article 19(2) of the Constitution.

Z. Because, in these circumstances, there is nothing to suggest that the impairment of the protected right of expression of a belief by the wearing of a hijab or headscarf is required to avoid disturbance of peace and order. There is no public order issue that can be made out from the wearing of an innocuous scarf. In any event, it must be pointed out that instances of disturbance to public order have not been caused by the wearing of headscarves but rather women wearing headscarves have been targeted by criminal elements, who have in turn disrupted public order and women's safety. For this reason, the Impugned Judgement and Impugned GO deserve to be struck down.

The Impugned Judgement incorrectly sustains the Impugned GO which illegally restricts Freedom of

Conscience and Religion under Article 25 of the Constitution:

AA. Because, the Impugned Judgement fails to adequately consider the ambit of restrictions upon the right to freedom of conscience and religion- which can only be imposed on grounds of public order, public health or public morality, or for protections of other rights under Part III of the Constitution. [**Indian Young Lawyers Association v. State of Kerala (2019) 11 SCC 1**]

BB. Because, in this regard, the Impugned Judgement adverts to the test for reasonable restrictions upon the right to freedom and religion, and in fact notes that, "*..the Government Order gives a loose impression that there is some nexus between wearing of hijab and the law & order situation*" and "*the impugned order could have been well drafted, is true*". In doing so, the Impugned Judgement accepts that the action of wearing hijab has not caused an impact upon the law and order situation. It does not, however, provide any reasoning, if any, for the

aforementioned restrictions to be termed as reasonable, in order to uphold the validity of the Impugned GO.

CC. Admittedly, the mere fact of students choosing to wear the hijab cannot be considered to have a detrimental impact upon public order or law and order. In the absence of a reasonable restriction, there exists a positive obligation upon the state to protect freedom of conscience and religion of students.

DD. Because, the Impugned GO's merits striking down as the restriction of the right of freedom and conscience of students by its operation is unreasonable.

The Impugned Judgement unsustainably upholds the Impugned GO which violates Articles 14 and 15 of the Constitution in that it directly and indirectly discriminates against women who choose to wear a hijab.

EE. Because, the Impugned Judgement is bad in law as it fails to address the direct and indirect discrimination meted out

to members of a specific community and sex vide the Impugned GO- summarily stating that,

> *"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."*

FF. Because, the Impugned GO explicitly classifies and targets members of a specific community and sex- in effect preventing them from exercising their constitutional rights. The stated objective of the Impugned GO is the protection of equality and unity in educational institutions so as to not disrupt public order – which is ostensibly under threat by religious practices of students. The only mention that the Impugned GO contains of a religious practice is that of students covering their heads with a cloth or a head scarf which is a targeted reference to the practice of Muslim women wearing the Hijab. It is for this reason alone that the Impugned GO inflicts direct discrimination upon a particular religion and sex, and falls foul of the equal protection clause of Article 14 of the Constitution as well

as the protection against discrimination guaranteed under Article 15 of the Constitution.

GG. Because, the test for identification of direct discrimination as has been propounded by this Hon'ble Court in the recent case of **Lt. Col. Nitisha v. Union of India & Ors. (2021) SCC OnLine SC 261** requires that the discriminating policy "*explicitly relies on a suspect classification (prohibited ground of discrimination) to act in a certain way. Such classification serves as an essential premise of the discriminator's reasoning.*" The Impugned Judgement merits setting aside as it fails to address the discriminatory nature of the Impugned GO.

HH. Because, the principle of equality contained within Part III of the Constitution requires a rational nexus between the objective of the state and action sought to be taken. The Impugned GO contains no reasoning between its stated objective of promoting equality and unity, and the action of banning headscarves. There exists no basis to presume that wearing of hijab (specifically) or any other form of head cover, representative of an individual, could lead to

a fracture of equality, unity and public order, and the Impugned GO is completely silent on the same. The classification of headscarves specifically affecting equality, unity and public order is suspect and without basis - constituting direct discrimination against persons based on their religion and sex.

II. Because, there is no intelligible differentia in the Impugned GO which fails any reasonable classification for the purpose of Article 14, and is arbitrary.

JJ. Because, religious diversity in the form of wearing of hijabs by Muslim women or in other like cases, turbans by members of the Sikh community, armlets and other religious symbols by Hindus or Christians, *namams* or tilaks by Hindus, add to the unity and equality of a pluralistic society and have established peaceful co-existence in educational institutions. Such co-existence is but a manifestation of positive secularism and fraternity recognised under the Constitution, denial of which violates the equal protection of laws guaranteed under Article 14 of the Constitution. The Impugned GO is grossly arbitrary

and fails the well-settled position that laws must be just, fair and reasonable and non-arbitrary as held in **Maneka Gandhi v. Union of India AIR 1978 SC 597**.

KK. Because, alternatively, even if this Hon'ble Court is to hold that the Impugned GO does not directly discriminate against persons belonging to a particular religion and sex - it is submitted that the Impugned GO meets the threshold of indirect discrimination as most recently elucidated by this Hon'ble Court in **Lt. Col. Nitisha v. Union of India & Ors. (2021) SCC OnLine SC 261** and **Navtej Singh Johar v. Union of India (2018) 10 SCC 1**.

LL. Because, this Hon'ble Court has expressly recognised the indirect discrimination caused by criteria which may be facially neutral but does not take into consideration the underlying impact upon certain targeted individuals/communities. If an action of the state disproportionately affects a particular group and in doing so has the effect of perpetuating or exacerbating disadvantage - then it indirectly discriminates against the group. It is respectfully submitted that in any event, the

Impugned GO constitutes indirect discrimination as it identifies a group which has had restricted access to education and by virtue of the restriction imposed upon headscarves, has compelled the group to choose between the right to freedom of conscience and religion on one hand and the right to education on the other - which has the effect of exacerbating the disadvantages faced by the group.

MM. Accordingly, it is submitted that the Impugned Judgement and Impugned GO deserve to be struck down as their application is discriminatory towards a particular identifiable group is violation of Articles 14,15 and 29(2) of the Constitution.

The Impugned Judgement fails to acknowledge that the Impugned GO is ultra vires of the Act

NN. Because, the Impugned GO is not aligned with the actual purpose of the Act. It is submitted that the Statement of Objects of the Act is clear that the same was enacted for improving the educational institution, raising the standards

of education and for harmonious development of the mental and physical capabilities of the students, within the State of Karnataka. Further, the Act also aims to regulate the education in the State in a way that is secular, inclusive of all communities, sensitive to religious and other difference, accommodating of religious and other difference. The Statement of Objects of the Act are provided below:

> "*It is considered necessary to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institutions in the State* ***with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education.***"
>
> (emphasis supplied)

OO. Because, it is evident from the bare reading of the Statement of Objects that the State Legislature's intention behind the Act is to make the educational institutions a place which is inclusive of all religions and that the education institutions cannot discriminate on the basis of the religion.

PP. Moreover, the Act specifically prohibits the educational institution from promoting any propaganda or practice which may hurt the religious sentiments of any class of citizens. Section 39 of the Act clearly provides for the same, the relevant extract of Section 39 of the Act is provided below:

> "*39. Withdrawal of recognition.- (1) Where any local authority or the Governing Council of any private educational institution,-*
>
> ***(b) denies admission to any citizen on ground of religion, race, caste, language or any of them***;

(c) ***directly or indirectly encourages in the educational institution any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting religion or the religious belief of that class;***

...the competent authority may, for reasons to be recorded in writing, withdraw the recognition of the institution or take such other action as is deemed necessary, after giving to the local authority or as the case may be, the Governing Council an opportunity of making its representation against such withdrawal or action."

QQ. Because, Section 39 of the Act clearly prohibits any discrimination on the basis of religion. The Impugned GO is in complete contradiction of the aims and objects with which the Act was enacted as the same in discriminatory against the women belonging to the Muslim community. The conduct of the colleges towards the women choosing to wear hijab is in complete violation of the Act. It is undeniable that prohibiting students from wearing hijab or

empowering educational institutions to do so is not plausibly necessary or expedient for giving effect to the purposes or provisions of the Act. Further, the Impugned GO banning hijab in educational institutions is against the inclusive and secular nature of the Act and thus the same is clearly in violation of the Act in itself.

RR. Further, the Impugned GO was issued in exercise of powers conferred under Section 133(3) of the Act. The Section invoked only permits the State Government to issue directions to educational institutions only under three specific circumstances – i.e. (i) carrying out the purposes of the Act; (ii) to give effect to any of the provisions contained in the Act; or (iii) of any rules or orders made thereunder. However, the government has no power under the Act to empower the colleges to prohibit students from wearing hijab. Evidently, the banning of wearing headscarves in schools does not fall under any of these specific categories which consequently renders the Impugned GO ultra vires the Act. In light of the above, the

Impugned GO is liable to be struck down by this Hon'ble Court.

The Impugned fails to acknowledge that the Impugned GO fails on the touchstone of the doctrine of proportionality

SS. Because, the Impugned Judgement fails to advert to the Petitioners' argument of violation of the Impugned GO being violative of the doctrine of proportionality.

TT. Because, the Impugned GO invokes jurisprudence to suggest that it is necessitated by a need to balance competing interests, i.e., individual rights on the one hand and the relationship between institution and students on the other. It is submitted that restriction on any fundamental rights guaranteed by the Constitution is to be tested on the parameters of proportionality. This Hon'ble Court in the case of **Modern Dental College v. State of MP, (2016) 7 SCC 353**, has observed that any infringement of a fundamental right has to pass the test of proportionality which includes the following: (i) pursues a

proper purpose; (ii) through means that a suitable and (iii) necessary; and (iv) that the benefit from the impugned measure outweighs the harm caused due to the restriction of the right an infringement of a right is proved.

UU. Because, in the present case, the Petitioners submits that the Impugned GO does not satisfy the test of proportionality that is required to sustain an interference with a protected right under Article 19 of the Constitution.

a. *First,* it is denied that the limitation is essential to serve a purpose, or that the purpose itself is such that it warrants an interference with a protected right. It is submitted that the purpose of the Impugned GO is to be seen in light of the parent legislation i.e. the Act. The Statement of Objects and the Preamble to the Act provides that the objective of the Act is inter alia is to cultivate secular outlook through education, which is not served by excluding members of one particular community and discriminating against them.

b. *Second*, the impairment of a constitutionally protected right to wear a hijab in accordance with subjective religious belief is entirely unrelated to maintenance of proper relations between the institution and its students. The Impugned GO has failed to demonstrate that the measure advances the purposes for which it has been promulgated.

c. *Third*, it cannot be said that students' wearing of hijab impairs any other person's or entity's rights. On the contrary, compelling students to choose between foregoing a subjective religious belief in hijab and an objective, constitutionally guaranteed right to education militates against the requirements that any limitations on rights be proportional.

d. *Fourth*, it may be noted that a complete prohibition on wearing the hijab, is not the least intrusive method of achieving the aims that the Respondent state claims are the aims of the Impugned GO.

VV. Because, as set out above, the Impugned GO, disproportionately impacts and indirectly discriminates against a protected minority: (i) women; who are (ii) Muslim. Given that this is an impact that specifically targets protected classes the Impugned GO deserves to be struck down for the reason that (i) it does not achieve any compelling government interest; (ii) it is not the least restrictive means for achieving the supposed interest; and (iii) it goes against the purpose with which the Act was enacted.

WW. Consequently, the Impugned Judgment and the Impugned GO is bad in law and ought to be set aside.

The Impugned Judgement fails to recognise that the Impugned GO is unconstitutional for being vague and arbitrary

XX. Because, the Impugned GO is vague and arbitrary, insofar as it proscribes clothing which disrupts 'public order'. The implementation of the Impugned GO and the prohibition on clothing which disrupts 'public order' being extended to

prohibit the wearing of hijabs additionally belies logic. The Impugned GO justifies its directive based on the fact 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. It is submitted that the Impugned GO is based on the assumption that students' religious practices should be curtailed goes against the inclusive and secular purposes of the Act and is a wholly irrelevant consideration.

YY. Because, by placing the responsibility for maintaining public order on students on the basis of the wearing of headscarf, the Impugned GO also has the effect of inverting the relationship between state and subject.

ZZ. Because, the maintenance of public order is constitutionally dependent on Respondent No. 2 performing its functions in accordance with law and preventing and prosecuting activities which are demarcated and clearly defined as being illegal. The Impugned GO seeks to absolve Respondent No. 2 of any responsibility for acting against criminal acts committed by

persons, if it can be averred that the victim of such act wore such item of clothing as may be subjectively determined to disrupt public order.

AAA. Because, as has been stated above, the Impugned Judgement fails to acknowledge the arbitrariness inherent within the Impugned GO. The Impugned judgement states that,

> *"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.*

BBB. Because the High Court's non-application of mind, and the impact of the order upon the fundamental rights of muslim women in the State of Karnataka make this a fit case for interfering under Article 136 of the Constitution.

6. GROUNDS FOR INTERIM RELIEF

A. Because the Petitioners has a credible and well- founded belief that the Impugned GO, which has been upheld by the Impugned Judgement, has been used as basis to deny many students the right to access schools, colleges and institutes of higher education in the State of Karnataka.

B. Because the continued operation of the Impugned GO will result in many students being unable to appear for their examinations which will have long term ramifications upon their promotion and self-actualisation.

C. Because there have been numerous reported instances of hijab wearing women outside the confines of educational institutions being heckled and harassed by anti-social elements which has had an adverse impact upon the law and order situation in the State of Karnataka.

D. Thus, in view of the fact and circumstances of the case, interest of justice would be served if the interim relief as prayed for may kindly be granted. It is respectfully submitted that the Petitioners have a very good case on

merits and the balance of convenience is also in favour of the Petitioners. Irreparable loss is being caused as students are being deprived of their fundamental right to education on the basis of this flawed and unsustainable Impugned GO. Hence, the interim relief as prayed for may kindly be granted in the interest of Justice. That no prejudice would be caused to the Respondents if the interim relief so prayed for is granted by this Hon'ble Court.

7. MAIN PRAYER

In view of the facts and circumstances narrated hereinabove, it is most respectfully submitted that this Hon'ble Court may be pleased to:

a. Grant Special Leave to Appeal against the Impugned Final Judgment & Order dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347/2022; AND/OR

b. Pass any other such other orders as the Hon'ble Court may deem fit in the interest of justice and equity;

8. INTERIM PRAYER

In the circumstances set out above, it is Most Respectfully Prayed that this Hon'ble Court be pleased to:

a) Stay the Impugned Final Judgment & Order dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347 of 2022 and Impugned Government Order dated 05.02.2022 bearing No. EP 14 SHH 2022; and

b) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice

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

FILED BY:

[FAUZIA SHAKIL]
ADVOCATE FOR THE PETITIONER

DRAWN BY:
DRAWN ON: 09-07-2022
FILED ON: 12-07-2022
NEW DELHI

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022
[AGAINST IMPUGNED FINAL JUDGMENT & ORDER DATED 15.03.2022 PASSED BY THE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION NO. 2347/2022.]

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

CERTIFICATE UNDER ORDER XXI RULE 3(1) OF THE SUPREME COURT RULES, 2013

Certified that the above mentioned special leave petition is confined only to the pleadings before the courts whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein 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 question of law raised in the petition or to make out grounds urged in the special leave petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the petitioner whose affidavit is filed in support of the Special Leave Petition.

FAUZIA SHAKIL
ADVOCATE FOR THE PETITIONER

New Delhi,
Filed On: 12-07-2022

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ...RESPONDENTS

AFFIDAVIT

I, Vimala K S, W/O. T Surendra Rao, aged about 65 Yrs, having my office at J – 129, 1st Floor, 10th A Cross, Laksminarayanapura, Bengaluru – 560021, do hereby solemnly affirm and state as under:

1. That I am the Vice – President of All India Democratic Women's Association. I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. The accompanying petition including the Synopsis and List of Dates (page ____to ____), Special Leave Petition (pages ____ to ____) (paras 01 to 08) and accompanying applications have been drafted and filed by my counsel on my instructions. I have fully understood the contents of the same. The averments contained therein are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the annexures to the accompanying Special Leave Petition and applications are true copies of their respective originals.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor, 10th 'A' Cross
L.N. Puram, Bangalore-21

DEPONENT

VERIFICATION

Verified at Bengaluru on this the 8th day of July, 2022that the contents of paragraph 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief. Nothing material has been withheld therefrom.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th 'A' Cross
L.N. Puram, Bangalore-21

DEPONENT

Solemnly affirmed before me

8 JUL 2022

185 61 ANNEXURE P1

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.

***

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 ಒಂದು 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-ಮೋಷಕರು 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.

VERIFICATION

I, Smt. Shameem, wife of Sardar, aged about 45 years, residing at at #205, Vijnapura, Kothur, Ambedkar Nagara, near Government High School, Bengaluru - 5600161, the Petitioner No. 2 do hereby on solemn affirmation state and declare that what is stated in the paragraph 2 to 7 is true to my own knowledge and belief and what is stated in paragraph 1 and 8 to 12 is based on the information and legal advice which I believe to be true and correct.

Identified by me:

Advocate

Bengaluru

Date:

DEPONENT

ವೈಯಕ್ತಿಕ ವಸ್ತ್ರ ಸಂಹಿತೆಗಿಂತ ಏಕರೂಪ ವಸ್ತ್ರ ಸಂಹಿತೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಷ್ಟ್ರದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಮತ್ತು ವಿವಿಧ ರಾಜ್ಯಗಳ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ಮುಂದೆ ದಾಖಲಾದ ಪ್ರಕರಣಗಳಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ತೀರ್ಮ 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 ಕಾರ್ಮಿಕ 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 ತೀರ್ಮ 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 ತೀರ್ಮಗಳನ್ವಯ ಶಿರವಸ್ತ್ರ(Head scarf) ಹಾಕಿಕೊಂಡು ಅಥವಾ ತಲೆಯನ್ನು ಮುಚ್ಚಿಕೊಂಡು ಶಾಲೆಗೆ ಬರದಂತೆ ನಿರ್ದೇಶಿಸಿರುವುದು ಸಂವಿಧಾನದ ಅನುಚ್ಛೇದ 25ರ ಉಲ್ಲಂಘನೆ ಅಲ್ಲವೆಂದಿರುವುದರಿಂದ ಹಾಗೂ ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983 ಮತ್ತು ಅದರಡಿ 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
(ವದ್ದಿನಿ ಎಸ್.ಎನ್.) 5/2/22
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಶಿಕ್ಷಣ ಇಲಾಖೆ(ಪದವಿ ಪೂರ್ವ)

TRUE TRANSLATION OF ANNEXURE A

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Government of Karnataka Circular

Sub : Uniform dress code for students of all Government schools and colleges

Ref : 1. Karnataka Education Act 1983

2. Govt. Cicular No 509-SHH/2013/31-01-2014

Foreword

Section 7 (2) (5), of the Karnataka Education Act 1983 states that the students of all government schools and colleges should act like one family without feeling the sense of belonging to any one particular community or class and should act in accordance with the ideals of social justice. Section 133 of the said Act states that the Government of Karnataka will have every right to instruct and direct the managements of schools and colleges in this regard.

In the above referred (ref 2) circular issued by the government, it has been clearly stated that Pre university education is an important and vital stage in the life of students. As such, as guided by the state from time to time, the grants given to these colleges should be utilised to the optimum level and basic infrastructure of the colleges are to be maintained properly. It has also been emphasised to improve and maintain the standard of coaching in all colleges and in this connections all schools and colleges should have development committees and the schools and colleges should be managed as per directions given by School/College development committees.

The Supervisory committees of any school or college (School Development Committees in case of government schools and Parents and Teachers Committees and School Management Committee in case of private schools) should, as directed in the above notifications, ensure a fair learning atmosphere in the school premises and thus enable the students to get quality education. These committees are empowered to take adequate measures and form code of conduct for the smooth functioning of the institution. The decisions taken by these committees will be applicable and confined to the particular schools or colleges.

In all schools and colleges, students, both boys and girls, should be enabled to participate in similar form of learning and in this respect programmes have been held in all schools and colleges. But in few educational institutions it is observed that boys and girl students are practicing their religious practices. This has disturbed the principles of equality and Unity being maintained in those schools and colleges and these incidents have come to the notice of the concerned authorities.

The Supreme court of India and High Courts of different states, have over a period of time, in various cases, given the following decisions regarding Uniform dress codes to be followed by student community.

1. In a case SP (c) No 35293/2018 dt 04-12-2018 the honourable high court of Kerala has issued a direction regarding the above matter, under its order no 9 as under

" 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 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. Fatima Hussain Syed Vs Bharat education society and others, (AIR 2003 Bom75) in this case, the same incident regarding wearing of uniform by a student in Kartik English school in Bombay was adjudged before the High court of Bombay. The High Court has ruled that, the instruction issued by the principal of the school not to wear the head scarf while attending the classes, is not a violation of Article 25 of the Indian constitution.

3. While invoking the same decision referred above under point 2, The High court of Madras, in a case Kamalamma Vs MGR Medical University Madras, Tamilnadu and others, has upheld the decision of the university to change the uniform code of the colleges. The same decision has been endorsed in another case, M Venkata Subbarao Matriculation Higher Secondary School Staff Association vs. M Venkata Subbarao Matriculation Higher Secondary School (2004 2 MLJ 653).

As per the above referred decisions of Supreme court and High courts of different states, and as per the orders issued therein, instructing the students not to cover their heads with a cloth or not to wear head scarf will not violate Article 25 of the constitution and considering the above and also in consideration of the Karnataka State Education Act 1983 and its provisions, the Government of Karnataka has issued directions as under :

Government notification no EP 14 SHH 2022 Bangalore dated 05-02-2022

In the light of what is stated in the foreword, by exercising the authority under provisions of Karnataka Education Act 1983 section 133 sub section 2, it has been instructed that students of all government schools and colleges are mandated to wear the prescribed uniform and the students of private schools and colleges are instructed to wear the uniforms prescribed by the school managements.

In the colleges coming under the purview of Pre University Board, the uniform prescribed by the College Development Committees or any supervisory committee so appointed should be adhered to. In case no uniforms are mandated or students are expected to wear such dress so that Equality and Unity should be ensured and measures should be taken to maintaining public peace and tranquillity.

Upon the orders of Governor and in his name

-Sd-

Under Secretary Education Department (Pre University)

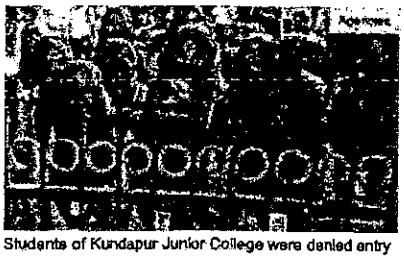
191 76

Karnataka Hijab row: Students in Hijab sent to separate classrooms

ET Online Last Updated: Feb 07, 2022, 01:43 PM IST

ANNEXURE P-2

Synopsis
Two colleges in Karnataka declared a holiday on Monday to avoid communal trouble while another allowed students wearing a hijab to sit in separate classrooms as the controversy spread across the state.



Students of Kundapur Junior College were denied entry

Two colleges in **Karnataka** declared a holiday on Monday to avoid communal trouble while another allowed students wearing a **hijab** to sit in separate classrooms as the controversy spread across the state.

The Government Junior PU College, **Jundapur** allowed the young women on the campus on Monday morning following protests in the past few days. Although, controversially, these students have been seated in separate classrooms and haven't been involved in lessons.

Meanwhile, at the Kalavara Varadaraj M Shetty Government First Grade College, **Kundapur**, students in hijab were sent home.

In two other colleges in the state, many students wore saffron scarves in a show of protest against their hijab-wearing fellow students.

193 73

ANNEXURE P3

Karnataka's hijab controversy explained

The Hindu Bureau

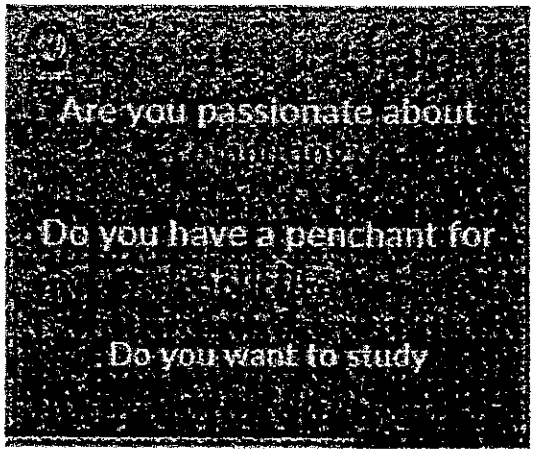
FEBRUARY 09, 2022 18:30 IST

A video on the hijab row that is rocking coastal Karnataka

00:0004:26

A controversy over the hijab or headscarf worn by Muslim girls has escalated in coastal Karnataka

Echoes of the controversy are being heard in other parts of Karnataka too, even as a political slugfest is unfolding on the communally sensitive issue.



Several political leaders including Mehbooba Mufti and Rahul Gandhi have voiced their condemnation on twitter.

Also read: Karnataka CM orders closure of all high schools and colleges for three days

How did it start?

Six female students belonging to the Government PU College for Girls in Udupi were not allowed to attend classes wearing hijab.

The students protested on December 31, 2021, claiming the college was not allowing them to attend classes for the past 15 days.

Udupi BJP MLA Raghupathi Bhat, who heads the college's development committee, held a meeting with parents and other stakeholders.

He told students to follow the college's dress code in the classroom. The six students chose to stay away from the classroom.

The students filed a writ petition in the Karnataka High Court, and also approached the National Human Rights Commission.

Why did other educational institutions get involved?

Following this incident, a group of boys at the Government Pre University College in Kundapur went to college sporting saffron shawls in protest against some girls attending classes wearing hijab.

Kundapura MLA Haladi Srinivas Shetty held a meeting with parents and asked students to comply with the dress code of the college till the government takes a final decision on the issue.

The MLA said that some girl students of the college have been coming to class sporting hijab for the last about five days.

The girl students, on the other hand, have argued that they cannot be forced to stay out of the college following a 'sudden change in the dress code' to bar hijab.

To counter girls wearing hijab, several Hindu boys have been turning up wearing saffron shawls, but they too have been barred from entering classrooms.

Such cases have been reported in several colleges in Udupi district in coastal Karnataka.

The row took a new turn in Chikkamagaluru when students of IDSG Government First Grade College arrived wearing blue shawls. They chanted Jai Bhim slogans and raised their voice in support of Muslim girls. They said they were in support of wearing hijab in colleges as part of religious practice.

What has the government said?

The Karnataka Government issued an order stating that students have to comply with the uniform/dress code prescribed by College Development Committees.

Primary and Secondary Education Minister B.C. Nagesh said rules framed under the Karnataka Educational Act 2013 and 2018 have empowered educational institutions to prescribe uniforms for school/PU college students.

The department has issued a circular based on these rules and appealed to students to follow uniform rules prescribed by colleges till the High Court pronounced its verdict on the matter.

Though uniform is not mandatory in colleges, College Development Committees, often headed by local MLAs, have been insisting on a dress code, including banning hijabs, in Udupi and other districts.

Hijab-clad student heckled by boys wearing saffron scarves in Mandya college

ANNEXURE P4

Special Correspondent

MYSURU FEBRUARY 09, 2022 00:16 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.

A girl arriving at a college in Mandya clad in hijab was heckled by a group of boys wearing saffron scarves on Tuesday. The girl was walking towards the classroom after parking her two-wheeler when the boys began waving saffron scarves at her. The girl, as seen in videos that have gone viral, raised 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 before she made her way to the classroom. The incident took place in PES College of Arts, Science and Commerce situated on Mysuru-Bengaluru highway.

The girl, talking to media later, said five other girls who came to the college with hijab, were also subjected to similar treatment and reduced to tears.

However, she said she received support from not only the college principal and other staff, but also her Hindu classmates. She denied that she was feeling unsafe and added that education is her priority while lamenting the efforts made to ruin education in the name of attire.

Inspector General of Police (Southern Range) Praveen Madhukar Pawar said the incident was part of the controversy that is gripping Karnataka. He denied that there was any tension in the college.

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ANNEXURE P 5

All India Democratic Women's Association

Date: February 9, 2022

AIDWA STATEMENT ON THE KARNATAKA HIJAB ISSUE

The All India Democratic Women's Association (AIDWA) strongly condemns the failure of the Karnataka state government to protect the rights of Muslim girl students. It is unacceptable that these students are being denied their right to education because of wearing the hijab.

It is shocking that the state government has irresponsibly stood by watching the issue spiral in the state without intervening proactively to fulfill its constitutional duty to protect the right to education of Muslim girls. Instead the state government re-issued an order banning clothes which "disturb equality, integrity and public order". The government invoked 133(2) of the Karnataka Education Act, 1983 which stated that students must wear the dress chosen by the College Development Committee or the appellate committee of the administrative board of pre-university colleges, which come under the pre-university education department. And in case a uniform was not selected, "clothes which disturb equality, integrity and public order should not be worn".

Muslim girl students have been wearing the hijab and attending classes in Karnataka. This controversy has been deliberately raked up in the attempt to target and intimidate the minority community. Mobs of aggressive young boys wearing saffron scarves and shouting jai Sri Ram exposes the hideous agenda of the communal forces. "Public order" is being vitiated by the hooligans promoted by the saffron brigade and not by the girls wearing hijab.

It is a violation of the fundamental constitutional Right to Freedom of Religion under Article 25, the Right to Education under Article 21-A and the Right to Dignity under Article 21. Likewise, Articles 15(1) and 15(2) do not allow any discrimination on the basis of birth place, religion, gender, caste and so on and says that no one should be stopped from entering public places. Article 29(2) does not allow discrimination on the basis of religion in state government aided institutions. The right to education is a fundamental right and must be protected without any compromises.

Due to the recent developments in Karnataka, all these rights are being denied to Muslim girl students. The Karnataka High Court will be hearing the petitions filed by five girl students of the Udipi Government Pre-University College on restricting the hijab.

As is our experience, the BJP and the saffron brigade led by the RSS have always used communal mobilizations and politics of hatred to further its agenda of targeting the minorities. This has

created an unprecedented situation of tensions amongst the student community in Karnataka just on the eve of their annual examinations.

The state government should not change any rules and laws arbitrarily causing a harrowing situation for the students at the fag end of the academic year causing disruption in their studies and especially adversely impact the educational opportunities of Muslim girls.

AIDWA demands an immediate stop to the hounding of Muslim girl students in Karnataka. The state government must ensure all protection to the Muslim girls and help them in being able to attend their classes in the colleges. All Muslim girls must be allowed to continue their education irrespective of the wearing of the hijab.

Communal and fundamentalist forces of whatever colour must not be allowed to divide the student community and prevented from vitiating the secular atmosphere in educational institutions. Anti-social elements trying to foment trouble in educational institutions must be dealt with a firm hand. BJP leaders and ministers should stop giving provocative statements to disturb communal harmony.

The AIDWA also appeals to all students, both boys and girls irrespective of their faith to remain united and defeat the nefarious designs of the saffron brigade.

Malini Bhattacharya

President

Mariam Dhawale

General Secretary

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ANNEXURE P6

Statement By Feminist, Democratic Organisations and Individuals On Targeting And Exclusion of Hijab Wearing Muslim Women Students

1. The ban on hijabs in classrooms and campuses, that has begun in coastal Karnataka and threatens to spread to other states, is a hate crime. The Hindu supremacists lynch/segregate/boycott Muslims on various pretexts - beef, Muslims' collective prayers, azaan, the skullcap, Urdu language. Hijab is only the latest pretext to impose apartheid on and attack Muslim women, following on the heels of Hindu supremacists holding multiple "online auctions" of Muslim women and making speeches calling for their sexual and reproductive enslavement.

2. The video from Mandya, Karnataka of a saffron-stole wearing mob of men surrounding a hijab-wearing Muslim woman and heckling her is a warning of how the hijab can easily become the next pretext for mob attacks on Muslims.

3. We firmly believe that the Constitution mandates schools and colleges to nurture plurality, not uniformity. Uniforms in such institutions are meant to minimise differences between students of different and unequal economic classes. They are not intended to impose cultural uniformity on a plural country. This is why Sikhs are allowed to wear turbans not only in the classroom but even in the police and Army. This is why Hindu students wear bindi/pottu/tilak/Vibhuti with school and college uniforms without comment or controversy. And likewise, Muslim women should be able to wear hijabs with their uniforms.

4. Rulebooks in at least one of the Udupi colleges allowed Muslim women to wear hijabs to college in Udupi as long as they matched the colour of the uniform. It is not hijabs that provoked the ongoing educational disruptions. It is Hindu-supremacist outfits which disrupted harmony by demonstrating with saffron stoles to demand a ban on hijabs. Banning both saffron stoles and hijabs is not a fair or just solution because unlike hijabs worn by some Muslim women, the only purpose of the saffron stoles in this instance were to achieve a ban on the hijab and intimidate Muslim women.

5. Making hijabi women sit in separate classrooms or move from colleges of their choice to Muslim-run colleges is nothing but apartheid. Hindu supremacist groups in coastal Karnataka have, since 2008, been unleashing violence to enforce such apartheid, attacking togetherness between Hindu and Muslim classmates, friends, lovers. It must be remembered that such violence has been

accompanied by equally violent attacks on Hindu women who visit pubs, wear "western" clothes, or love/marry Muslim men. Islamophobic hate crimes have been joined at the hip to patriarchal hate crimes against Muslim and Hindu women - by the same Hindu-supremacist perpetrators.

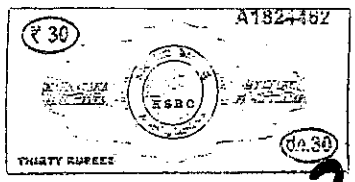
6. We are appalled that the Karnataka Home Minister has ordered an investigation into the phone records of hijab-wearing Muslim women, to "probe their links" with "terrorism groups". Till yesterday Muslims were being criminalised and accused of "terrorism" and "conspiracy" for protesting a discriminatory citizenship law, or indeed for protesting against any form of discrimination. Now Muslim women wearing hijab is being treated as a conspiracy - in a country where women of many Hindu and Sikh communities cover their heads in much the same way, for much the same reasons; and even India's first woman PM and President covered their heads with their saris without exciting comment or controversy.

7. Girls and women should be able to access education without being shamed or punished for their clothes. Educational institutions should pay attention to what is inside students' heads not what's on them. We stand with every woman who is told that she can't enter college because she's wearing jeans or shorts - or because she's wearing a hijab.

8. We unequivocally stand in solidarity with Muslim women whether or not they wear hijabs, to be treated with respect and to enjoy the full gamut of rights. We affirm that the Karnataka Muslim women students wearing hijabs are doing so of their own agency, and this agency must be respected.

9. What women choose to wear whether they choose to cover or uncover, is a matter of 'choice'. It cannot be a measure of modesty and immodesty. This is true for patriarchal imposition of religious practices across the spectrum. Stop trying to tell women what they must wear in order to be respected - instead respect women no matter what they wear. If you think a woman "exposes herself too much" or does not "dress like a good Hindu/Muslim/Christian/Sikh woman", the problem lies with your patriarchal gaze and sense of entitlement. Feminist and democratic principles lie in respecting that every woman charts her own path in fighting patriarchy, and deciding what practices are in keeping with her faith and which ones to reject.

10. We demand stern action against the organisations and individuals who led and participated in the mob that heckled a Muslim woman in Mandya. All over the country, we ask governments to alert police and public to the need to deter any attempt to intimidate hijab-wearing women.



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BEFORE THE HON'BLE HIGH COURT OF KARANTAKA, AT BENGALURU

Writ Petition. No._____ of 2022

All India Democratic Women's Association & Anr. **Appellant**	**Vs**	State of Karnataka & Ors. **Respondents**

We, All India Democratic Women's Association, the Petitioner No. 1 in the above matter, hereby appoint and retain Aditya Chatterjee, Nitya Kaligotla, and Mahima Meenaxi to appear, act and plead for us in the above matter, and to conduct / prosecute and defend the same, in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and/or other proceedings arising therefrom, and also in proceedings for review of judgement and for leave to appeal to Supreme Court, and to obtain return of any documents filed therein, or receive any money which may be payable to us.

We hereby authorise them on our behalf to enter into a compromise in the above matter, to execute any decree / order therein, to appeal from any decree / order therein, and to appear, to act, to plead in such appeal (if any) preferred by any other party from any decree / order therein.

We further agree that if we fail to pay the fees agreed upon or to give due instructions at any stage they are at liberty to retire from the case and recover all amounts due to them and retain all our monies till such dues are paid.

Executed by us on at .

All India Democratic Women's Association (AIDWA) Karnataka State Committee

Signature

Identified by me/us

Certified, that the contents were explained to the executor(s) in our presence in English/ language known to the executor(s) who appear(s) perfectly to understand the same and has/have signed in our presence.

Accepted

Nitya Kaligotla KAR/860/2014
Aditya Chatterjee KAR/931/2012
Mahima Meenaxi KAR/2301/2021

Address for Service
Ground Floor, No. 7,
Raja Ram Mohan
Roy Road,
Bengaluru – 560025
aditya@adityachatterjee.in

Advocates for the Petitioner No. 1
Place: Bengaluru
Date: 17.02.2022

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We salute the courage of the Muslim women students in Karnataka who are bravely fighting this battle for dignity and rights in the face of intimidation by Hindu-supremacist thugs backed by the state. We are glad to hear from these students that several of their Hindu and Christian friends are supporting their struggle - and we appeal to students and citizens all over the country to resist any attempt to impose misogynist and Islamophophic "dress codes" on students and women.

All India Democratic Women's Association,
All India Progressive Women's Association,
Awaaz-E-Niswan,
Bebaak Collective,
Forum Against Oppression of women,
Feminists In Resistance,
National Alliance of People's Movements,
National Federation of Indian Women,
People's Union for Civil Liberties,
Saheli
Anuradha Banerji, Saheli, New Delhi
Arundhati Dhuru, NAPM
Chayanika Shah, Queer Feminist activist and educator, Mumbai
Meera Sanghamitra, NAPM
Kavita Krishnan, AIPWA
Nandini Rao,New Delhi
Naveddu Nilladiddare, Karnataka
Poushali Basak, FAOW,FIR (KolKatta)
Safoora Zargar, research scholar and activist, Jamia Millia Islamia
Vrinda Grover, Advocate, Supreme Court of India
Annie Raja, NFIW
Mariam Dhawale, AIDWA

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ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION (AIDWA)
Karnataka State Committee
ಅಖಿಲ ಭಾರತ ಜನವಾದಿ ಮಹಿಳಾ ಸಂಘಟನೆ (ಎಐಡಿಡಬ್ಲ್ಯೂಎ)
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸಮಿತಿ
No. J 129, 1st Floor, 10th A Cross, Lakshminarayanapura, Bangalore – 560 021
Phone : 9845197079 E-mail : janavadikar@gmail.com

15-2-2022.

Resolution

The Karnataka State Committee of All India Democratic Women's Association met on Feb-15th-2022.

The committee discussed the issue of "dress code" in the GO dated 05.02.2022 *'GO') and the ongoing discrimination against muslim girl students wearing hijabs from attending schools and colleges.

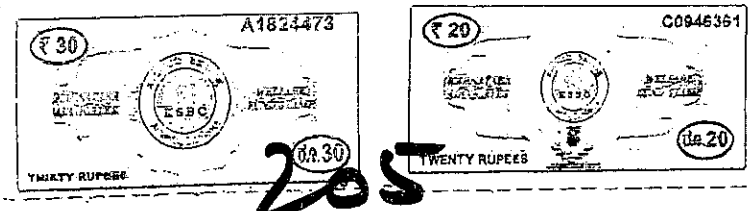
The committee felt that as a woman's organisation which has a membership of over one crore and is working for the rights of women since four decades it ought to approach the courts of law to redress the discrimination that school and college-going Muslim girls and women are being subject to.

AIDWA has intervened in many Women's rights issues irrespective of religion, caste and creed. AIDWA has a sizable membership of Muslim women also and the organisation feels that it is our bounden duty to safeguard the rights of all women.

Hence the meeting unanimously resolved that AIDWA file a petition in challenge to the GO and has accordingly authorized Mrs. Vimala K.S, Karnataka State Vice President to sign all pleadings, affidavits, memos, petitions, applications, vakalatnama and any other documentation necessary for the purpose of instituting and prosecuting proceedings before the Hon'ble High Court of Karnataka and/or any other court of law or tribunal or other authority.

Devi
President.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, , I Floor,
10th 'A' Cross, L. N Puram,
Bangalore-560 021



BEFORE THE HON'BLE HIGH COURT OF KARANTAKA, AT BENGALURU

Writ Petition. No._____ of 2022

All India Democratic Women's Association & Anr. **Appellant**	**Vs**	State of Karnataka & Ors. **Respondents**

I, Smt. Shameem, the Petitioner No. 2 in the above matter, hereby appoint and retain Aditya Chatterjee, Nitya Kaligotla, and Mahima Meenaxi to appear, act and plead for me in the above matter, and to conduct / prosecute and defend the same, in all interlocutory or miscellaneous proceedings connected with the same or with any decree or orders passed therein, appeals and/or other proceedings arising therefrom, and also in proceedings for review of judgement and for leave to appeal to Supreme Court, and to obtain return of any documents filed therein, or receive any money which may be payable to me.

I hereby authorise them on my behalf to enter into a compromise in the above matter, to execute any decree / order therein, to appeal from any decree / order therein, and to appear, to act, to plead in such appeal (if any) preferred by any other party from any decree / order therein.

I further agree that if I fail to pay the fees agreed upon or to give due instructions at any stage they are at liberty to retire from the case and recover all amounts due to them and retain all our monies till such dues are paid.

Executed by me on at .

Signature

Identified by me/us

Certified, that the contents were explained to the executor(s) in our presence in English/ language known to the executor(s) who appear(s) perfectly to understand the same and has/have signed in our presence.

Accepted

Nitya Kaligotla KAR/860/2014
Aditya Chatterjee KAR/931/2012
Mahima Meenaxi KAR/2301/2021

Address for Service
Ground Floor, No. 7,
Raja Ram Mohan
Roy Road,
Bengaluru – 560025
aditya@adityachatterjee.in

Advocates for the Petitioner No. 2
Place: Bengaluru
Date: 17.02.2022

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

I.A. No._____ OF 2022

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S

ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS.
...RESPONDENTS

APPLICATION FOR PERMISSION TO FILE SPECIAL LEAVE PETITION

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

THE HUMBLE APPLICATION OF THE
PETITIONERS ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. That the present Petition for Special Leave to Appeal under Article 136 of the Constitution of India is preferred against the Impugned Judgment dated 15-03-2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347/2022.

2. That the facts stated in the Special Leave Petition may be read with this application and the same is not being repeated for the sake of brevity.

3. The Petitioners who are aggrieved by the impugned judgment, as they are among the people who wear hijab to their schools and are not being allowed to do the same after the Judgment, are not made a party in 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).

4. That the High Court of Karnataka at Bengaluru through its impugned judgment held that all these petitions being devoid of merits, are liable to be and accordingly are dismissed not appreciating the facts and material of the case.

5. That the present application is being made bonafide and in the interest of Justice.

6. That the Petitioners be most graciously permitted to file the present Special Leave Petition.

PRAYER

In the aforesaid facts and circumstances it is most respectfully prayed that this Hon'ble court may graciously be pleased to:

a) Permit the Petitioners to file the Special Leave Petition against the Impugned Judgment dated 15-03-2022 passed by the Karnataka at Bengaluru in Writ Petition No. 2347/2022; AND

b) pass such other order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL REMAIN DUTY BOUND AND SHALL FOREVER PRAY.

FILED BY:

FAUZIA SHAKIL
COUNSEL FOR THE PETITIONERS

NEW DELHI
11-07-2022

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
I.A. No. _____ OF 2022
IN
SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ...RESPONDENTS

AFFIDAVIT

I, Ms. Shameen, W/O. Sardar, aged about 45Yrs, resident of 205, Vijnapura, Kothur, Ambedkar Nagara, Near Government High School, Bengaluru - 560016, do hereby solemnly affirm and state as under:

1. That I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. The accompanying application for Permission to file SLP has been drafted and filed by my counsel on my instructions. I have fully understood the contents of the same. The averments contained therein are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the annexures to the accompanying Special Leave Petition and applications are true copies of their respective originals.

DEPONENT

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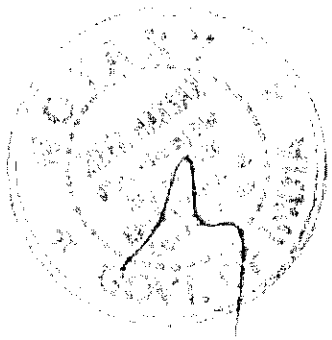
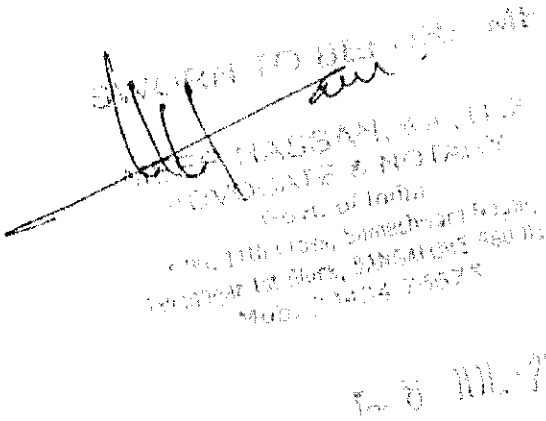
~~DEPONENT~~

VERIFICATION

Verified at Bengaluru; on this the 8th day of July, 2022 that the contents of paragraph 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief. Nothing material has been withheld therefrom.

DEPONENT





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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

I.A. No._____ OF 2022

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S

ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS.
...RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER

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

THE HUMBLE APPLICATION OF THE
PETITIONERS ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. That the present Petition for Special Leave to Appeal under Article 136 of the Constitution of India is preferred against the Impugned Judgment dated 15-03-2022 passed by the High Court of Karnataka at Bengaluru in writ petition no. 2347/2022.

2. That the facts stated in the Special Leave Petition may be read with this application and the same is not being repeated for the sake of brevity.

3. The Petitioners have filed web copy of the impugned order due to paucity of time. The same may be granted and the Petitioners may be exempted from filing certified copy of the Impugned Order.

4. That the present application is being made bonafide and in the interest of Justice.

5. That the Petitioners be most graciously permitted to file the present Special Leave Petition.

PRAYER

In the aforesaid facts and circumstances it is most respectfully prayed that this Hon'ble court may graciously be pleased to:

a) Permit the Petitioners to grant exemption from fling certified copy of the impugned order dated 15-03-2022 passed by the Karnataka at Bengaluru in writ petition no. 2347/2022; AND

b) pass such other order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL REMAIN DUTY BOUND AND SHALL FOREVER PRAY.

FILED BY:

FAUZIA SHAKIL
COUNSEL FOR THE PETITIONERS

NEW DELHI
11.07.2022

213

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
I.A. No. _____ OF 2022
IN
SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ...RESPONDENTS

AFFIDAVIT

I, Vimala K S, W/O. T Surendra Rao, aged about 65 Yrs, having my office at J – 129, 1st Floor, 10th A Cross, Laksminarayanapura, Bengaluru – 560021, do hereby solemnly affirm and state as under:

1. That I am the Vice – President of All India Democratic Women's Association. I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. The accompanying application for exemption from filing certified copy of the Impugned Order/Judgment has been drafted and filed by my counsel on my instructions. I have fully understood the contents of the same. The averments contained therein are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the annexures to the accompanying Special Leave Petition and applications are true copies of their respective originals.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th 'A' Cross
L.N. Puram, Bangalore-21

214

DEPONENT

VERIFICATION

Verified at Bangalore on this the 8th day of July, 2022that the contents of paragraph 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief. Nothing material has been withheld therefrom.

All India Democratic
Women's Association
Karnataka State Committee
No. J-129, 1st Floor 10th
L.N. Puram, Bangalore-21

DEPONENT

No. Of Commissioner

SWORN TO BEFORE ME

HASSAN, B.A., LL.B
ADVOCATE & NOTARY
Govt. of India
96, 11th Cross, Sarveshwara Nagar,
Jayanagar 1st Block, BANGALORE-560 011.
Mob. 93439 70675

8 JUL 2022

215

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

I.A. No._____ OF 2022

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S

ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

AN APPLICATION FOR CONDONATION OF DELAY IN FILING THE SPECIAL LEAVE PETITION

To,

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

THE HUMBLE APPLICATION OF THE PETITIONERS ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners are filing the present Special Leave Petition being aggrieved by the Impugned Final Order and Judgment dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347/2022 whereby the High Court has erroneously dismissed the writ petition, filed by the Petitioners herein without considering the relevant laws, authorities and facts of the present case.

2. That all the facts have been stated in the Special Leave Petition in detail and the same are not repeated herein for the sake of brevity. The Petitioners crave leave and permission of this Hon'ble Court that the same may be treated as part and parcel of this application.

3. That the Hon'ble High Court had erroneously dismissed the Writ Petition No. 2347/2022 filed by the Petitioners.

4. That the delay in filing SLP against the order dated 15.03.2022 in dismissing the writ petition is explained on account of the Petitioner No. 2 being a resident of a village near the city of Bangalore. Further, the Petitioner No. 2 being a resident of outskirt of Bangalore, it took her some time to find a lawyer in New Delhi for filing the SLP. The Petitioners submit that his conduct was diligent

and reasonable, and prays that this Hon'ble Court may kindly condone the delay in filing SLP against the order dated 15.03.2022.

5. That the Petitioners have been diligent in prosecuting their case through various stages of litigation.

6. It is for these reasons that the delay of ____ days has occurred in filing the instant Special Leave Petition as against the order dated 15.03.2022.

7. That the abovementioned delay is neither intentional nor deliberate and the same may kindly be condoned in the interest of justice.

PRAYER

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

a) condone the delay of ___ days in filing the instant Special Leave Petition against the Impugned Final Order and Judgment dated 15.03.2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347/2022 in the interest of justice; and

b) pass any other order/orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS PETITIONERS IS IN DUTY BOUND SHALL EVER PRAY.

FILED ON: FILED

BY:

[]

ADVOCATE FOR THE PETITIONERS

DRAWN BY:

FILED ON: 11.07.2022

NEW DELHI

219

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
I.A. No. _____ OF 2022
IN
SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ...RESPONDENTS

AFFIDAVIT

I, Vimala K S, W/O. T Surendra Rao, aged about 65 Yrs, having my office at J – 129, 1st Floor, 10th A Cross, Laksminarayanapura, Bengaluru – 560021, do hereby solemnly affirm and state as under:

1. That I am the Vice – President of All India Democratic Women's Association. I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. The accompanying application for condonation of delay in filing the SLP has been drafted and filed by my counsel on my instructions. I have fully understood the contents of the same. The averments contained therein are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the annexures to the accompanying Special Leave Petition and applications are true copies of their respective originals.

NOTARY ... INDIA

NO Cr. Corrn. Cases

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th A Cross
L.N. Puram, Bangalore-21

DEPONENT

DEPONENT

VERIFICATION

Verified at Bengaluru on this the 8th day of July 2022that the contents of paragraph 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief. Nothing material has been withheld therefrom.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th 'A' Cross
L.N. Puram, Bangalore-8

DEPONENT

SWORN TO BEFORE ME

ADVOCATE & NOTARY

221

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

I.A. No._____ OF 2022

SPECIAL LEAVE PETITION (CIVIL) NO. _____OF 2022

IN THE MATTER OF:

ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS. ...RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING ORIGINAL AFFIDAVIT AND VAKALATNAMA

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

THE HUMBLE APPLICATION OF THE PETITIONERS ABOVENAMED:

MOST RESPECTFULLY SHEWETH:

1. That the present Petition for Special Leave to Appeal under Article 136 of the Constitution of India is preferred against the Impugned Judgment dated 15-03-2022 passed by the High Court of Karnataka at Bengaluru in Writ Petition No. 2347/2022.

2. That the facts stated in the Application may be read with this application and the same is not being repeated for the sake of brevity.

3. The Applicant has filed the scanned copy of affidavit alongwith the Application. The Applicant is unable to travel to Delhi to avoid contagion of COIVD 19 Virus.

4. That the present application is being made bonafide and in the interest of Justice.

5. That the petitioner be most graciously permitted to file the accompanying Application.

222

PRAYER

In the aforesaid facts and circumstances it is most respectfully prayed that this Hon'ble court may graciously be pleased to:

a) grant exemption from fling original Affidavit to the Applicant; AND

b) pass such other order/orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL REMAIN DUTY BOUND AND SHALL FOREVER PRAY.

FILED BY:

FAUZIA SHAKIL
COUNSEL FOR THE PETITIONERS

NEW DELHI
11.07.2022

223

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
I.A. No. _____ OF 2022
IN
SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:
ALL INDIA DEMOCRATIC WOMEN'S ASSOCIATION & ANR. ...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS ...RESPONDENTS

AFFIDAVIT

I, Vimala K S, W/O. T Surendra Rao, aged about 65 Yrs, having my office at J – 129, 1st Floor, 10th A Cross, Laksminarayanapura, Bengaluru – 560021, do hereby solemnly affirm and state as under:

1. That I am the Vice – President of All India Democratic Women's Association. I am well acquainted with the facts and circumstances of the case and competent to swear this affidavit.
2. The accompanying application for exemption from filing certified copy of the Impugned Order/Judgment has been drafted and filed by my counsel on my instructions. I have fully understood the contents of the same. The averments contained therein are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.
3. That the annexures to the accompanying Special Leave Petition and applications are true copies of their respective originals.

All India Democratic
Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th 'A' Cross
L.N. Puram, Bangalore-21

DEPONENT

VERIFICATION

Verified at Bangalore on this the 8th day of July, 2022that the contents of paragraph 1 to 3 of the present affidavit are true and correct to the best of my knowledge and belief. Nothing material has been withheld therefrom.

All India Women's Association
Karnataka State Committee
No. 3.128, 1st Floor
L.N. Puram, Bangalore-21

DEPONENT

SWORN TO BEFORE ME

Govt. of India

08 JUL 2022

226

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL/ORIGINAL/APPELLATE JURISDICTION
APPEAL/ PETITION/REFERENCE No. 201

VAKALATNAMA

I/We_____,
Appellant(s)/Petitioner(s)/ Respondent (s) /opposite party in the above Appeal/ Petition/Reference do hereby appoint retain:

FAUZIA SHAKIL, ADVOCATE ON RECORD
D-40, LGF, JANGPURA EXTENSION
NEW DELHI - 110014

to act& appear for me/us in the above Appeal/Petition/Reference & on my/our behalf to conduct & prosecute (or defend) or withdraw the same& all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation& application for Review, to file& obtain return of documents& to deposit& receive money on my/our behalf&in the said Appeal/Petition/Reference& in application for review& to represent me/us& to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 8th day of July 2022

All India Democratic Women's Association (AIDWA)
Karnataka State Committee
No. J-129, 1st Floor 10th 'A' Cross
L.N. Puram, Bangalore-21

APPELLANT(S)/PETITIONER(S)/OPPOSITE PARTY/INTERVENOR/RESPONDENT(S)

ADVOCATE-ON-RECORD
FAUZIA SHAKIL

MEMO OF APPEARANCE

To,
The Registrar,
Supreme Court of India,
New Delhi.
Sir,
Please enter my appearance on behalf of the Petitioner(s)/Appellant(s)/ Respondent(s)/ Opposite parties/ Intervener(s) in the matter above mentioned.
Dated this the ..... day of 2022

Yours faithfully

_____
FAUZIA SHAKIL
Advocate-on-Record