Diary No. # 11135/2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.15400 OF 2022

(Against the Final Judgment & Order dated 15.03.2022 in Writ Petition No. 2347 of 2022 (GM-RES) passed by the High Court of Karnataka at Bengaluru)

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF: -

Advocate Thamanna Sulthana A.J. ...Petitioner

Versus

State of Karnataka &Ors. ...Respondents

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

I.A. No. of 2022

(Application for seeking Permission to File Special Leave Petition)

IN

I.A. NO. of 2022

(Application for Exemption from Filing Certified copy of Impugned Judgment)

Advocate for the Petitioner: Pallavi Pratap

DIARY NO. 11135 F 2022

DECLARATION

All Defects have been duly cured. Whatever has been added/ deleted/ modified in the petition is the result of curing defects and nothing else. Except curing the defects, nothing has been done. Paperbooks are complete in all respects.

Advocate-on-Record
Pallavi Pratap

Dated: 13/4/2022
Mobile No. 9810320102

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A

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Special Leave Petition (c) No. of 2022

IN THE MATTER OF:-

Advocate Thamanna Sulthana A.J. ...Petitioner

Versus

State of Karnataka &Ors. ...Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is/ are within time.

2. The petition is barred by time and there is delay of days in filing the same against order dated **15.3.2022** and petition for condonation of days delay has been filed

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

BRANCH OFFICER

New Delhi

Dated:- 9.4.2022

No. F.5/Judl(I)/2018, dated: 29/10/20
w.e.f. 29th October, 2018

A1

ANNEXURE 'X'

PROFORMA FOR FIRST LISTING

SECTION IV-A

The case pertains to (Please tick/check the correct box):

- ☐ Central Act: (Title) N/A
- ☐ Section: N/A
- ☐ Central Rule: (Title) N/A
- ☐ Rule No(s) N/A
- ☐ State Act: (Title) Karnataka Education Act
- ☐ Section: N/A
- ☐ State Rule: (Title) N/A
- ☐ Rule No(s) N/A
- ☐ Impugned Interim Order: (Date) N/A
- ☐ Impugned Final Order/Decree: (Date) 15-3-2022
- ☐ High Court: (Name) High Court of Karnataka at Bengaluru
- ☐ Names of Judges: Hon'ble Ritu Raj Awasthi, C.J. & Hon'ble Krishna S. Dixit
- ☐ Tribunal/Authority: (Name) N/A

---

1. Nature of matter: ☑ Civil ☑ Criminal

2. (a) Petitioner/appellant No.1: Advocate Thamanna Sulthan A.T.
   (b) e-mail ID: pallaviprotap@hotmail.com
   (c) Mobile phone number: 9999990078

A2

3. (a) Respondent No.1: State of Karnataka & Or
   (b) e-mail ID: N/A
   (c) Mobile phone number: N/A

4. (a) Main category classification: 18 Matter
   (b) Sub classification: 1807 others

5. Not to be listed before: N/A

6. **(a) Similar disposed of matter with citation, if any, & case details:** No any Similar Matter Disposed of
   (b) Similar pending matter with case details: _____

7. Criminal Matters: N/A

   (a) Whether accused/convict has surrendered: [x] Yes [ ] No.
   (b) FIR No. N/A Date: N/A
   (c) Police Station: N/A
   (d) Sentence Awarded: N/A
   (e) Period of sentence undergone including period of detention/custody undergone: N/A

8. Land Acquisition Matters: N/A

   (a) Date of Section 4 notification: N/A
   (b) Date of Section 6 notification: N/A
   (c) Date of Section 17 notification: N/A

9. Tax Matters: State the tax effect: N/A

10. Special Category (first petitioner/appellant only): N/A

[x] Senior Citizen>65 years [x] SC/ST [x] Woman/child [x] Disabled

[x] Legal aid case [x] In custody

11. Vehicle Number (in case of Motor Accident Claim matters): N/A

Date:

AOR for petitioner(s)/appellant(s)
(Name) Pallavi Pratap
Registration No. 2553

SYNOPSIS B

The Petitioner seeks leave to appeal against the final Judgment and order dated 15.03.2022 in Writ Petition No. 2347/2022 (GM-RES) passed by the High Court of Karnataka at Bengaluru wherein the High Court has upheld the Karnataka Government's impugned Govt. Order dated 05.02.2022 (the "GO") banning *Hijab*/ Headscarf's in educational institutions and held that *Hijab*/Headscarf's are not a part of essential religious practice in Islam, thereby dismissing the Writ Petitions and other connected petitions.

The Petitioner herein is the president of an organisation for young women, namely the Girls Islamic Organization (GIO), Kerala Chapter. GIO is a group of Muslim women aged between 15 and 30, working in around 23 states in India. In Kerala, with almost 10,000 workers, it has been actively participating in the public sphere for the last three and a half decades. It focuses on the upliftment and development of Muslim girls in the society. GIO leads and organises various programmes dealing with social status, rights and contributions of Muslim women in today's world. The Petitioner was not a party to the proceedings before the High Court nor filed Writ Petition challenging the Order of the Karnataka

Government dated 05.02.2022. However, the Petitioner is approaching this Hon'ble court with a permission to file this present Special Leave Petition.

The present Special Leave petition raises extremely serious and important Questions of Law including as to Constitutional Rights of general public importance.

The petitioners before the High Court included the young Muslim women from schools and colleges in Karnataka who had been arbitrarily shut out of their own college by their own teachers. However, the High Court passed a judgement of cold-blooded legalism that, without a word of commiseration for their suffering, went on to snuff out the rights of the young people before it to privacy, dignity, religious expression and, most fundamentally of all, to education.

The impugned judgment has upheld the legality of the Government Order passed by the Karnataka Government that essentially banned the hijab in Educational Institutions that have a uniform prescribed by a College Development Committee, ruling that the hijab is not an essential part of Islam. In colleges without

uniform, the notification prescribed that clothes should be worn that are "in the interests of unity, equality, and public order." The impugned judgement authorises and legitimises the prohibition on the hijab by the Government and College Development Committees. Following the impugned judgement, the prohibition on the hijab is coming into wider effect in many more colleges all over the country.

It is submitted that the impugned judgment is erroneous on the following grounds:

A. The High Court has failed to note that the right to wear a Hijab is protected as a part of the right to freedom of conscience under Article 25 of the Constitution. Further, it is pertinent to note that the right to freedom of conscience is essentially an individual right, and the test of "Essential Religious Practice" is not necessary to determine the same.

B. The Government of Karnataka, in a duplicitous act of benevolent patriarchy, claimed to represent the concerns of Muslim women who don't want to wear the hijab, have committed grave error and curtailed the rights of the Muslim girl students choosing to wear a hijab in an extremely disrespectful and humiliating fashion. The

E

High Court has further committed grave error while sanctifying this claim.

C. That the High Court has gone against the dictum of the Constitutional Bench Judgment of this Hon'ble Court in **Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954 AIR SC 282)** (the "Shirur Mutt Case"). Wherein this Hon'ble Court has held:

"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 or 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.

The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression " practice of religion " in Article 25."

D. That the High Court has failed to protect the practice of religion as protected by Article 25 of the Muslim girl students and thus the impugned judgment is erroneous. The High Court ought to have taken a practical approach rather than a pedantic approach and protected the rights of the girl students.

E. That the High Court ought to have accepted the submission of the Muslim girl students when they submitted that the hijab was a part of practice of their faith and essential to them. It is not for the High Court to sit in judgment of whether it is essential for the person practising it or not. That this approach of the High Court to judge a practice which has been conscientiously and in a bona fide manner been followed by the Petitioners, falls squarely against the law laid down by this Hon'ble Court in **Bijoe Emmanuel v. State of Kerala (AIR 1987 SC 748)** wherein this Hon'ble Court held:

G1

"In Ratilal's case we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations In Jarnshedji v. Soonabai, 23 Bomaby ILR 122:

"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 judgement on that belief, he has no right to interfere with the conscience of a doner who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

We do endorse the view suggested by Davar J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Art. 25 but subject, of course, to the inhibitions contained therein."

F. That the 1954 Constitutional Bench Judgment in the **Shirur Matt Case** provided the principle of the test of essential religious practice and the same has been relied upon by the High Court in the Impugned Judgment. But the Shirur Mutt Judgment provided a very wide and all encompassing definition of religion and what constitutes as an essential practice. Unfortunately the High Court has followed that decision without fully understanding the definition of religion as defined in the said judgment because if that were the case then the High Court would have seen that the practice of hijab is an essential practice followed by the Muslim girls who conscientiously and in a bona fide manner believed and followed the said practice and that alone makes it an essential practice and therefore qualifies the test set out in the Shirur Matt case. Therefore the High Court has relied upon a judgment without fully understanding the said judgment and should be struck down.

G. That vide the impugned judgment, the High Court cites examples of balancing rights,

such as the uniform prescribed in Kendriya Vidyalayas which allows for the headscarf and turban in a prescribed colour, only to then dismiss it as militating against the very concept of the school uniform. After concluding that the hijab is not a part of the essential practice of Islam and the right to wear it is not protected under Article 25, the court concluded that the right to wear a hijab is at best a "derivative right" which can be circumscribed "consistent with discipline & decorum" in what it calls "qualified public places like, like schools, courts, war rooms, defence camps, etc."

H. That this approach to force homogeneity upon the Muslim girl students falls squarely against the Constitutional Bench Judgment on Privacy in **K.S Puttaswamy v. Union of India (2017) 10 SCC 1.** Wherein this Hon'ble Court held that individual autonomy i.e the ability of an individual to make choices and decide how to develop their personality,

lies at the core of the concept of privacy. The Hon'ble Justice D.Y. Chandrachud speaking for four judges specifically highlighted:

J

"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."

I. Vide the GO the Respondent State has specifically targeted and undermined the individual dignity and privacy of the Muslim girl students and aimed to suppress the diversity brought by their act of preserving

their culture with a bogus and highly arbitrary claim that their practices threaten the peace of the institution.

J. It is submitted that the dismissal by the court of any viable solution between the interest of the State to prescribe a uniform and the interests of the individual to manifest their faith or to express their identity via their dress is highly erroneous and against right to life and liberty, right to dignity and against the principles of natural justice.

K. The High Court ought to have shown 'reasonable accommodation' and allowed for students to, in addition to the uniform, wear a hijab of the colour of the 'prescribed dress code'. However, the High Court erroneously held that any such accommodation "would establish a sense of 'social-separateness'" and would "offend the feel of uniformity which the dress code is designed to bring about amongst all the students regardless of their religion & faiths."

L. That the High Court failed to notice that "the sense of social separateness" and the offence to "the feel of uniformity which the

dress code is designed to bring about amongst all the students regardless of their religion & faiths" has actually been brought about as a result of the introduction of the GO. Since the said GO has been released, it has resulted in tension, segregation of muslim girl students and divide among the students, parents and people in general. That the effect of the GO has been exactly opposite of what it has claimed to achieve.

M. That the High Court erred in holding that if Hijab as a practice is not followed by most of the people practicing Islam in India then Hijab is not an essential religious practice. The same is problematic way of justifying the GO as the majority or minority of practice does not determine the essentiality of that practice. That in the case of Kirpan which is essential to the Sikh religion, and yet the majorty of the Sikhs do not carry the Kirpan with them at all times. Thus, just because the vast majority of Sikhs do not wear a Kirpan does not mean it is not essential to their religion. It is therefore an erroneous approach taken by the High Court to disregard the rights of the Muslim girl students to practice their faith. If that

practice is essential for them, then in that case, what the majority or minority does should not matter, what the person believes in bonafide should be the only reason since it is that individual that is practicing it and thus is protected under Article 25 of the Constitution.

N. It is submitted that the idea of a 'derivative right' has no constitutional sanction, neither does the language of a 'qualified public place'. Both concepts aim to dilute the freedom of religion, the right to expression, and the right to dignity.

O. The Vienna Declaration states that human rights are "universal, indivisible and interdependent and interrelated". There is no concept in human rights law of one right having a lesser status than another right or of a right getting diluted based on the location where it is exercised. Further, the idea that schools, courts, war rooms and defence camps are somehow of a similar nature and rights melt away when one is in these spaces enjoys no constitutional sanction.

N

P. The High Court has also blithely diluted the constitutional requirement that the Government must show that its action of issuing the notification was a reasonable exercise of its power. While the impugned judgement concedes that the Government Order is "hastily issued", the manifest arbitrariness in the notification is casually brushed aside as a "feeble ground".

Q. It is submitted that when a statute or notification is to be tested on grounds of 'manifest arbitrariness' as per this Hon'ble Court's decision in **Shayara Bano v. Union of India (2017) 9 SCC 1**, what is required to be shown is that there is a "determining principle" underlying the regulation, and the regulation is not promulgated either "capriciously" or "excessively".

R. It is also submitted that, if one must implement uniforms for the purpose of creating uniformity, then the same should be done across the board. The implementing authority cannot allow someone to wear a bindi or have sacred threads around their wrist or even a turban, when the same authority insisted on removal of Hijab of Muslim girl students. That this act by the

Respondent State is blatantly discriminatory and aimed to single out and traumatise Muslim girl students, which it has sadly, succeeded in achieving.

S. The High Court has failed to note that the Indian legal system explicitly recognises the wearing / carrying of religious symbols. It is pertinent to note that Section 129 of the Motor Vehicles Act, 1988, exempts turban wearing Sikhs from wearing a helmet.Order IX, Rule 8 of the Supreme Court Rules makes a special provision for affidavits that are to be sworn by pardanashin women. Furthermore, under the rules made by the Ministry of Civil Aviation, Sikhs are allowed to carry kirpans (knife) onto aircraft.

T. That the High Court failed to appreciate the contention that right to wear hijab comes under the ambit of right to privacy under Article 21 and right to freedom of expression under Article 19(1)(a) of the Constitution.

U. The impugned Government Order has apparently cited an order of this Hon'ble Court in ***Asha Ranjan and Others vs State of Bihar and Others*** **in (2017) 4 SCC 3971,** according to which larger public

interest prevails upon individual interest not by negating the individual rights but by upholding larger interests. Relying on the same principle, the Government Order claims to ensure the relationship between institutions and students. This indirect ban on the wearing of hijab by Muslim girl students in their colleges flies in the face of clear legal principles laid down by the courts on various occasions.

V. In the case of ***Asha Ranjan v State of Bihar*** *(Supra)*, in which the State Government's directive takes shelter, the factual matrix was different. The petitioner, in that case, sought the transfer of the cases pending against the accused Shahabuddin, from Siwan Jail to jail in Delhi and conducting of the trial through video conferencing, in view of the political influence wielded by him. The petitioner's husband, a journalist, was allegedly shot dead by the henchmen of the accused, as revenge for exposing the latter's crimes and the investigation of the case was entrusted with the CBI. One is at a loss to understand how this Hon'ble Court's observations in this case in the context of the accused's right to

a fair trial being balanced with victim's rights, could be relied upon to justify the ban on wearing of hijab by Muslim girls within their schools.

W. *In* ***Bijoe Emmanuel v. State of Kerala*** **[(1986)3 SCC 615]**, this Hon'ble Court held: *"whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do". Further* this Hon'ble Court held, *"Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to*

be borne in mind in interpreting Article 25". This Hon'ble Court in *Bijoe Emmanuel* also reminded that: *"Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it".*

X. It is submitted that insisting upon the removal of *hijab* in the educational institutions is impermissible, as being violative of the fundamental rights guaranteed under Article 25 of the Constitution and against the law laid down by this Hon'ble Court in ***Sri Venkataramana Devaru vs. State of Mysore*** **[1958 SCR 895]** and **Indian Young Lawyers Association vs. State Of Kerala (2019) 11 SCC 1.**

Hence, the present SLP.

LIST OF DATES

Date	**Events**
05.03.1984	Girls Islamic Organization (GIO) was established on March 5 1984. GIO releases the potential of womenfolk in molding the society's future and also intends to uplift the status of women in

	the society and enhance their power of action and reaction. GIO consist of a group of Muslim women aged between 15 and 30 years, working in around 23 states in India.
January 2022	Certain Educational Institutions in Karnataka State banned Muslim girls from wearing Hijab to Educational Institutes, hereby denying their right to education.
31.01.2022	Muslim women from schools and colleges in Karnataka who had been arbitrarily shut out of their own colleges by their own teachers approached the High Court of Karnataka at Bangalore by filing Writ Petitions WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022 AND WP NO.3044/2022.
05.02.2022	Government of Karnataka issued an Order under section 133 read with sections 7(2)& (5) of the Karnataka Education Act, 1983 (hereafter the '1983 Act') which provided that, the students should compulsorily adhereto

	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'. A true copy of the GO dated 05.02.2022 issued by the Government of Karnataka is annexed herewith and marked as **Annexure P1(pages** 182-192)
10.02.2022	The High Court of Karnataka passed an interim order in respect of WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022 AND WP NO.3044/2022

	and held that the interest of students would be better served by their returning to the classes than by the continuation of agitations and consequent closure of institutions and requested the State Government and all other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Further it was ordered to restrain all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom, until further orders.
16.02.2022	The Government of Karnataka issued another GO in pursuance of the interim order passed by the High Court of Karnataka wherein it was stated thus: "Pending consideration of all these petitions, we restrain all students from wearing their religion or faith in saffron shawls (Bhagwa), scarfs, hijabs, religious flags or the like within the classroom, until further orders. We make it clear that this order is confined

	to such institutions where the College Development Committees have prescribed the student dress code/uniform". A true copy of the G.O dated 16.02.2022 bearing no.MWD02MDS2022 issued by the Government of Karnataka is annexed herewith and marked as **Annexure P2(pages** 193-194)
15.03.2022	Vide the impugned judgment the High Court upheld the Karnataka Government's Order dated 05.02.2022 banning *Hijab*/Headscarf's in educational institutions and held that *Hijab*/Headscarf's are not a part of essential religious practice in Islam, and dismissed the Writ Petitions and other connected petitions in limine.
29.04.2022	Hence the present SLP

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)

2

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,

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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

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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

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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

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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

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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.

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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)

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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

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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

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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

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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

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

II. BROAD CONTENTIONS OF PETITIONERS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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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

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(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

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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

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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

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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

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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

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'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

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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

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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

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

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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*

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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

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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

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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.

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SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

[60] (1959) 1 SCR 996

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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 *sārva dharma samabhāava and dharma nirapekshata*. The Apex Court in *INDIRA NEHRU*

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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

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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.*

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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..."

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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

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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

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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.

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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

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

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

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

[66] 354 US 436 (1957)

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

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

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

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

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

[67] 1971 SCR (2) 446

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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

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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

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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*

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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***

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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)

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"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.

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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:

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"...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

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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

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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.

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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*

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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

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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 Sūra 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

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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:

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> *"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 Ismā'īl 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."*

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(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

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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.*

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

[70] 2004 (1) JKJ 418

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

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

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

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

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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

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

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

[71] (2016) SCC Online Ker 487

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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

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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.

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(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

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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

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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'*,

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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*

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[73] (1901) A.C. 495

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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.

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(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

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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

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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

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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

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'...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

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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..."

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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

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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

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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.

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

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

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

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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)

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> *"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.*

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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

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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.

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(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*

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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...".*

[83] (1985) 1 SCC 641

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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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*

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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

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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*

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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*

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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.*

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EISNER[86], *"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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[86] 245 U.S.418 (1918)

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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.

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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

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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 ..."*

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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

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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 bhaguwa or such other religious symbols*, and therefore, the alleged act of the respondents in seeking adherence to the school discipline & dress code cannot be faltered. Absolutely no case is made out for granting the prayers or any other reliefs on the basis of these pleadings. The law of *Quo Warranto* is no longer in a fluid state in our country; the principles governing issuance of this writ having been well defined vide UNIVERSITY OF MYSORE vs. C.D. GOVINDA RAO[89] . For seeking a Writ of this nature, one has to demonstrate that the post or office which the

[89] AIR 1965 SC 491

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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

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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

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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

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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

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2022

(Against the Final Judgment & Order dated 15.03.2022 in Writ Petition No. 2347 of 2022 (GM-RES) passed by the High Court of Karnataka at Bengaluru)

[WITH PRAYER FOR INTERIM RELIEF]

IN THE MATTER OF:-

BETWEEN	POSITION OF PARTIES	
	High Court	Supreme Court
Advocate Thamanna Sulthana A. J., President, Girls Islamic Organisation, D/o Jaleel A. S, Areepurath (H), Velayanad P.O Vellangallur -680 662 Thrissur, Kerala.	Not Party	Petitioner
VERSUS		
1. State of Karnataka, Represented By the Principal Secretary, Department of Primary and Secondary Education	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	Contesting Respondent No.2
3. District Commissioner, UDUPI, District, Manipal, Agumbe- UDUPI Highway, Eshwar Nagar, Manipal, Karnataka-576104	Respondent No.3	Contesting Respondent No.3
4. The Director, Karnataka Pre-University Board, Department of Pre-University Education Karnataka, 18th Cross Road, Sampige Road, Maleswaram, Bengaluru-560012.	Respondent No.4	Contesting Respondent No.4
5. Smt. Resham, D/o. K. Faruk, Aged about 17 years, Through Nest 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	Performa Respondent No.5

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.

MOST RESPECTFULLY SHOWETH:

1. The Petitioner seeks leave to appeal against the final Judgment and order dated 15.03.2022 in Writ Petition No. 2347 of 2022 (GM-RES) passed by the High Court of Karnataka at Bengaluru wherein the High Court has upheld the Karnataka Government's impugned Order dated 05.02.2022 banning *Hijab*/Headscarf's in educational institutions and held that *Hijab*/Headscarf's are not a part of essential religious practice in Islam, thereby dismissing the Writ Petitions and other connected petitions in limine.

2. **Questions of Law**:-

a) Whether the wearing of Hijab/Headscarf of the Muslim girl students is an essential religious practice and protected under Article 25 of the Constitution?

b) Whether the wearing of Hijab/Headscarf is protected under Article 25 as a right to freedom of conscience of an individual?

c) Whether the right to wearing of Hijab/Headscarf of Muslim girl students ought to be protected under Article 19 (1)(a) as a right to freedom of their expression?

d) Whether the Impugned Judgment violates the principle of freedom of religion as established by this Hon'ble Court in the

Constitutional Bench Judgment of **Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954 AIR SC 282)** (the "Shirur Mutt Case")?

e) Whether the Impugned Judgment goes against the law laid down by this Hon'ble Court in **Bijoe Emmanuel v. State of Kerala (AIR 1987 SC 748)?**

f) Whether the High Court by allowing the GO to continue has forced homogeneity upon the Muslim girl students and the same is against the Constitutional Bench Judgment on Privacy in **K.S Puttaswamy v. Union of India (2017) 10 SCC 1?**

g) Whether the GO is manifestly arbitrary as it contrary to the Karnataka Education Act?

h) Whether the GO violates Article 15 as it directly discriminates against Muslim girl students?

that the defendant is trying to refuse the contract and hence he issued Ext. A2 and against Ext. A2, and A3 is also concerned. So it is found that actually the suit is within the limitation period as prescribed by Article 54 of the Limitation Act and hence the point No.1 is found infavour of the plaintiff and against the defendant. So the suit is within the limitation period and there does not barred by limitation as claimed by the defend.

16. **ISSUE No.1:-** The case of the plaintiff before the court as per the evidence of PW1 is that as per Ext. A1 he has paid 1lakh as advance as part of the sale consideration for the purchase of the plaint schedule properties from the defendant on 8.11.93. But the defendant has committed defaulted the performance of his part of contract and hence the plaintiff filed the suit when he received information that defendant is voluntarily and intentionally refused to perform the contract. And according to plaintiff he was ready and

4. **DECLARATION IN TERMS OF RULE 5:-**

Certified that the Annexures P-1 to P-2 produced along with the Special Leave Petitions are the copies of the pleading/documents, which formed part of the records of the case in court below against whose order the leave to appeal is sought for in this petition.

5. **GROUNDS:-**

A. The High Court has failed to note that the right to wear a Hijab is protected as a part of the right to freedom of conscience under Article 25 of the Constitution. Further, it is pertinent to note that the right to freedom of conscience is essentially an individual right, and the test of "Essential Religious Practice" is not necessary to determine the same.

B. The Government of Karnataka, in a duplicitous act of benevolent patriarchy, claimed to represent the concerns of Muslim women who don't want to wear the hijab, have committed grave error and curtailed

the rights of the Muslim girl students choosing to wear a hijab in an extremely disrespectful and humiliating fashion. The High Court has further committed grave error while sanctifying this claim.

C. That the High Court has gone against the dictum of the Constitutional Bench Judgment of this Hon'ble Court in **Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (1954 AIR SC 282)** (the "Shirur Mutt Case"). Wherein this Hon'ble Court has held:

"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 or 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.

The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression " practice of religion " in Article 25."

D. That the High Court has failed to protect the practice of religion as protected by Article 25 of the muslim girl students and thus the impugned judgment is erroneous. The High Court ought to have taken a practical approach rather than a pedantic approach and protected the rights of the girl students.

E. That the High Court ought to have accepted the submission of the muslim girl students when they submitted that the hijab was a part of practice of their faith and essential to them. It is not for the High Court to sit in judgment of whether it is essential for the person practising it or not. That this approach of the High Court to judge a practice which has been conscientiously and in a bona fide manner been followed by the Petitioners, falls squarely against the law laid down by this Hon'ble Court in **Bijoe Emmanuel v. State of Kerala (AIR 1987 SC 748)** wherein this Hon'ble Court held:

"In Ratilal's case we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations In Jarnshedji v. Soonabai, 23 Bomaby ILR 122:

"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 judgement on that belief, he has no right to interfere with the conscience of a doner who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

We do endorse the view suggested by Davar J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Art. 25 but subject, of course, to the inhibitions contained therein."

F. That the 1954 Constitutional Bench Judgment in the Shirur Matt case provided

the principle of the test of essential religious practice and the same has been relied upon by the High Court in the Impugned Judgment. But the Shirur Mutt Judgment provided a very wide and all encompassing definition of religion and what constitutes as an essential practice. Unfortunately the High Court has followed that decision without fully understanding the definition of religion as defined in the said judgment because if that were the case then the High Court would have seen that the practice of hijab is an essential practice followed by the muslim girls who conscientiously and in a bona fide manner believed and followed the said practice and that alone makes it an essential practice and therefore qualifies the test set out in the Shirur Matt case. Therefore the High Court has relied upon a judgment without fully understanding the said judgment and should be struck down.

G. That vide the impugned judgment, the High Court cites examples of balancing rights, such as the uniform prescribed in Kendriya Vidyalayas which allows for the headscarf and turban in a prescribed colour, only to then dismiss it as militating against the very concept of the school uniform. After concluding that the hijab is not a part of the essential practice of Islam and the right to wear it is not protected under Article 25, the court concluded that the right to wear a hijab is at best a "derivative right" which can be circumscribed "consistent with discipline & decorum" in what it calls "qualified public places like, like schools, courts, war rooms, defence camps, etc."

H. That this approach to force homogeneity upon the muslim girl students falls squarely against the Constitutional Bench Judgment on Privacy in **K.S Puttaswamy v. Union of**

India (2017) 10 SCC 1. Wherein this Hon'ble Court held that individual autonomy i.e the ability of an individual to make choices and decide how to develop their personality,

lies at the core of the concept of privacy. The Hon'ble Justice D.Y. Chandrachud speaking for four judges specifically highlighted:

"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."

I. Vide the GO the Respondent State has specifically targeted and undermined the individual dignity and privacy of the Muslim girl students and aimed to suppress the diversity brought by their act of preserving their culture with a bogus and highly arbitrary claim that their practices threaten the peace of the institution.

J. It is submitted that the dismissal by the court of any viable solution between the

interest of the State to prescribe a uniform and the interests of the individual to manifest their faith or to express their identity via their dress is highly erroneous and against right to life and liberty, right to dignity and against the principles of natural justice.

K. The High Court ought to have shown 'reasonable accommodation' and allowed for students to, in addition to the uniform, wear a hijab of the colour of the 'prescribed dress code'. However, the High Court erroneously held that any such accommodation "would establish a sense of 'social-separateness'" and would "offend the feel of uniformity which the dress code is designed to bring about amongst all the students regardless of their religion & faiths."

L. That the High Court failed to notice that "the sense of social separateness" and the offence to "the feel of uniformity which the

dress code is designed to bring about amongst all the students regardless of their religion & faiths" has actually been brought about as a result of the introduction of the GO. Since the said GO has been released, it has resulted in tension, segregation of muslim girl students and divide among the students, parents and people in general. That the effect of the GO has been exactly opposite of what it has claimed to achieve.

M. That the High Court erred in holding that if Hijab as a practice is not followed by most of the people practicing Islam in India then Hijab is not an essential religious practice. The same is problematic way of justifying the GO as the majority or minority of practice does not determine the essentiality of that practice. That in the case of Kirpan which is essential to the Sikh religion, and yet the majorty of the Sikhs do not carry the kirpan with them at all times. Thus, just

because the vast majority of Sikhs do not wear a kirpan does not mean it is not essential to their religion. It is therefore an erroneous approach taken by the High Court to disregard the rights of the Muslim girl students to practice their faith. If that practice is essential for them, then in that case, what the majority or minority does should not matter, what the person believes in bonafide should be the only reason since it is that individual that is practicing it and thus is protected under Article 25 of the Constitution.

N. It is submitted that the idea of a 'derivative right' has no constitutional sanction, neither does the language of a 'qualified public place'. Both concepts aim to dilute the freedom of religion, the right to expression, and the right to dignity.

O. The Vienna Declaration states that human rights are "universal, indivisible and

interdependent and interrelated". There is no concept in human rights law of one right having a lesser status than another right or of a right getting diluted based on the location where it is exercised. Further, the idea that schools, courts, war rooms and defence camps are somehow of a similar nature and rights melt away when one is in these spaces enjoys no constitutional sanction.

P. The High Court has also blithely diluted the constitutional requirement that the Government must show that its action of issuing the notification was a reasonable exercise of its power. While the impugned judgement concedes that the Government Order is "hastily issued", the manifest arbitrariness in the notification is casually brushed aside as a "feeble ground".

Q. It is submitted that when a statute or notification is to be tested on grounds of

'manifest arbitrariness' as per this Hon'ble Court's decision in **Shayara Bano v. Union of India (2017) 9 SCC 1**, what is required to be shown is that there is a "determining principle" underlying the regulation, and the regulation is not promulgated either "capriciously" or "excessively".

R. It is also submitted that, if one must implement uniforms for the purpose of creating uniformity, then the same should be done across the board. The implementing authority cannot allow someone to wear a bindi or have sacred threads around their wrist or even a turban, when the same authority insisted on removal of Hijab of Muslim girls students. That this act by the Respondent State is blatantly discriminatory and aimed to single out and traumatise Muslim girl students, which it has sadly, succeeded in achieving.

S. The High Court has failed to note that the Indian legal system explicitly recognises the wearing / carrying of religious symbols. It is pertinent to note that Section 129 of the Motor Vehicles Act, 1988, exempts turban wearing Sikhs from wearing a helmet. Order IX, Rule 8 of the Supreme Court Rules makes a special provision for affidavits that are to be sworn by pardanashin women. Furthermore, under the rules made by the Ministry of Civil Aviation, Sikhs are allowed to carry kirpans (knife) onto aircraft.

T. That the High Court failed to appreciate the contention that right to wear hijab comes under the ambit of right to privacy under Article 21 and right to freedom of expression under Article 19(1)(a) of the Constitution.

U. The impugned Government Order has apparently cited an order of this Hon'ble Court in ***Asha Ranjan and Others vs***

***State of Bihar and Others* in (2017) 4 SCC 3971,** according to which larger public interest prevails upon individual interest not by negating the individual rights but by upholding larger interests. Relying on the same principle, the Government Order claims to ensure the relationship between institutions and students. This indirect ban on the wearing of hijab by Muslim girl students in their colleges flies in the face of clear legal principles laid down by the courts on various occasions.

V. In the case of *Asha Ranjan v State of Bihar (Supra)*, in which the State Government's directive takes shelter, the factual matrix was different. The petitioner, in that case, sought the transfer of the cases pending against the accused Shahabuddin, from Siwan Jail to jail in Delhi and conducting of the trial through video conferencing, in view of the political influence wielded by him. The

petitioner's husband, a journalist, was allegedly shot dead by the henchmen of the accused, as revenge for exposing the latter's crimes and the investigation of the case was entrusted with the CBI. One is at a loss to understand how this Hon'ble Court's observations in this case in the context of the accused's right to a fair trial being balanced with victim's rights, could be relied upon to justify the ban on wearing of hijab by Muslim girls within their schools.

W. *In* ***Bijoe Emmanuel v. State of Kerala*** **[(1986)3 SCC 615]**, this Hon'ble Court held: *"whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of*

Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do". Further this Hon'ble Court held, *"Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Article 25".* This Hon'ble Court in *Bijoe Emmanuel* also reminded that: *"Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it".*

X. It is submitted that insisting upon the removal of *hijab* in the educational institutions is impermissible, as being violative of the fundamental rights guaranteed under Article 25 of the Constitution and against the law laid down by this Hon'ble Court in ***Sri Venkataramana Devaru vs. State of Mysore*** **[1958 SCR 895]** and **Indian Young Lawyers Association vs. State Of Kerala (2019) 11 SCC 1.**

Y. **The Government Order is contrary to the Karnataka Education Act and has led to tension and discord in the college and is therefore against the purpose it claims to achieve**: The Karnataka Education Act states that all regulation relating to discipline and standards aims at "cultivating a ...secular outlook through education".

Z. Decades of Indian case law on secularism emphasises that secularism entails a respect for religion, a disavowal of any anti-religious state position, the preservation of India's 'composite culture'SR Bommai v Union of India (1994) AIR 1918 demonstrates concern for religious communities and individuals (particularly minorities), and supports the equal public presence of religion.

AA. The Act's aim to further secularism as understood in the Indian Constitution is also evident in the other provisions of the Act discussed further. Section 7 (2) (vi) anticipates the Government prescribing curricula in respect of fundamental duties including to 'value and preserve the rich heritage of our composite culture'. In failing to show respect for the practices of religious minorities and valuing our composite

culture, the Government and colleges act contrary to the stated purpose of the Act.

BB. Indian constitutional secularismdiffers dramatically from these other models of secularism viz the US and French models. It does not require the sanitisingof the public sphere from religious influence and rather is "celebratory" of religious diversity, unlike some other models of secularism. The celebratory nature of Indian secularism - and its inclusiveness of religious dress - is demonstrated by the specific protection offered to the carrying and wearing of the Sikh kirpan under Section 25 of the Constitution.

CC. Section 5 of the Act shows special concern for weaker sections of society (which includes the young women affected by the college and Government actions) and directs the state to promote their education. Section 5 reads: Promotion of education of the

weaker sections and the handicapped.- The State Government shall endeavour to promote the education of the handicapped, backward classes and the weaker sections of the society including the economically weaker sections thereof and in particular of the Scheduled Castes, Scheduled Tribes with special care by adopting towards that end such measure as may be appropriate. The state and college's actions which create obstacles to the education of girls and women wearing hijab, particularly Muslim girls and women, brazenly contradicts the Act's directive to promote their education.

DD. Section 39 of the Act indicates that the Act aims for educational environments to be tolerant, sensitive, welcoming and inclusive of all religious practices and views:

39. Withdrawal of recognition.- (1) Where any local authority or the Governing Council of any private educational institution,- (c)

directly or indirectly encourages in the educational institution any propaganda or practice wounding the religiousfeelings of any class of citizens of ... the competent authority may, for reasons to be recorded in writing, withdraw the recognition of the institution....

The actions of the colleges clearly amount to practices which wound the religious feelings of Muslim citizens. The impugned Government Order dated 05.02.2022 is propaganda that wounds the religious feelings of Muslim citizens by singling out and denouncing a religious practice and mischaracterising the position of the Courts on the practice:

"However, it has come to the notice of the Department of Education that in some institutions, students are following practises as per their religion, which is adversely affecting equality in such schools and

colleges... As the Supreme Court and various High Courts have held that restricting students from coming to school wearing headscarfs or head covering is not in violation of Article 25 of the Constitution, and after carefully examining the rules under Karnataka Education Act 1983, the government issues the following Order..."

EE. The Act's purposes also include regulating colleges in a way that makes accommodation for religious views and practices. This is indicated by Section 15 (b) which, for instance, makes allowances for children to be excused from attendance from a school in which "religious instruction of a nature not approved by his parent is compulsory." The impugned Government Order, on the other hand, has as a stated purpose: the prohibition of a minority religious practice (hijab). This is an improper purpose, which makes the impugned

Government Order unlawful.Moreover, the actions of the colleges, under the supposed authority of the impugned Government Order, are contrary to the Acts' purposes of creating an educational environment tolerant, sensitive, welcoming and inclusive of all religious practices and views.

FF. Further, Section 39 of the Act also indicates that the Act aims for non-discriminatory access to education, while the actions of the Government and colleges thwart this purpose by discriminating against Muslim girls and women who wear hijab: 39. Withdrawal of recognition.- (1) Where any local authority or the Governing Council of any private educationalinstitution,- (b) denies admission to any citizen on ground of religion, race, caste, language or any of them; ... the competent authority may, for reasons to be recorded in writing, withdraw the recognition of the institution.

GG. **The impugned Government Order is not saved by Article 15 (3) and is not otherwise justified:** Article 15 (1) prohibits direct as well as indirect discrimination. The impugned Government Order violates both prohibitions. The Government Order violates the prohibition on direct discrimination on grounds of religion, and ongrounds of religion intersecting with sex under Article 15 (1).

HH. Article 15 (1) prohibits the state from discriminating against a citizen on "grounds only of religion, ... sex, or any of them." This prohibition of discrimination interdicts direct as well as indirect discrimination. Direct discrimination refers to explicitly classifying between persons on a prohibited ground.

II. Indirect discrimination, refers to a facially neutral provision that nonetheless has a disproportionate impact along prohibited

grounds.

The impugned Government Order violates the prohibition on direct discrimination on grounds of religion, and on grounds of religion intersecting with sex. While the operative part of the Government Order does not mention religion or sex in the context of the dress code, the preamble to the impugned Government Order makes it explicit that the aim of the Government Order is to target headscarves worn by Muslim women.

JJ. The Government Order states that it has been promulgated in response to the concern that "in some institutions, students are following practises as per their religion which is adversely affecting equality in such schools and colleges." The impugned Government Order then goes on to state (wrongly) that "As the Supreme Court and various High Courts have held that

restricting students from coming to school wearing head scarfs or head covering is not in violation of Article 25 of the Constitution...". Thus, the concern of the Government in promulgating the Government Order is the headscarf or head covering worn as part of religious attire. As such, the Government Order is expressly targeted at persons belonging to religions that mandate the wearing of headscarves and head coverings as part of their attire. On its face, this would include Muslims wearing the hijab or skull caps, and Sikhs wearing turbans, amongst others.

KK. It is submitted that, the Government Order targets Muslim girls who cover their heads as part of religious observance. As such it violates the prohibition on intersectional discrimination on grounds of religion and sex. The Government Order cites certain court decisions in support ofthe proposition

that restrictions on headscarves do not violate Article 25. All these decisions pertain to female Muslim studentswho were restricted from wearing a head scarf in school. The other decisions that the Government Order cites refer to the general utility of uniforms in educational institutions, but those cases do not examine whether the imposition of the dress code impinges thereligious rights of the petitioner, and in fact the petitioner did not seek to assert such a right at all. The intent behind the Government Order canalso be gauged from the fact that the entire justification offered by the Government during the hearings in the matter pertainedto the application of the Government Order to Muslim girl students in schools and colleges across the state. The Attorney General for Karnatakaadmitted in the hearings that the Government Order was promulgated in response to Muslim girls

asserting their right to wear the hijab to schools and colleges. The ban has also been applied expressly against the hijab.

LL. It is submitted that the wearing of other religious attire, including Sikh turbans, kadas, religious threads, sindoor etc, which marks the religion of the wearer were not intended to be excluded,and have, in practice, not been excluded by this Government Order. Taken together, the explicit intent of the Government Order, and its focus in restricting the dress code is to discriminate on grounds of religion, and in particular to target Muslim girl students who wear the headscarf to their educational institutions. The Government Order seeks to prescribe a common uniform and restrict Muslim girls from "following practices as per their religion" and wear a headscarf or head covering. Therefore this Government Order violates the prohibition in Article 15 (1),

Constitution of India against discriminating on grounds of religion, and on grounds of religion coupled with sex since the Government Order, by its express reasoning and by Government admission, seeks to impose restrictions along prohibited grounds.

MM. Further it is submitted that the Government Order is not saved by Article 15 (3) and is not otherwise justified. Article 15 (3), Constitution of India states that "Nothing in this article shall prevent the State from making any special provision for women and children."

NN. It is pertinent to note that the Government Order seems to be making a special provision for women and children and is thus protected by this clause. However, Article 15(3) enables the state to make special provisions for women and children in order to empower and strengthen them. A law

under this provision cannot have the effect of disadvantaging the very groups for whose benefit the law is being made.

OO. In Government of AP v PB Vijayakumar, AIR 1995 SC 1648. This Hon'ble Court held that "The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that centuries, women of thiscountry have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio- economic backwardness of women and to empower them in a manner that would bring about effective equality between men and womenthat Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women.

PP. It is submitted that a law that restricts women's access to education or denies them the right to assert their religious identity cannot empowerwomen or strengthen their status.

In Anuj Garg v Hotel Association of India, (2008) 3 SCC 1, this Hon'ble Court struck down a provision that prohibited women from working in places that served liquor. Rejecting the argument that such a provision was protected under Article 15 (3), the Court heldthat:

"It is to be borne in mind that legislations with pronounced "protective discrimination" aims, such as this one, potentially serve as double edged swords. ...Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. .... No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a

fundamental tenet which cannot be compromised in the name of expediency untilunless there is a compelling state purpose. Heightened level of scrutiny is the normative threshold for judicial reviewin such cases.

While striking down the law, the Court also cautioned the state that "instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach."

QQ. Building on this jurisprudence, in Joseph Shine v Union of India,(2019) 3 SCC 39 this Hon'ble Court held that:

"Article 15(3) encapsulates the notion of 'protective discrimination'. The constitutional guarantee in Article 15(3) cannot be employed in a manner that entrenches paternalistic notions of 'protection'. This latter view of protection only serves to place women in a cage.

Article 15(3) does not exist in isolation. ... Neither Article 15(1), nor Article 15(3) allow discrimination against women. Discrimination which is grounded in paternalistic and patriarchal notions cannot claim the protection of Article 15(3). "

RR. Thus, Article 15 (3) cannot be used to justify a law that imposes restrictions on women in the exercise of their rights (such as to education, privacy, autonomy, and religious freedom) in the guise of benefiting them. Even otherwise, a law that seeks the shelter of Article 15 (3) in order to discriminate against women for their own benefit, i.e.,engage in "protective discrimination," has to satisfy the test of proportionality. As stated in **Anuj Garg v Hotel Association of India, (2008) 3 SCC 1** in evaluating whether a protective discrimination law is saved by Article 15 (3), the Court's task is to determine whether the measures furthered

by the State in form of legislative mandate,to augment the legitimate aim of protecting the interests of women are proportionate to the other bulk of well-settled gender norms such as autonomy, equality of opportunity, right to privacy at al. The bottom-line in this behalf would a functioning modern democratic society which ensures freedom to pursue varied opportunitiesand options without discriminating on the basis of sex, race, caste or any other like basis. In fine, there should be a reasonable relationship of proportionality between the means used and the aim pursued.

SS. This Hon'ble Court added that such a measure which seeks the protection of Article 15 (3) requires to be strictly scrutinised by the Court, and "should not be only assessed on its proposed aims but rather on the implications and the effects."

TT. Likewise, indirect discrimination can be justified if the impugned measure pursues a legitimate aim through proportionatemeans. In **Lt. Col. Nitisha v Union of India AIR 2021 SC 1797** this Hon'ble Court stated that:

"While assessing the justifiability of measures that are alleged to have the effect of indirect discrimination, the Courtneeds to return a finding on whether the narrow provision, criteria or practice is necessary for successful job performance. In this regard, some amount of deference to the employer/defendant's view is warranted. Equally, the Court must resist the temptation to accept generalizations by defendants under the garb of deference and mustclosely scrutinize the proffered justification. Further, the Court must also examine if it is possible to substitute the measures with less discriminatory

alternatives. Only by exercising such close scrutiny and exhibiting attentiveness to the possibility of alternatives can a Court ensure that the full potential of the doctrine of indirect discrimination isrealized and not lost in its application."

UU. Adapting this dictum to the present context, to justify the indirect discrimination perpetrated by the Government Order, the state has to show that the measure is necessary to meet educational objectives, and that it is not possible to substitute the measure withless discriminatory alternatives.

VV. **The banning of the hijab and other religious clothing invades the sanctity of bodily privacy and dignity:** In K.S Puttaswamy v Union of India(2017) 10 SCC 1, both Chandrachud J and Nariman J also held that privacy of the body entitles the individual to safeguards regarding state

intrusion into physical aspects of personhood.1 Chandrachud J. held:

"The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of theguarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physicalaspects of personhood... When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.

WW. Therefore this dignity-rich understanding of the right to privacy endorsed by this Hon'ble Court guarantees all individuals protection from state intrusion into the privacy and integrity of the body. The Court has also clearly held that the physical aspect of privacy

might be especially crucial when it intersects with gender and extends the protection of right to privacy to physically intimatedecisions such as family, marriage, procreation and sexual orientation.

XX. To many Muslim women, the wearing of the hijab in public spaces enhances their dignity by creating a sanctified personal space of the body. Any prohibition on wearing religious symbols within schools and colleges in Karnataka before and in pursuance of the Government of Karnataka order dated February 5, 2022 will undoubtedly require Muslim women to now suddenly exist in these public spaces without the hijab. We have already seen images of Muslim women being required to disrobe partially or remove their hijab before entering school and college premises. Such a requirement by the state to appear what to the wearer is semi-clothed in public spaces, or to disrobe to an

extent before entering schools and colleges, can trigger personal humiliation and indignity and invades the basic guarantee of privacy of the body. It interferes in an area of extremely intimate personal choice. It is therefore violative of the fundamental right to dignity and privacy of Muslim women. The same applies to persons of other religions to whom being forced to take off their religious symbols is an act of deep personal and religious humiliation.

YY. This does not imply that the state or schools are prohibited from prescribing any sort of uniform, but rather that the right ofprivacy and dignity of individuals should be accommodated within the requirements of uniformity and therefore any uniforms prescribed must be justified by the state in accordance with the doctrine of proportionality. In the case of Muslim women in particular, their religious beliefs

and humiliation at being asked to disrobe intensify the degree of the privacy and dignity

violation, requiring stronger justifications from the state.

ZZ. Therefore, since the ban on the hijab and other religious clothing in educational institutions gravely infringes the rights to privacy and dignity of individuals, it must be justified by the state applying the proportionality test.

AAA. **The Government Order is Against Right to Education:** In Mohini Jain Mohini Jain v State of Karnataka (1992) 3 SCC 666 and Unni Krishnan Unnikrishnan v State of Andhra Pradesh (1993) 1 SCC 645, this Hon'ble Court recognised the right to education as part of the right to a dignified life under Article 21. In both cases, this Hon'ble Court recognised the importance of the right to education for the realisation of

all other rights under Part III of the Indian Constitution. In Unni Krishnan this Hon'ble Court observed,

"Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, ... that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. In Mohini Jain the importance of education has been duly and rightly stressed... In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the

Preamble to the Constitution cannot be achieved. The Constitution would fail.

BBB. **Government Order has created arbitrary barriers to access to education of Muslim girls:** The scope of the right to education under Article 21 includes the right to access free education between the ages of 6 and 14. After the age of 14, the right to access free education is circumscribed by the economic capacity of the state, but includes the right to access higher (university) education in private universities without payment of capitation fees. This is in recognition of the close link between the rights to education and equality, wherein this Hon'ble Court has emphasised equal access to education for all, and the removal of arbitrary barriers to education. In Mohini Jain, while striking downcapitation fees in universities as unconstitutional, this Hon'ble Court observed that:

"Capitation fee makes the availability of education beyond the reach of the poor. The State action in permitting capitation fee to be charged by state-recognised educational institutions is wholly arbitrary and as such violative of Article 14 ofthe Constitution of India."

6. **GROUNDS FOR INTERIM RELIEF:**

a) The impugned Order passed by the Government of Karnataka, taking away the rights of Muslim Students to wear Hijab, is in violation of Article 25 of Constitution of India. Right to wear Hijab is protected as a part of the right to conscience.

b) The Article 15(1) prohibits direct as well as indirect discrimination. The impugned Government Order violates both prohibitions.

c) Article 15(1) prohibits State from discriminating against a citizen on grounds

of religion, sex etc. The Government Order targets Muslim girls who cover their heads as part of religious observance.

d) That the impugned Government Order is not saved by Article 15(3) and is not otherwise justified. Article 15(3) states that "Nothing in this Article shall prevent the State from making any special provision for women and Children". Article 15(3) enables the State to make special provisions for women and Children in order to empower and strengthen them. But in the present case, it is having the effect of disadvantaging the very groups for whose benefit the law is being made.

e) A law that restricts women's access to education or denies them the right to assert their religious identity cannot empower women or strengthen their status.

f) Vide the GO the Respondent State has specifically targeted and undermined the

individual dignity and privacy of the Muslim girl students and aimed to suppress the diversity brought by their act of preserving their culture with a bogus and highly arbitrary claim that their practices threaten the peace of the institution

g) The High Court has failed to note that the Indian legal system explicitly recognises the wearing / carrying of religious symbols.

h) The Government Order is also contrary to the Karnataka Education Act as well and has led to tension in the Schools/Colleges and is therefore against the purpose it claims to achieve.

i) That the High Court failed to appreciate the contention that right to wear hijab comes under the ambit of right to privacy under Article 21 and right to freedom of expression under Article 19(1)(a) of the Constitution.

j) The impugned Government Order is gravely affecting the Right to Privacy as well as the right to Education.

7. **MAIN PRAYER:-**

It is therefore most respectfully prayed that this Hon'ble court be pleased to

(a) grant Special Leave to Appeal against the final Judgment and order dated 15.03.2022 in WP NO. 2347 OF 2022 passed by the High Court of Karnataka at Bangalore;

(b) Pass such further order and orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF**:

It is therefore most respectfully prayed that this Hon'ble court be pleased to:

a) grant an ad- interim ex parteStay of the Operation of the final Judgment and Order dated 15.03.2022 in WP No. 2347 OF 2022 passed by the High Court of Karnataka at Bangalore.

b) pass an order staying the operation of the order dated 05.02.2022 passed by the Respondent No.1

c) pass such further order and orders as this Hon'ble Court may deem fit in the facts and circumstances of the present case.

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

DRAWN BY | FILED BY

(Haris Beeran) | (Pallavi Pratap)

Advocate | Advocate for the Petitioner

NEW DELHI

Drawn On :: 07.04.2022

Filed On :: 09.04.2022

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Special Leave Petition (c) No. of 2022

IN THE MATTER OF:-

Advocate Thamanna Sulthana A.J. ...Petitioner

Versus

State of Karnataka &Ors. ...Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Courts below 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 P-1 to P-2 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. The certificate is given by the Advocate as authorized by the Petitioner whose affidavit is filed in support of Special Leave Petition.

(Pallavi Pratap)

Date:-9.4.2022 Advocate for Petitioner

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Special Leave Petition (c) No.____ OF 2022

IN THE MATTER OF:-

Advoate Thamanna Sulthana A.J. ...Petitioner

Versus

State of Karnataka &Ors. ...Respondents

AFFIDAVIT

I, Thamanna Sulthana A J, Advocate, Aged 25 years, D/o Jaleel A S, President of Girls Islamic Organization (GIO) Kerala Chapter, Residing at Areepurath (H), Velayanad, P.O Vellangallur, Thrissur, Kerala Pin -680 662, do hereby solemnly affirm and state as follows:-

1. I am the Petitioner in the present Writ Petition and I am well conversant with the facts and circumstances of the case and such competent and authorized to swear upon this affidavit.
2. I state that the contents of the List of Dates at pages 8 to V and Special Leave Petition contained in paras 1 to 8 at pages 130 to 148

and application are true to my knowledge and information derived from the records of the case made is true as per the legal advice received and believed by me.

3. I say that the Annexures P-1 to P-2 at pages 187 to 194 are true copies of the respective originals.

DEPONENT

VERIFICATION

Verified at Ernakulam on this the 6th day of April 2022, that the contents of paragraphs 1 to 3 of my above affidavit are true and correct to my knowledge and belief, that no part of it are false and nothing material has been concealed therefrom.

DEPONENT

AMEEN HASSAN K
ADVOCATE, KANJERI
Roll No: K/[illegible]/2018
Mob: 9961 90 96 20

Annexure-P,
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KARNATAKA GOVERNMENTS PROCEEDINGS

SUBJECT: Regarding dress code of Students of all schools and colleges in the State.

Read: 1) Karnataka education act 1983

2) Government Circular No 509 SHH 2013.
Dated: 31.01.2014

INTRODUCTION:

The above mentioned Circular No. 1 of the Government of Karnataka Act of 1983 passed in 1983 (1-1995) Article 7 (2) As explained in paragraph (5), the students of all the schools of the State of Karnataka shall act in the same manner as in the family and shall not be confined to any particular class. The government is empowered to issue appropriate directions to schools and colleges under section 133 of the present Act.

In the above mentioned circular No. (2), Pre university education is an important stage in a student's life. Development committee are being set up in all the schools and colleges in the state in order to comply to all the notices issued by the government and to ensure appropriate utilization of the funds and to develop the infrastructure and to protect and improve the quality of education. It is entrusted to discharge functions in the schools and colleges as per the decision of the respective development committees.

Be it any supervision committee in educational institutions (Govt schools and colleges - SDMC, in Private college, parents and teacher's committee and such institution/s administrative department) in an intention to provide conducive educational environment they should formulate and execute the rules which are in consonance with the government policies. Such committee's decisions will be regarding to their respective schools and colleges.

Student programs will be conducted for the convenience of all the boys and girl's students to take part and bring in uniformity, however in certain educational institution it is noticed that several students are following the practice as per their religion, due to which equality and unity is being affected in the schools and colleges which is brought to the attention of the education department.

In the cases before the Supreme Court of the country and the High Courts of various States relating to the Uniform Dress Code instead of the Personal Dress Code, the following are the decisions as follows:

1) The High Court of the State of Kerala in WP No 35293/2018 Dated: 04-12-2018 The Court has stated the principle stated in Order-9 as follows:

"9. The Apex Court in Asha Renjan & others v / s State of Bihar & others [(2017) 4 SCC 3971 When the Balance Test is accepted, the competing rights have been taken up and the individual interest must have a larger public

interest, thus conflict to competing rights can be resolved not by negating individual rights but by upholding larger rights to remain to hold such relationship between institution and students"

2) In the case of Fatima Hussein Syed vs. India Education Society and others, (AIR 2003 Bom 75), a similar issue has arisen in the Kartik English School, Mumbai, which has been examined by the Bombay High Court. The Principal of this school directed the applicant not to wear a head scarf or cover his head in violation of Article 25 of the Constitution. Finally, it was decided that it was not violation of article 25 of constitution India.

3) By considering the above mentioned decision rendered by the supreme court the Madras High Court also V.Kamalamm Vs Dr.MGR Medical University. Tamilnadu and others. In the decision the court has upheld the decision to alter the dress code.

As per the above mentioned decision rendered by the Hon'ble supreme court and by various High courts, to direct not to wear headscarf's and also not to allow covering of the head is not violation of article 25 and also the government has after thorough contemplation of Karnataka education act 1983 has ordered as hereunder.

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Government Order No: EP14SH2022 Bangalore,

Date: 05.02.2022.

On the basis of the factors mentioned in the circular, by utilizing the powers enshrined in Karnataka education act 1983, under subsection 133 (2), it is ordered in all the Government schools to mandatorily abide to the uniform which is prescribed by the Government. Private schools shall allow to wear only such uniforms which are prescribed by their respective administrative committee.

Colleges coming under the jurisdiction of pre university education board shall wear the uniform as per the respective college development committee (CDC) as administered. In a circumstance where the uniform is not prescribed by the governing body, it is directed to wear such uniform which protects equality and solidarity and which will not affect the public peace.

By order of the Governor of Karnataka
and by his name
Sd/-
N (Padmani SN)
Under Secretary to Government
Department of Education (Pre-University)

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KARNATAKA GOVERNMENT

No: EP 14 SHH 2022
officer

Karnataka Government

Multi Storey Building

Bangalore, dated
05.02.2022

AMENDED/ ADDITIONAL ORDER

In the same Numbered Order dated 05.02.2022 in the part of introduction in 2nd line of first paragraph Instead of "Section 7(2)(5)" add "Section 7(2)(g)(v)"

In the preamble portion of the said order in 4th line of 9th paragraph instead of "Karnataka Education Act 1983 and rules made thereunder" add and insert "Karnataka Education Act 1983 Section 133 Sub Section (2) and Section 7 (1)(i), 7(2)(g)(v) and THE KARNATAKA EDUCATIONAL INSTITUTIONS (CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA ETC.,) RULES, 1995 under Rule 11"

In continuation of the paragraph 1 of the said order ADD Karnataka Education Act 1983 Section 133 Sub Section (2) and Section 7 (1)(i), 7(2)(g)(v) and as per Rule 11 of THE KARNATAKA EDUCATIONAL INSTITUTIONS (CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA ETC.,) RULES, 1995"

As per the order of the Governor of Karnataka
And by his name
Sd/-
(Padmini S N)
Under Secretary to Government
Education Department (Pre university)

CC to:

1. Chief secretary to Government, Karnataka Government, Vidhana Soudha, Bangalore.
2. Additional Chief Secretary to government, Grameena and Panchayat Raj department, Bangalore
3. General Secretary to Government, Social welfare department, Bangalore
4. General Secretary of Government, Department of Minority Welfare, Bangalore.
5. General Secretary of Government, Department of Women and Child Development, Bangalore,
6. General secretary to chief minister, Vidhana Soudha, Bangalore
7. Commissioner, Department of Public education, Bangalore
8. Director, Department of Pre University Education, Bangalore,
9. All the District Officers and District Magistrates
10. Chief Executive Officer of all District Panchayats of the State
11. Additional Commissioner, Public education Department, Kalaburgi/Dharwad
12. All Joint / Deputy Directors of the State, Department of Public Education.
13. All Joint / Deputy Directors, Department of Pre-Graduate Education
14. Respected Primary and Secondary Education and Sakaala Minister Private Secretary, Vidhana Soudha
15. Private Secretary to the Additional Chief Secretary of the Government, Department of Higher Education,
16. Private Secretary to the General Secretary to the Chief Secretary to Government, Department of Primary and Secondary education.
17. Additional / Deputy Secretaries to Government 1-2 Private Assistant
18. Additional copies

Annexure-P2

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Government of Karnataka

Order No. MWD 02 MDS 2022

Ministry

Vikasasudha, Bangalore

Dated:16.02.2022

Circular

Sub: Regarding the attendance of students in Schools wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom

The Hon'ble High Court of Karnataka at Bengaluru in W.P No2347/2022 passed an interim order dated 10.02.2022regarding the attendance of students in School. The operative part of the interim order reads as follows:

"... In the above circumstances, we request the state government and all their stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom, until further orders."

"We make it very clear that this order is confined to such institutions wherein the college Development

Committees have prescribed the student dress/uniform."

The above High Court Order applies to all educational institutions run by the Minority Welfare Department and Moulana Azad Model Schools (English medium).

In this backdrop it is been ordered that hijab, scarves, saffron shawls and other religious symbols in the classrooms are being forbidden to wear. The circular is issued after it has come to the notice that women students are attending classes in hijab.

Major P. Manivannan
Secretary for Minority Welfare,
Haj and Wakf Department

TC

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No. of 2022

In

Special Leave Petition (civil) No. of 2022

IN THE MATTER OF:-

Advocate Thamanna Sulthana.A.J ...Petitioner

Versus

State of Karnataka & Ors. ...Respondents

AN APPLICATION SEEKING PERMISSION TO FILE 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
Petitioner above-named:

MOST RESPECTFULLY SHOWETH:

1. The Petitioners seek leave to appeal against the impugned final judgment and

order dated 15.03.2022 in Writ Petition No. 2347/2022 (GM-RES) passed by the High Court of Karanataka at Bengaluruwherein the High Court has upheld the Karnataka Government's impugned Order dated 05.02.2022 banning *Hijab*/Headscarf's in educational institutions and held that *Hijab*/Headscarf's are not a part of essential religious practice in Islam, thereby dismissing the Writ Petitions and other connected petitions in limine.

2. The Petitioner herein is not a party to either of the Writ Petition filed before the Hon'ble High Court of Karnataka at Bengaluru. The Writ Petitions before the Karnataka High Court were filed by young Muslim women who had been arbitrarily shut out of their own school/college by

their own teachers. The Petitioner herein is the president of the Girls Islamic Organization (GIO) Kerala Chapter.GIO is a group of Muslim women aged between 15 and 30, working in around 23 states in India. In Kerala, with almost 10000 workers, it has been actively participating in the public sphere for the last three and a half decades. It focuses on the upliftment and development of Muslim girls in the society.

4. It submitted that the impugned order has deeply grieved the Petitioner and similarly placed women and therefore the Petitioner has approached this Hon'ble Court for relief.

5. Therefore, the Petitioner seeks the kind indulgence of this Hon'ble Court in allowing

the present application in the interest of justice so that the Petitioner may challenge the impugned order.

PRAYER

A. Pass an order granting the Petitioner permission to file special leave petition against impugned final judgment and order dated 15.03.2022 in Writ Petition No. 2347/2022 (GM-RES) passed by the High Court of Karanataka at Bengaluru.

B. Pass any further orders as this Hon'ble court may deem appropriate

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

Filed by:

(Pallavi Pratap)

Advocate for the Petitioner

New Delhi

Filed on:-09.04.2022

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No. of 2022

IN

Special Leave Petition (c) No. of 2022

IN THE MATTER OF:-

Advocate Thamanna Sulthana.A.J ...Petitioner

Versus

State of Karnataka & Ors. ...Respondents

AN APPLICATION FOE EXEMPTION FROM FILING CERTIFIED COPY OF IMPUGNED JUDGMENT

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

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MOST RESPECTFULLY SHOWETH:-

1. The Petitioner is filing the present Special Leave Petition against the impugned final judgment and order dated 15.03.2022 in Writ Petition No. 2347 of 2022 (GM-RES) passed by the High Court of Karanataka at Bengaluru wherein the High Court has upheld the Karnataka Government's impugned Order dated 05.02.2022 banning *Hijab*/Headscarf's in educational institutions and held that *Hijab*/ Headscarf's are not a part of essential religious practice in Islam, thereby dismissing the Writ Petitions and other connected petitions in limine.

2. That in the urgency involved in this matter the Petitioner filed this Special Leave Petition without filing the certified copy of the Impugned Judgment dated 15.03.2022

in Writ Petition No. 2347/2022 (GM-RES) passed by the High Court of Karnataka. The Applicant herein have placed digital copy of the Impugned Judgment from the website of High Court since there is an urgency in filing the present SLP. In view of the above it is respectfully prayed that this Hon'ble Court may be pleased to exempt the Petitioner from filing the certified copy of the Impugned Final Judgment. The Applicant undertakes to file the certified copy of the Final Judgment on a later stage if its necessary.

3. In the facts and circumstances of the case, it is in the interest of Justice, that the Petitioner herein above may kindly be exempted from filing certified copy of Impugned Final Judgment.

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PRAYER

It is therefore, humbly prayed that your Lordships may graciously be pleased to:

a) Exempt the Petitioner from filing certified copy of impugned Judgment and final Order dated 15.03.2022 in Writ Petition No. 2347 of 2022 (GM-RES) passed by the High Court of Karanataka at Bengaluru.

b) Pass such other orders which may deem fit and proper to the circumstances of the case

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

New Delhi
Filed on: 09.04.2022

(Pallavi Pratap)
Advocate for Petitioner