IN THE SUPREME COURT OF INDIA

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

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. 15413 OF 2022

Arising out of the impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in the Writ Petition bearing No. 2146 of 2022.

IN THE MATTER OF:

Manal and Another ...PETITIONERS

VERSUS

State of Karnataka and Others ...RESPONDENTS

WITH

IA NO. OF 2022

[AN APPLICATION FOR PERMISSION TO FILE SLP]

WITH

IA NO. OF 2022

[AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF IMPUGNED ORDER]

PAPER-BOOK

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ADVOCATE FOR THE PETITIONER: ANAS TANWIR

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2022

IN THE MATTER OF:

MANAL & Anr. …PETITIONERs

VERSUS

THE STATE OF KARNATAKA & Ors. …RESPONDENTs

WITH

OFFICE REPORT ON LIMITATION

1. The petition is /are within the time.

2. The petition is barred by time and there is delay of days in filing the same against order dated 15.03.2022 and petition for condonation of_____ days has been filed.

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

BRANCH OFFICER

Dated: 15.3.2022

PROFORMA FOR FIRST LISTING

IN THE SUPREME COURT OF INDIA

SECTION:

The case pertains to (Please tick/check the correct box):				
(a)	Central Act: (Title)			N/A
(b)	Section			N/A
(c)	Central Rule: (Title)			N/A
(d)	Rule No (s)			N/A
(e)	State Act: (Title)			N/A
(f)	Section:-			N/A
(g)	State Rule: (Title)			N/A
(h)	Rule No (s):			N/A
(i)	Impugned Interim order: (Date)			N/A
(j)	Impugned Final order/ Decree: (Date)			15.03.2022
(k)	High court: (Name)			HIgh Court of Karnataka
(l)	Names of judges			Hon'ble Chief Justice Ritu Raj Awasthi, Hon'ble Justice Krishna S. Dixit and Justice J. M. Khazi
(m)	Tribunal / Authority:(Name)			N/A
1.	Nature of matter (Civil / Criminal)			Civil
2.	(a)	Petitioner name		Manal and Anr,

	(b)	E-mail ID:		N/A
	(c)	Mobile phone number		N/A
3.	(a)	Respondent name		State of Karnataka
	(b)	E-mail ID:		N/A
	(c)	Mobile phone number		N/A
4.	(a)	Main category classification:		N/A
	(b)	Sub classification		N/A
5.	Not to be listed before			
6.	(a)	Similar disposed of matter with citation, if any, & case details		No similar Matter Disposed off
	(b)	Similar pending matter with case		No similar matter Pending
7.	Criminal matters: -			N/A
	(a)	Whether accused / convict has surrendered:		N/A
	(b)	FIR No.		N/A
	(c)	Date:		N/A
	(d)	Police station		N/A
	(e)	Sentence Awarded		N/A
	(f)	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
	(a)	Senior citizen >65 years		N/A
	(b)	SC/ST		N/A
	(c)	Woman / Child		N/A
	(d)	Disable		N/A
	(e)	Legal Aid case		N/A
	(f)	In custody		N/A
11.	Vehicle number (in case of motor accident claim matter):			N/A

ANAS TANWIR

Advocate for the Petitioner

SYNOPSIS AND LIST OF DATES

This instant Special Leave Petition is being preferred against the order and Judgement of the Hon'ble High Court of Karnataka wherein the Hon'ble High Court was pleased to dismiss the petition by passing an order without applying its mind.

The Petitioner most humbly submits that the Hon'ble High Court has erred in creating a dichotomy of freedom of religion and freedom of conscience wherein the Court has inferred that those who follow a religion can not have the right to conscience.

The Petitioner in this instant matter had approached the Hon'ble High Court for the purposes of seeking redressal for the violation of their Fundamental Rights against the **Government Order No: EP14 SHH 2022** passed by Respondent No. 1 on 05.02.2022, issued under Sections 7 and 133 of the Karnataka Education Act, 1983. The impugned Government Order directed the College Development Committees all over the State of Karnataka to prescribe a 'Student Uniform' that mandated the students to wear the official uniform and in absence of any designated uniform the students were mandated to wear an uniform that was in the essence of unity, equality and public order.

The Hon'ble High Court has failed to note that the Karnataka Education Act, 1983, and the Rules made thereunder, do not provide for any mandatory uniform to be worn by students. A perusal of the scheme of the Act reveals that it aims to regulate the institutions, rather than the students. Sections 03 and 07 of the said Act provide the State Government with the powers to *inter alia* regulate education, curriculum of study, medium of instruction, etc. However, neither of these provisions empowers the State Government to prescribe a uniform for the students.

The Petitioner herein submits that the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 ("1995 Rules") apply to primary education, and not pre-university colleges. Rule 11 allows institutions to specify a uniform. The same is reproduced below:

> *"11. Provision of Uniform, Clothing, Text Books, etc., (1) Every recognised educational institution* ***may specify*** *its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.*
>
> *(2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.*
>
> *(3) Purchase of uniform clothing and text books from the school or from a shop, etc., suggested by school authorities and stitching of uniform clothing with the tailor suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard."*

It is submitted that the 1995 Rules do not make it mandatory for a school / institution to prescribe a uniform. The same is left to the discretion of the school / institution. In the instant case, the respective institutions had not prescribed any uniform for their students.

The Petitioner submits that the Hon'ble High Court has failed to note that there does not exist any provision in law which prescribes any punishment for students for not wearing uniforms. Even if one were to presume that there existed a mandate to wear a particular uniform, there is no punishment prescribed in case a student does not wear the uniform. It is pertinent to note that Chapter XVII of the Act prescribes penalties for various offences, including impersonation during examinations, penalty for ragging, etc. Furthermore, Rule 15 of the 1995 Rules prescribes the penalties that can be levied for the violation of any provision of the Act or

the Rules by the institutions. However, there does not exist any provision in either the Act or the Rules thereunder that prescribes a punishment for students for not wearing an institution-prescribed uniform. Therefore, it is submitted that the action of the Respondents in prohibiting the students from accessing classrooms is devoid of any legal basis.

There is no provision in the Act or the rules allowing the formation of a 'College Development Committee'. Such a committee, even if formed, has no powers to regulate the wearing of a uniform, or any other matter in an educational institution.

The order dated 05.02.2022 issued by the State is beyond the scope of powers under Section 133 (2) of the Act. It seeks to supplant, and not supplement the provisions of the Act. It is humbly submitted that under Section 133 (2), the State Government can (a) issue directions to institutions; (b) such directions must be necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the rules made thereunder.

The notification issued by the State Government does not mention the objective or provision of the Act it seeks to achieve. Further, as has already been stated, there is no provision in the Act or in the rules, mandating uniforms. This being the position, the notification is beyond the scope of the powers under Section 133 (2). In any event, the notification seeks to create a new obligation. This is not permissible in light of the Judgement of this Hon'ble Court in *Kunj Behari Lal Butail v. State of H.P.,* (2000) 3 SCC 40.

> *"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act. 14. We are also of the opinion that a*

> *delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."*

The Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of the right to privacy under Article 21 of the Constitution of India. It is submitted that the freedom of conscience forms a part of the right to privacy. Reliance is placed on the judgement of this Hon'ble Court in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, wherein it was stated

> *"372. …While the right to freely "profess, practise and propagate religion may be a facet of free speech guaranteed under Article 19(1)(a), the freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty."*
>
> *"373. …The choice of appearance and apparel are also aspects of the right to privacy. The freedom of certain groups of subjects to determine their appearance and apparel (such as keeping long hair and wearing a turban) are protected not as a part of right to privacy but as a part of their religious belief. Such a freedom need not necessarily be based on religious beliefs falling under Article 25."*

Consequently, it is submitted that any infringement of such freedom of conscience has to be tested on the touchstone of the "triple test" as laid down in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, and reiterated in the case of *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1. The "triple test" requires that to constitute a valid infringement of privacy, there must be:

a. Existence of a Law;
b. A legitimate state interest;

c. Law must be proportionate.

In this case, neither the Act nor the Rules prescribe any uniform for students or prohibit the wearing of a Hijab. Therefore, the first requisite of the above-mentioned "triple test" – i.e., existence of a law, is not satisfied.

The Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of 'expression' and is thus protected under Article 19(1)(a) of the Constitution. It is submitted that clothing and appearance fall within the ambit of the right of expression guaranteed under Article 19(1)(a) of the Constitution, as was held by this Hon'ble Court in the case of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438. Further reliance is placed on the judgement of this Hon'ble Court in the case of *Jigya Yadav v. CBSE*, (2021) 7 SCC 535, wherein it was stated:

> *"125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1: (2019) 1 SCC (Cri) 1],* ***this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.****"*

The Hon'ble High Court has failed to address the discrepancy on part of the Respondents to maintain conditions conducive for the practice of freedoms as guaranteed under the Constitution. Such lackadaisical behaviour of the Respondent is against what was held by this Hon'ble Court in *Indibily Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436, wherein it was stated:

"50. The freedoms which are guaranteed by Article 19 are universal. Article 19(1) stipulates that all citizens shall have the freedoms which it recognises. Political freedoms impose a restraining influence on the State by carving out an area in which the State shall not interfere. Hence, these freedoms are perceived to impose obligations of restraint on the State. But, apart from imposing "negative" restraints on the State these freedoms impose a positive mandate as well. In its capacity as a public authority enforcing the rule of law, the State must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for the free exercise of speech and expression, the State cannot look askance when organised interests threaten the existence of freedom. The State is duty bound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the State must be utilised to effectuate the exercise of freedom. When organised interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the State to ensure that speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of intolerance. In the present case, we are of the view that there has been an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique. Others who embark upon a similar venture would be subject to the chilling effect of "similar misadventures". This cannot be countenanced in a free society. Freedom is not a supplicant to power."

The Hon'ble High Court has failed to highlight the actions of the Respondent which have shifted the burden of maintenance of public order from the State to the public on the basis that the wearing of Hijab by the Petitioner is the sole reason for the situation. This is akin to the claim that the Petitioner is

responsible for the issue because they have chosen to practice their faith publicly.

The Hon'ble High Court has failed to note that the right to wear a Hijab is protected as a part of the right to conscience under Article 25 of the Constitution. It is submitted that since the right to conscience is essentially an individual right, the 'Essential Religious Practices Test' ought not to have been applied by the Hon'ble High Court in this instant case.

It is further submitted that the lead judgement of this Hon'ble Court on the aspect of freedom of conscience – ***Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615**, dealt with the issue without going into the question of 'essential religious practices', considering the claim of a religious exemption on the basis of bona fide faith. This Hon'ble Court had held in the above-mentioned Judgement that:

> *"25. 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…"*

Assuming the 'Essential Religious Practices Test' does apply, the Hon'ble High Court has failed to note that wearing of Hijab or headscarf is a practice that is essential to the practice of Islam. Reliance in this scenario is placed on a Judgement of the Hon'ble Kerala High Court in the case of ***Amna Bint Basheer & Anr. v. CBSE*, 2016 SCC OnLine Ker 41117: AIR 2016 Ker 115**, wherein it was held:

> *"30. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code."*

> Reliance is placed on another Judgement of the Hon'ble Kerala High Court in the case of *Nadha Raheem v. CBSE*, 2015 SCC OnLine Ker 21660, wherein it was observed that *"it cannot be ignored that in our country with its varied and diverse religions and customs, it cannot be insisted that a particular dress code be followed failing which a student would be prohibited from sitting for examinations."*

Reliance is also placed on a Judgement of the Hon'ble Madras High Court in the case of *M. Ajmal Khan v. Election Commission of India,* 2006 SCC OnLine Mad 794: (2006) 4 LW 104 (Mad) (DB), wherein it was held:

> *"15. … It is, thus, seen from the reported material that there is almost unanimity amongst Muslim scholars that purdah is not essential but covering of head by scarf is obligatory."*

The Hon'ble 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 onto aircraft.

This public order was passed with an indirect intent of attacking the religious minorities and specifically the followers of Islamic faith by ridiculing the female Muslim students wearing Hijab. This ridiculing attack was under the guise of attaining secularity and equality on the basis of uniform wherein the College Development Committees prohibited the students wearing Hijab from entering the premises of the educational institutions. This step-motherly behaviour of Government authorities has prevented students from practising their faith which has resulted in an unwanted law and order situation.

However, the Hon'ble High Court in its impugned order had vehemently failed to apply its mind and was unable to understand the gravity of the

situation as well as the core aspect of the Essential Religious Practices enshrined under Article 25 of the Constitution of India. Further, it also misinterpreted the law in accordance with the given facts and erred heavily while granting relief to the Petitioner by taking a stand in favour of the Respondent, thus, failing to offer relief to the Petitioner for its misery.

Hence, this instant petition for Special Leave to Appeal.

LIST OF DATES

DATES	EVENTS
07.07.1983	The Karnataka Government in accordance with the powers bestowed upon it enacted the Karnataka Education Act, 1983 (1 of 1983). The Act does not contain any provision prescribing a uniform in Pre-University College. The Act also does not contain any provision authorising the formation of a 'College Development Committee'. A copy of the Karnataka Education Act, 1983 dated NIL is attached herewith and annexed hereto as **Annexure P-1**(Pages 150 to 233)
1995	The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 were notified. These rules pertain primarily to school education. Rule 11 of these rules allow an educational institution to prescribe a uniform. A copy of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 is attached herewith and annexed hereto as **Annexure P-2.** (Pages 234 to 246)
05.02.2022	The **Government Order No. EP14 SHH 2022** was passed by the Government of Karnataka wherein it banned Muslim students from wearing Hijab and annexed hereto as **Annexure P-3.** (Pages 247 to 220)

09.02.2022	The Single Judge Bench of Hon'ble Justice Mr. Krishna S. Dixit referred the matter to a larger bench comprising of Chief Justice Hon'ble Ritu Raj Awasthi, Hon'ble Justice Mr. Krishna S. Dixit and Hon'ble Justice Ms. K. M. Khazi and annexed hereto as **Annexure P-4.**(Pages 251 to 251)
10.02.2022	The Hon'ble Karnataka High Court passed an interim order restraining all the students from wearing any form of religious clothes in the classroom and annexed hereto as **Annexure P-5.**(Pages 254 to 258)
14.02.2022	An Impleading Application was filed before the Hon'ble Karnataka High Court in the **WP NO. 2347/2022** on behalf of the present Petitioner No. 2 and annexed hereto as **Annexure P-6**. (259 to 285)
15.03.2022	Hence, this Special Leave Petition.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

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

AND

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

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

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

IN W.P. NO.2347 OF 2022

BETWEEN:

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

… PETITIONER

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

AND:

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.2146 OF 2022

BETWEEN:

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

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

3 . ALIYA ASSADI
AGED ABOUT 17 YEARS,

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

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

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

... PETITIONERS

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

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

AND:

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

2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012

3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101

4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101

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

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

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

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

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.2880 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.3038 OF 2022

BETWEEN:

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

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

… PETITIONERS

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

AND:

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

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

BANGALORE-560001.

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.3424 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4309 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4338 OF 2022

BETWEEN:

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

… PETITIONER

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

AND:

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

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

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

4 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

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

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

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

ORDER

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

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

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

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

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

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

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

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

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

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

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

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

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

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

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

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

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

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

College Development Committee or *College Supervision Committee; and*

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

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

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

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

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

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

II. BROAD CONTENTIONS OF PETITIONERS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

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

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

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

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

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

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

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

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

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

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

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

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

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

[47] (1985) 2 SCC 556

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

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

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

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

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

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

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

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

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

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

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

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

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

have broadly framed the following questions for consideration:

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

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

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

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

[60] (1959) 1 SCR 996

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

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

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

[61] (1975) Supp. SCC 1

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

VI. CONSTITUTIONAL RIGHT TO RELIGION AND RESTRICTIONS THEREON:

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

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

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

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

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

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

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

[62] (1889) 133 US 333

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

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

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

[63] AIR 1954 MAD 385

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

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

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

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

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

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

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

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

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

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

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

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

[66] 354 US 436 (1957)

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

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

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

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

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

[67] 1971 SCR (2) 446

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

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

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

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

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

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

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

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

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

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Sūra xxiv* (*Nūr*):**

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

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

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

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

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

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

Sūra xxxiii (Ahzāb)

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

Is *hijab* Islam-specific?

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

[*] *Id*

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

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

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

***Sūra xxiv* (*Nūr*)**

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

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

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

Sūra *xxxiii* (*Ahzāb*)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[70] 2004 (1) JKJ 418

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

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

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

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

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

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

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

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

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

[71] (2016) SCC Online Ker 487

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

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

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

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

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

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

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

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

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

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

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

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[72] 1973 SCC OnLine All 333

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

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

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

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

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

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

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

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

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

[73] (1901) A.C. 495

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

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

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

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

[74] (1909) 33 BOM. 122

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

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

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

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

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

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

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

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

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

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[75] AIR 1957 SC 133

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

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

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

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

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

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

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

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

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

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

[76] (1929) 2 KB 416

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[80] (2020) 10 SCC 274

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

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

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

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

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

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

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

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

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

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

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

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

[83] (1985) 1 SCC 641

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[86] AIR 1992 SC 111

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

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

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

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

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

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

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

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

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

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

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

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

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

[87] AIR 1952 SC 16

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

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

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

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

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

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

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

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

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

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

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

XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

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

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

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

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

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

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

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

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

[89] AIR 1965 SC 491

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

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

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

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

XIX. THE PUBLIC INTEREST LITIGATIONS:

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

[90] AIR 1986 CAL. 104

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

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

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

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

Costs made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

SJ/CBC

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

Arising out of the impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in the Writ Petition bearing No. 2146 of 2022.

MEMORANDUM OF PARTIES

		High Court	In this Court
IN THE MATTER OF:			
1.	**MANAL** UNDER THE CARE OF MR. NOOR MOHAMMED AGE - 19 YEARS R/O NO.29 -115A - 5, BAPUTHOTA, KADOVOOR, MALPE, UDUPI, KARNATAKA STATE - 576108	Not a Party	PETITIONER NO. 1
2.	**NIBA NAAZ** D/O MR. B. NASEER AGE - 19 YEARS R/O NO.13 – 73, A2, BAILAKERE, KODAVOOR, THENKANIDIYOOR, UDUPI, KARNATAKA STATE - 576106	Not a Party	PETITIONER NO. 2

VERSUS

1.	THE STATE OF KARNATAKA REP BY THE PRINCIPAL SECRETAY PRIMARY AND HIGHER EDUCATION DEPARTMENT OF EDUCATION KARNATAKA GOVERNMENT MINISTRY MS BUILDING BANGALORE 560001, KARNATAKA	RESPONDENT NO. 1	CONTESTING RESPONDENT NO. 1
2.	DIRECTOR PU EDUCATION DEPARTMENT MALLESHWARAM EDUCATION DEPARTMENT BANGALORE 560012	RESPONDENT NO. 2	CONTESTING RESPONDENT NO. 2
3.	DEPUTY DIRECTOR PRE UNIVERSITY COLLEGE UDUPI DIST UDUPI 576101	RESPONDENT NO. 3	CONTESTING RESPONDENT NO. 3
4.	DEPUTY COMMISSIONER DC OFFICE UDUPI CITY UDUPI 576101	RESPONDENT NO. 4	CONTESTING RESPONDENT NO. 4
5.	GOVT PU COLLEGE FOR GIRLS UDUPI CITY UDUPI 576101 REP BY ITS PRINCIPAL	RESPONDENT NO. 5	CONTESTING RESPONDENT NO. 5
6.	RUDRE GOWDA S/O NOT KNOWN AGE ABOUT 55 YEARS, OCCUPATION PRINCIPAL OFFICE AT GOVT PU COLLEGE FOR GIRLS UDUPI CITY UDUPI 576101	RESPONDENT NO. 6	CONTESTING RESPONDENT NO. 6

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	RESPONDENT NO. 7	CONTESTING RESPONDENT NO. 7
8.	DR YADAV AGE ABOUT 56 S/O NOT KNOWN HISTORY LECTURER OFFICE AT GOVT PU COLLEGE FOR GIRLS UDUPI CITY UDUPI 576101	RESPONDENT NO. 8	CONTESTING RESPONDENT NO. 8
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	RESPONDENT NO. 9	CONTESTING RESPONDENT NO. 9
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	RESPONDENT NO. 10	CONTESTING RESPONDENT NO. 10
11.	RUDRAPPA AGE ABOUT 51 YEARS S/O NOT KNOWN CHEMISTRY SUB LECTURER OFFICE AT GOVT PU COLLEGE FOR GIRLS UDUPI CITY UDUPI 576101	RESPONDENT NO. 11	CONTESTING RESPONDENT NO. 11

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	RESPONDENT NO. 12	CONTESTING RESPONDENT NO. 12
13.	CHAYA SHETTY AGE ABOUT 40 YEARS, W/O NOT KNOWN PHYSICS SUB LECTURER R/AT KUTPADY UDYAVAR UDUPI 574118	RESPONDENT NO. 13	CONTESTING RESPONDENT NO. 13
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	RESPONDENT NO. 14	CONTESTING RESPONDENT NO. 14
15.	RAGHUPATHI BHAT AGE ABOUT 53 YEARS S/O LATE SRINIVAS BHARITHYA LOCAL MLA AND UNAUTHIRIZED CHAIRMAN OF CDMC D NO 8-32 AT SHIVALLY VILLAGE PO SHIVALLY UDUPI 576102	RESPONDENT NO. 15	CONTESTING RESPONDENT NO. 15
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	RESPONDENT NO. 16	CONTESTING RESPONDENT NO. 16

17.	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	PETITIONER NO. 1	PERFORMA RESPONDENT NO. 17
18.	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	PETITIONER NO. 2	PERFORMA RESPONDENT NO. 18
19.	ALIYA ASSADI AGED ABOUT 17 YEARS D/O AYUB ASSADI STUDENT REPRESENTED BY HER FATHER AYUB ASSADI S/O ABDUL RAHIM AGED ABOUT 49 YEARS, R/AT NO 4-2-66 ABIDA MANZIL NAYARKERE ROAD KIDIYOOR AMBALAPADI UDUPI 576103	PETITIONER NO. 3	PERFORMA RESPONDENT NO. 19

20.	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	PETITIONER NO. 4	PERFORMA RESPONDENT NO. 20
21.	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	PETITIONER NO. 5	PERFORMA RESPONDENT NO. – 21

PETITIONER UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA FOR GRANT OF SPECIAL LEAVE TO APPEAL AGAINST THE IMPUGNED FINAL JUDGEMENT AND ORDER DATED 15.03.2022, PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU IN WRIT PETITION (CIVIL) BEARING NO. 2146 OF 2022.

To,

The Hon'ble Chief Justice of India
And his companion Justices of the
Supreme Court of India

The humble petition on behalf of
The Petitioner above named;

1. **MOST RESPECTFULLY SHOWETH**

1. This Special Leave Petition challenges the Impugned Judgement, dated 15.03.2022, passed by the Hon'ble High Court of Karnataka at Bangalore, in Writ Petition (Civil) No. 2146 of 2022. Vide the impugned Judgement, the Hon'ble High Court, has dismissed the Writ Petition preferred by the Petitioners.

1.A The Petitioners have made State of Karnataka as the Respondent No. 1 instead of chief secretary (insert department name) as recorded in impugned Judgment because no post Chief secretary exists in the said department.

2. **QUESTION OF LAW**

1. Whether the Hon'ble High Court has failed to note that there is no provision for a uniform under the Karnataka Education Act, 1983 ("the Act") or the rules made thereunder?
2. Whether the Hon'ble High Court has failed to note that even if a uniform was to be prescribed, the Act and/or the rules made thereunder do not prescribe any punishment for failure to wear a uniform?
3. Whether the Hon'ble High Court has failed to note that there is no provision in the Act or the rules allowing the formation of a 'College Development Committee'?
4. Whether the Hon'ble High Court has failed to note that the order dated 05.02.2022 issued by the State is beyond the scope of powers under Section 133 (2) of the Act?
5. Whether the Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of the right to privacy under Article 21 of the Constitution?
6. Whether the Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of 'expression' and is thus protected by Article 19(1)(a) of the Constitution?
7. Whether the Hon'ble High Court has failed to note that the right to

wear a Hijab is protected as a part of the right to conscience under Article 25 of the Constitution, and that the 'essential religious practices test' does not apply to this case?

8. Whether the Hon'ble High Court has failed to note that the wearing of Hijab is a practice that is essential to the practice of Islam, even if the 'essential religious practices test' were to apply in the instant case?

3. **DECLARATION IN TERMS OF RULES 3(2)**

The Petitioners state that they have not filed any other petition seeking leave to appeal against the Impugned Judgement, dated 15.03.2022, passed by the Hon'ble High Court of Karnataka at Bangalore in Writ Petition (Civil) No. 2146 of 2022.

4. **DECLARATION IN TERMS OF RULES 5**

The Annexures P-1 to P-12 produced along with the present Special Leave Petition are true copies of the pleadings / documents, which formed the parts of records of the case in the Hon'ble Court below against whose judgement the leave to appeal is sought for in this Petition.

5. **GROUNDS**

The Petitioners prefer the present Special Leave Petition on *inter alia* the following grounds:

A. BECAUSE the Hon'ble High Court has failed to note that the Karnataka Education Act, 1983, and the Rules made thereunder, do not provide for any mandatory uniform to be worn by students. A perusal of the scheme of the Act reveals that it aims to regulate the institutions, rather than the students. Sections 03 and 07 of the said Act provide the State Government with the powers to *inter alia* regulate education, curriculum of study, medium of instruction, etc. However, neither of these provisions empowers the State Government to prescribe a uniform for the students.

B. Because the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 ("1995

Rules") apply to primary education, and not to pre-university colleges. Rule 11 allows institutions to specify a uniform. The same is reproduced below:

> *"11. Provision of Uniform, Clothing, Text Books, etc., (1) Every recognised educational institution* ***may specify*** *its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.*
>
> *(2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.*
>
> *(3) Purchase of uniform clothing and text books from the school or from a shop, etc., suggested by school authorities and stitching of uniform clothing with the tailor suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard."*

It is submitted that the 1995 Rules do not make it mandatory for any school / institution to prescribe a uniform. The same is left to the discretion of the school / institution. In the instant case, the respective institutions had not prescribed any uniform for their students.

C. BECAUSE the Hon'ble High Court has failed to note that there does not exist any provision in law which prescribes any punishment for students for not wearing uniforms. Even if one were to presume that there existed a mandate to wear a particular uniform, there is no punishment prescribed in case a student does not wear the uniform. It is pertinent to note that Chapter XVII of the Act prescribes penalties for various offences, including impersonation during examinations, penalty for ragging, etc. Furthermore, Rule 15 of the 1995 Rules prescribes the penalties that can be levied for the violation of any provision of the Act or the Rules by the institutions. However, there does not exist any provision in either the Act or the Rules thereunder

that prescribes a punishment for students for not wearing an institution-prescribed uniform. Therefore, it is submitted that the action of the Respondents in prohibiting the students from accessing classrooms is devoid of any legal basis.

D. Because there is no provision in the Act or the rules allowing the formation of a 'College Development Committee'. Such a committee, even if formed, has no powers to regulate the wearing of a uniform, or any other matter in an educational institution.

E. Because the order dated 05.02.2022 issued by the State is beyond the scope of powers under Section 133 (2) of the Act. It seeks to supplant, and not supplement the provisions of the Act. It is humbly submitted that under Section 133 (2), the State Government can (a) issue directions to institutions; (b) such directions must be necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the rules made thereunder.

The notification issued by the State Government does not mention the objective or provision of the Act it seeks to achieve. Further, as has already been stated, there is no provision in the Act or in the rules, mandating uniforms. This being the position, the notification is beyond the scope of the powers under Section 133 (2). In any event, the notification seeks to create a new obligation. This is not permissible in light of the Judgement of this Hon'ble Court in *Kunj Behari Lal Butail v. State of H.P.,* (2000) 3 SCC 40.

F. BECAUSE the Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of the right to privacy under Article 21 of the Constitution of India. It is submitted that the freedom of conscience forms a part of the right to privacy. Reliance is placed on the judgement of this Hon'ble Court in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, wherein it was stated

> *"372. …While the right to freely "profess, practise and propagate religion may be a facet of free speech guaranteed under Article*

19(1)(a), the freedom of the belief or faith in any religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty."

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

Consequently, it is submitted that any infringement of such freedom of conscience has to be tested on the touchstone of the "triple test" as laid down in the case of *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, and reiterated in the case of *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1. The "triple test" requires that to constitute a valid infringement of privacy, there must be:

d. Existence of a Law;
e. A legitimate state interest;
f. Law must be proportionate.

In this case, neither the Act nor the Rules prescribe any uniform for students or prohibit the wearing of a Hijab. Therefore, the first requisite of the above-mentioned "triple test" – i.e., existence of a law, is not satisfied.

G. BECAUSE the Hon'ble High Court has failed to note that the right to wear a Hijab comes under the ambit of 'expression' and is thus protected under Article 19(1)(a) of the Constitution. It is submitted that clothing and appearance fall within the ambit of the right of expression guaranteed under Article 19(1)(a) of the Constitution, as was held by this Hon'ble Court in the case of *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438. Further reliance is

placed on the judgement of this Hon'ble Court in the case of *Jigya Yadav v. CBSE*, (2021) 7 SCC 535, wherein it was stated:

> *"125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1: (2019) 1 SCC (Cri) 1],* ***this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution."***

H. BECAUSE the Hon'ble High Court has failed to address the discrepancy on part of the Respondents to maintain conditions conducive for the practice of freedoms as guaranteed under the Constitution. Such lackadaisical behaviour of the Respondent is against what was held by this Hon'ble Court in *Indibily Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436, wherein it was stated:

> *"50. The freedoms which are guaranteed by Article 19 are universal. Article 19(1) stipulates that all citizens shall have the freedoms which it recognises. Political freedoms impose a restraining influence on the State by carving out an area in which the State shall not interfere. Hence, these freedoms are perceived to impose obligations of restraint on the State. But, apart from imposing "negative" restraints on the State these freedoms impose a positive mandate as well. In its capacity as a public*

authority enforcing the rule of law, the State must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for the free exercise of speech and expression, the State cannot look askance when organised interests threaten the existence of freedom. The State is duty bound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the State must be utilised to effectuate the exercise of freedom. When organised interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the State to ensure that speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of intolerance. In the present case, we are of the view that there has been an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique. Others who embark upon a similar venture would be subject to the chilling effect of "similar misadventures". This cannot be countenanced in a free society. Freedom is not a supplicant to power."

I. BECAUSE the Hon'ble High Court has failed to highlight the actions of the Respondent which have shifted the burden of maintenance of public order from the State to the public on the basis that the wearing of Hijab by the Petitioner is the sole reason for the situation. This is akin to the claim that the Petitioner is responsible for the issue because they have chosen to practice their faith publicly.

J. BECAUSE the Hon'ble High Court has failed to note that the right to wear a Hijab is protected as a part of the right to conscience under Article 25 of the Constitution. It is submitted that since the right to

conscience is essentially an individual right, the 'Essential Religious Practices Test' ought not to have been applied by the Hon'ble High Court in this instant case.

It is further submitted that the lead judgement of this Hon'ble Court on the aspect of freedom of conscience – *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615, dealt with the issue without going into the question of 'essential religious practices', considering the claim of a religious exemption on the basis of bona fide faith. This Hon'ble Court had held in the above-mentioned Judgement that:

> *"25. 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…"*

K. BECAUSE assuming the 'Essential Religious Practices Test' does apply, the Hon'ble High Court has failed to note that wearing of Hijab or headscarf is a practice that is essential to the practice of Islam. Reliance in this scenario is placed on a Judgement of the Hon'ble Kerala High Court in the case of *Amna Bint Bashneer & Anr. v. CBSE*, 2016 SCC OnLine Ker 41117: AIR 2016 Ker 115, wherein it was held:

> *"30. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code."*

Reliance is placed on another Judgement of the Hon'ble Kerala High Court in the case of *Nadha Raheem v. CBSE*, 2015 SCC OnLine Ker 21660, wherein it was observed that *"it cannot be ignored that in our country with its varied and diverse religions and customs, it cannot be*

insisted that a particular dress code be followed failing which a student would be prohibited from sitting for examinations."

Reliance is also placed on a Judgement of the Hon'ble Madras High Court in the case of *M. Ajmal Khan v. Election Commission of India,* 2006 SCC OnLine Mad 794: (2006) 4 LW 104 (Mad) (DB), wherein it was held:

> *"15. … It is, thus, seen from the reported material that there is almost unanimity amongst Muslim scholars that purdah is not essential but covering of head by scarf is obligatory."*

L. BECAUSE the Hon'ble 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 onto aircrafts.

6. **GROUNDS FOR INTERIM RELIEF**

The impugned Judgement of the Hon'ble High Court is prima-facie erroneous and fails to consider the grounds that have been mentioned in the foregoing paragraphs. Further, the Petitioners are being put to irreparable losses, as they continue to miss out on their education – inclusive of both classes and examinations. It is further submitted that the balance of convenience also lies in favour of the Petitioners, inasmuch as no harm / loss is caused to anyone by the Petitioners continuing to wear Hijab to college.

7. **MAIN PRAYER**

It is most respectfully prayed that this Hon'ble Court may be pleased

to:

a) Grant a special leave to appeal against the Impugned Judgement, dated 15.03.2022, passed by the Hon'ble High Court of Karnataka at Bangalore, in Writ Petition (Civil) No. 2146 of 2022;

b) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

8. **PRAYERS FOR INTERIM RELIEF**

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

a) Pass an ad-interim, ex-parte order staying the implementation and effect of the Impugned Judgement, dated 15.03.2022, passed by the Hon'ble High Court of Karnataka at Bangalore, in Writ Petition (Civil) 2146 of 2022.

b) Pass an ad-interim, ex-parte order allowing the Petitioners to attend classes and answer examinations while wearing the Hijab / headscarf.

c) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

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

Drawn On: 15.03.2022
Filed On: 15.03.2022

FILED BY
ANAS TANWIR
Advocate-on-Record for the Petitioners

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

Arising out of the impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in the Writ Petition bearing No. 2146 of 2022.

IN THE MATTER OF:

Niba Naaz and Another …PETITIONER

VERSUS

Government of Karnataka and Others …RESPONDENT

CERTIFICATE

Certified that the above Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in these proceedings. No additional facts, documents and grounds have been taken upon therein or relied upon in this instant Special Leave Petition. It is further certified that the copies of the documents / annexures attached to the SLP are necessary to answer the question of law raised in the petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instruction given by the petitioner whose affidavit is filed in support of the SLP.

Filed on: 15.03.2022

Filed by: ANAS TANWIR
ADVOCATE FOR THE PETITIONER

148-149

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:

Ms. Manal & Ors ..Petitioners

Versus

State of Karnataka & others ...Respondents

AFFIDAVIT

I, Ms. Manal, D/o- Mr. Noor Mohammed, Aged 19 years, R/o- No. 29- 115A-5, Baputhota, Kodavoor, Malpe, Udupi- 576108 do hereby solemnly affirm and state as under:

1. That the deponent is the petitioner herein and is fully conversant with the facts of the case and as such is competent and authorized to swear this affidavit.
2. That I have read the accompanying List of Dates (Pages B to L) of Special Leave Petition (Pages130to147) (Paras 1 to 8) understood the contents therefore the same are true and correct as per my personal knowledge and belief.
3. That the Annexures accompanying are true and correct copies of their respective originals.

DEPONENT

VERIFICATION

I, above named deponent do hereby verify that the contents of above affidavit are based on information derived from the official record as such true and correct as per my knowledge and belief of the deponent, no part of it is false and nothing material has been concealed therefrom.

Verified at Udupi on 15th day of March, 2022.

DEPONENT

NOTARY ASHEEDULLA ADVOCATE UDUPI REG NO. 20466 07/05/2025 GOVT. OF INDIA

Notarial Register Book: 01 Page: 92 Serial No. 212 Date: 15/3/2022

SIGNED BEFORE ME

NOTARY UDUPI 15/03/2022

ANNEXURE P-1

A copy of the Karnataka Education Act, 1983 dated NIL

THE KARNATAKA EDUCATION ACT, 1983

ARRANGEMENT OF SECTIONS

CHAPTER IV

EXAMINATIONS AND PREVENTION OF MALPRACTICES ETC.

CHAPTER V

CLASSIFICATION AND REGISTRATION OF EDUCATIONAL INSTITUTIONS.

CHAPTER VI

RECOGNITION OF EDUCATIONAL INSTITUTIONS ETC

CHAPTER VII

MANAGEMENT OF RECOGNISED PRIVATE EDUCATIONAL INSTITUTIONS AND LOCAL AUTHORITY INSTITUTIONS ETC.

CHAPTER XII

TAKING OVER OF MANAGEMENT REQUISITIONING AND ACQUISITION OF EDUCATIONAL INSTITUTIONS.

CHAPTER XIII

PROVISION FOR ANCILLARY SERVICES IN REGONISED EDUCATIONAL INSTITUTIONS.

CHAPTER XIV

TERMS AND CONDITIONS OF SERVICES OF EMPLOYEES IN PRIVATE EDUCATIONAL INSTITUTIONS.

CHAPTER XV

CONTROL OF PRIVATE EDUCATIONAL INSTITUTION

CHAPTER XVI

STATE EDUCATIONAL ADVISORY COUNCIL ETC.

*****

STATEMENT OF OBJECTS AND REASONS

I

Act 1 of 1995.- It is considered necessary to provide for the planned development of educational institutions, inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education.

Hence the Bill.

(Published in Karnataka Gazette Part IV-2A, dated 7.7.1983 at page 291.)

II

Amending Act 8 of 1998.- When the Karnataka Education Bill, 1983 was pending for assent of the President of India, the Government of India sought clarifications from the State Government on certain matters. By way of response, the State Government proposed certain amendments to the said Bill and simultaneously a draft of the Karnataka Education (Amendment) Ordinance was also sent to Government of India.

The Government of India, while conveying the assent of the President to the said Bill also, conveyed previous instructions of the President to the Ordinance.

The Karnataka Education Bill which has received the assent of the President was published as an Act on 20th January, 1995 and all the provisions of the Act were brought into force with effect from the 1st day of June, 1995.

As the Amendment Ordinance could not be promulgated it is proposed to introduce a Bill incorporating all the amendments contained in the Ordinance, which are as below:-

(1) Amendment of Section 1 to include in sub-section (3) certain education institutions affiliated to Council on India School Certificate Examination so as to exclude them from the application of the Act;

(2) Public interest is defined by amendment of section 2;

(3) Section 67 is being amended to restrict the period of taking over of management initially to one year with a power to extend it for a further period of one year;

(4) A new section 67A is proposed for relinquishment of management of educational institutions;

(5) Amendment of section 74 is consequential.

Hence the Bill.

(Obtained from L.A. Bill No. 15 of 1996.)

II

Amending Act 13 of 2003.- It is considered necessary to prepare upto date Codal Volumes of the Karnataka Acts and to repeal all the spent Acts and amendment Acts from time to time.

The Government constituted One-man Committee for the above purpose. The Committee has reviewed the Karnataka Acts for the period from 1.1.1956 to 31.12.2000 and has proposed the "Repealing and Amending Bill, 2002" which seeks to repeal the following types of Acts,-

(i) Acts which amended the Karnataka Acts whether they are now in force or not;

(ii) Acts which amended regional Acts which are no longer in force;

(iii) Appropriation Acts as they are spent Acts;

(iv) Acts which have been struck down or by necessary implication struck down by the Courts;

(v) Acts which are by implication repealed by Central Acts;

(vi) Acts which are temporary and spent enactments; and

(vii) Acts which amend the Central Acts and regional Acts which are in force.

The Bill does not include Acts which are already repealed expressly.

This Bill also seeks to amend certain Acts which are considered necessary.

Hence the Bill.

[L.C. Bill No. 4 of 2002]

[Various entries of List II and III of the Seventh Schedule]

KARNATAKA ACT No. 1 OF 1995

(First published in the Karnataka Gazette Extraordinary on the Twentieth day of January, 1995)

THE KARNATAKA EDUCATION ACT, 1983

(Received the assent of the President on the Twenty-Seventh day of October 1993)

(As amended by Act 8 of 1998 and 13 of 2003)

An Act to provide for better organisation, development, discipline and control of the educational institutions in the State.

WHEREAS it is considered necessary to provide for the planned development of educational institutions inculcation of healthy educational practice, maintenance and improvement in the standards of education and better organisation, discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental and physical faculties of students and cultivating a scientific and secular outlook through education;

BE it enacted by the Karnataka State Legislature in the Thirty-fourth Year of the Republic of India as follows:-

CHAPTER I

GENERAL

1. Short title, extent, application and commencement.- (1) This Act may be called the Karnataka Education Act, 1983.

(2) It extends to the whole of the State of Karnataka.

(3) It applies to all educational institutions and tutorial institutions in the State except,-

(i) institutions for scientific or technical education financed by the Central Government, and declared by Parliament by law to be institutions of national importance;

(ii) institutions of higher education which shall be deemed to be University as declared by the Central Government by a notification, under section 3 of the University Grants Commission Act, 1956 (Central Act III of 1956);

(iii) institutions established or maintained and administered by or affiliated to or recognised by the University of Agricultural Sciences in so far

as the matter pertaining to them are dealt within the University of Agricultural Sciences Act, 1963 (Karnataka Act 22 of 1963);

[1][(iiia) Educational Institutions affiliated to or recognised by the Council of Indian School Certificate Examination or Central Board of Secondary Education respectively][1]

1. Inserted by Act 8 of 1998 w.e.f. 11-4-1998.

(iv) in so far as the matters pertaining to colleges and institutions are dealt within,-

(a) the Indian Medical Council Act, 1956 (Central Act, CII of 1956);

(b) the Dentists Act, 1948 (Central Act XVI of 1948);

(c) the Pharmacy Act, 1948 (Central Act VIII of 1948);

(d) the Karnataka State Universities Act, 1976 (karnataka Act 28 of 1976);

[1][(d-a) the All India Council for Technical Education Act, 1987 (Central Act 52 of 1987);

(d-b) the Indira Gandhi National Open University Act, 1985 (Central Act 50 of 1985);

(d-c) the National Council for Teachers Education Act, 1993 (Central Act 73 of 1993);][1]

1. Inserted by Act 8 of 1998 w.e.f. 11-4-1998.

(e) the Karnataka Ayurvedic and Unani Practitioners' Miscellaneous Provisions Act, 1961 (Karnataka Act 9 of 1961) ; and

(f) the Karnataka Homoeopathic Practitioners Act, 1961 (Karnataka Act 35 of 1961);

(v) such other class or classes of institutions, subject to such conditions and to such extent as the State Government may, by notification, specify:

Provided that nothing in Chapter III, section 35 of Chapter V, Chapter VII and Chapters IX to XV (both inclusive) except sections 57 and 58 of Chapter X shall be applicable to commerce institutions.

(4) It shall come into force on such [1][date][1] as the State Government may, by notification, appoint and different dates may be appointed for different provisions of the Act.

2. Act came into force on 1-6-1995 by notification.

2. Definitions.- In this Act, unless the context otherwise requires,-

(1) 'academic year' means the year beginning on such date as the State Government or the prescribed authority may, by notification, specify with respect to any specified area or with respect to any educational institution or class of educational institutions;

(2) 'adult education' means the education or further education of a person of not less than fifteen years of age who has not attended any educational institution at any time before, or, as the case may be, who is a dropout from an educational institution at any level of his studies therein;

(3) 'approved school' means any school in any specified area imparting primary education which,-

(a) is under the management of the State Government or a local authority; or

(b) being under any other management, is recognised by the State Government or by an officer authorised by the State Government in this behalf or by a school board as approved school for the purposes of this Act;

(4) "attendance authority" means any person having the prescribed qualification appointed to be an attendance authority under section 13;

(5) "backward classes" means any socially and educationally backward classes of citizens recognised by the Government for purposes as the case may be, of clause (4) of Article 15 or clause (4) of article 16 of the Constitution of India;

(6) 'child' means a boy or girl within such age group not being less than six years or more than fourteen years at the beginning of the academic year as the State Government may specify for the purposes of this Act either generally or with respect to any specified area;

(7) 'competent authority' means any person, officer or authority authorised by the State Government, by notification, to perform the functions and discharge the duties of the competent authority under all or any of the provisions of this Act for such area or for such purposes or for such classes of institutions as may be specified in the notification;

(8) "commerce education" means education in typewriting, shorthand, Book-keeping and accountancy, commerce, office practice and procedure, salesmanship and marketing, banking practice, insurance practice and such other subjects as may be notified by the State Government;

(9) "commerce institution" means any institution imparting commerce education and presenting students for examinations conducted by the Karnataka Secondary Education Examination Board;

(10) "district" means revenue district;

(11) "District Education Officer" means an Officer appointed as such to be incharge of the administration of the primary education in a district or part of a district;

(12) "Director for Compulsory Primary Education" means the Commissioner of Public Instruction in Karnataka or any other officer discharging the functions and exercising the powers of Director for Public Instruction (Primary Education);

(13) 'educational agency' in relation to a private educational institution, means any person or body of persons which has established and is administering or proposes to establish and administer or is entrusted with the establishment, management, administration and maintenance of such private educational institution;

(14) "educational institution" means any institution imparting education referred to in section 3 and includes a private educational institution but does not include an institution under the direct management of the University or of the Central Government or a tutorial institution;

(15) "employee" means a person employed in an educational institution;

(16) "general education" means every branch of education other than religious, professional, medical, technical or special education;

(17) "Governing Council" means any person or body of persons permitted or deemed to be permitted under this Act to establish or maintain a private educational institution; or commence institution or tutorial institution and includes the governing body, by whatever name called, to which the affairs of the said educational institution are entrusted;

(18) "grant" or "grant-in-aid" means any sum of money paid as aid out of the State funds to any educational institution;

(19) "Managing Committee" means the individual or the body of individuals entrusted or charged with the management and administration of a private educational institution and where a society, trust, or an association manages more than one such institution, includes the managing committee of each such institution;

(20) "medical education" includes education in modern scientific medicine, in all its branches, Ayurvedic system of medicine, Unani system of medicine, integrated system of medicine, Indigenous medicine, Naturopathy, Siddha or Homoeopathy;

(21) "minority educational institution" means a private educational institution of its choice established and administered by a minority whether based on religion or language, having the right to do so under clause (1) of Article 30 of the Constitution of India;

(22) "non-formal Education" means the education, of a person upto fifteen years of age who has not attended any educational institution at any time before or as the case may be, who is a drop out from an educational institution at any level of his studies therein to enable him to enter the formal educational system at an appropriate level;

(23) "parent" in relation to a child includes a guardian and every person who has the lawful custody of the child;

(24) "prescribed" means prescribed by rules made under this Act;

(25) "primary education" means education in and upto such classes and standards as are prescribed under this Act;

(26) "primary school" means a school or part of such school in which primary education upto any standard is imparted;

(27) "private educational institution" means any educational institution imparting education referred to in section 3, established and administered or maintained by any person or body of persons, but does not include an educational institution,-

(a) established and administered or maintained by the Central Government or the State Government or any local authority or any other authority designated or sponsored by the Central Government or the State Government;

(b) established and administered by any University established by law;

(c) giving, providing or imparting only religious instruction, but not any other instruction; or

(d) imparting instruction for which there is no approved syllabi or course of studies or Government or University Examination;

(28) "private tuition" means instruction or teaching given by an employee of a recognised educational institution outside its premises to students;

[1][(28A) 'Public interest' includes public order, public health, public morality and other similar purposes;][1]

1. Inserted by Act 8 of 1998 w.e.f. 11.4.1998.

(29) "ragging" means causing, inducing, compelling or forcing a student, whether by way of a practical joke or otherwise, to do any act which detracts from human dignity or violates his person or exposes him to ridicule or to forbear from doing any lawful act, by intimidating., wrongfully restraining, wrongfully confining, or injuring him or by using criminal force to him or by holding out to him any threat of such intimidation, wrongful restraint, wrongful confinement, injury or the use of criminal force;

(30) "recognised educational institution" means an educational institution recognised under this Act and includes one deemed to be recognised thereunder;

(31) "registering authority' means any person, officer or authority authorised by the State Government by notification, to perform the functions and discharge the duties of the registering authority under all or any of the provisions of this Act for such area or for such purposes or for such classes of institutions as may be specified in the notification;

(32) "secondary education" means education in and upto such class or standard as may be prescribed;

(33) "secretary" in relation to a private educational institution means the person, by whatever name called, who under the rules or regulations of the private educational institution is a chief executive entrusted with the management of the affairs of the institution;

(34) "society" includes a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960), or Karnataka Co-operative Societies Act, 1959 or a trust registered under the Bombay Public Trust Act, 1950, or any association of individuals registered under any other law for the time being in force;

(35) "special education" means education for the handicapped, education in music, dance, drama, fine arts, physical education including sports and games and such other types of education as the State Government may by notification, in that behalf specify;

(36) "specified area" means any area in which primary education is notified by the State Government to be compulsory under section 11;

(37) "technical education" means any course of study in Engineering, Technology, Architecture, Ceramics, Industrial Training, Mining, or in any other subject, as the State Government may, by notification, specify;

(38) "tribunal" means the Educational Appellate Tribunal constituted under section 96;

(39) "tutorial institution" means an unrecognised institution established or run by not less than two persons for systematically imparting education or instruction to twenty or more persons in any subject with a view to prepare them to appear for an examination in any branch of education conducted or recognised by the State Government or the Universities in the State or any body or authority under this Act or any other law for the time being in force.

3. Regulation of education.- (1) The State Government may, subject to sub-section (3) of section 1, regulate general education, professional education, medical education, technical education, commerce education and special education at all levels in accordance with the provisions of this Act.

(2) The State Government may towards that end,-

(a) establish and maintain educational institutions;

(b) permit any local authority or a private body of persons to establish educational institutions and maintain them according to such specifications as may be prescribed;

(c) require registration of educational institutions including tutorial institutions;

(d) recognise educational institutions;

(e) grant aid to any recognised educational institutions in furtherance of the objects of this Act;

(f) regulate the admission including the minimum or maximum number of persons to be admitted to any course in any educational institution or class of such institutions, and the minimum age for such admission;

(g) prescribe the conditions for eligibility of or admissions to any educational institution or class of such institutions;

(h) establish hostels or recognise private hostels and frame rules for grant-in-aid to recognised private hostels;

(i) permit or establish institutions imparting education in arts, crafts, music, dance, drama or such other fine arts, physical education including sports;

(j) permit and establish institutions or centres for pre-primary education, adult education and non-formal education; and

(k) take from time to time such other steps as they may consider necessary or expedient.

4. Prohibition of private tuition.- On and after the date of commencement of this Act, no institution recognised or deemed to be recognised under this Act, shall permit any of its employees to give private tuition nor shall such employee impart such tuition to any person.

5. 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.

6. Educational institutions to be in accordance with this Act.- No educational institution shall be established or maintained otherwise than in accordance with the provisions of this Act or the rules made thereunder.

7. Government to prescribe curricula, etc.- (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify,-

(a) the curricula, syllabi and text books for any course of instruction;

(b) the duration of such course;

(c) the medium of instruction;

(d) the scheme of examinations and evaluation;

(e) the number of working days and working hours in an academic year;

(f) the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;

(g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;

(h) the facilities to be provided, such as buildings, sanitary arrangments, playground, furniture, equipment, library, teaching aid, laboratory and workshops;

(i) such other matters as are considered necessary.

(2) The curricula under sub-section (1) may also include schemes in respect of,-

(a) moral and ethical education;

(b) population education, physical education, health education and sports;

(c) socially useful productive work, work experience and social service;

(d) innovative, creative and research activities;

(e) promotion of national integration;

(f) promotion of civic sense ; and

(g) inculcation of the sense of the following duties of citizens, enshrined in the Constitution namely:-

(i) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(iii) to uphold and protect the sovereignty, unity and integrity of India;

(iv) to defend the country and render national service when called upon to do so;

(v) 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;

(vi) to value and preserve the rich heritage of our composite culture;

(vii) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(viii) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(ix) to safeguard public property and to abjure violence;

(x) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

(3) The prescription under sub-section (1) may be different for the different categories of educational institutions.

(4) (a) The objectives of education at the primary level shall be universalisation of education at the primary level by comprehensive access by both formal and non-formal means and by improving retention and completion rates with carriculum development and teacher education to help children attain the required level of achivement in the following basic purposes:-

(i) development of 'basic skills' in literacy in the mother tongue and Kannada (where mother tongue is not Kannada), numeracy and communication;

(ii) development of 'life skills' for understanding of and meaningful interaction with the physical and social environment, including study of Indian culture and history, science, health and nutrition;

(iii) introduction of 'work experience' or socially useful productive work to provide children with the ability to help themselves, to orient them to the work processes of society and to develop right attitudes to work;

(iv) promotion of values including moral values; and

(v) development of good attitudes towards further learning.

(b) The main objective of education at the secondary level shall be to impart such general eduction as may be prescribed so as to make the pupil fit either for higher academic studies or for job-oriented vocational courses. The general education so imparted shall, among others, include,-

(i) the development of linguistic skills and literary appreciation in the regional language;

(ii) the attainment of prescribed standards of proficiency in any two other selected languages among classical or modern Indian languages including Hindi and English;

(iii) the acquisition of requisite knowledge in mathematics and physical and biological sciences, with special reference to the physical environment of the pupil;

(iv) the study of social sciences with special reference to history, geography and civics so as to acquire the minimum necessary knowledge in regard to the State, country and the world;

(v) the introduction of 'work experience' or 'socially useful productive work' as an integral part of the curriculum; and

(vi) training in sports, games, physical exercises and other arts.

(5) In every recognised educational institution,-

(a) the course of instruction shall conform to the curricula and other conditions under sub-section (1); and

(b) no part of the working hours prescribed shall be utilised for any purpose other than instruction in accordance with the curricula.

CHAPTER II

EDUCATIONAL AUTHORITIES

8. Appointment of Officers.- (1) The State Government shall constitute as many departments as it deems necessary to deal with the various aspects of education and appoint a Director or Commissioner for each department or group of departments.

(2) The State Government may also appoint such number of officers as may be necessary, designated as Additional Director, Joint Director, Deputy Director or otherwise, for each department or group of departments to assist each such Director in the exercise of the powers conferred on and the performance of the functions entrusted to him by or under this Act.

(3) Subject to the provisions of this Act and the general or special orders of the State Government made in this behalf, the Director or Commissioner appointed under sub-section (1), shall be the Chief Controlling Authority in all matters connected with the administration of such part of education in the State as may be allotted by the State Government by an order in this behalf to the department or group of departments, of which he is the Director or Commissioner.

(4) The State Government may constitute such number of Vigilance Cells at the State, division and district levels as it thinks fit with such number of officers as it deems necessary in each cell for each department to

perform such duties and functions as may be prescribed for the proper observance of the provisions of this Act and rules thereunder.

(5) All persons employed in the administration of this Act shall be subject to the superintendence, direction and control of the State Government and the officer or officers to whom each officer shall be subordinate shall be determined by the State Government.

9. District Educational Officers and other sub-ordinate officers and staff at the district level.- (1) The State Government may appoint for each District one or more District Educational Officers, and every such District Educational Officer shall exercise such powers and perform such functions as may be entrusted to him by or under this Act.

(2) The State Government may sanction the appointment of such number of officers and staff as may be necessary to assist the District Educational Officer.

(3) The appointment to the posts sanctioned under sub-section (2) shall be made by such authority and in such manner as may be prescribed.

(4) The powers and functions of the officers and staff appointed under this section shall be such as may be prescribed.

10. Constitution of Boards.- (1) The State Government may, by notification, establish a Board of Secondary Education to be called "The Board of Secondary Education, Karnataka", the composition, powers and functions of which shall be such as may be prescribed. The functions of the Board shall include,-

(a) advising the State Government on the co-ordinated development of secondary education in the State; and

(b) the conduct of examinations, conforming to the minimum standards as may be prescribed and the award of certificates.

(2) The State Government may, by notification establish a Board of Teacher's Education to be called "The Board of Teacher's Education, Karnataka" the composition and powers of which shall be such as may be prescribed. The functions of the Board shall be to advise the State Government on the course of study, preservice and inservice training of teachers and other matters relating to teachers' education.

(3) (1) The State Government may, by notification establish a Board of Technical Education to be called "The Board of Technical Education,

Karnataka", the composition and powers of which shall be such, as may be prescribed.

(2) The functions of the Board shall be,-

(a) to advise the State Government on or State proposed schemes for the co-ordinated development of technical education in the State at all levels;

(b) to inspect the institutions periodically and ensure that the standards of the course and the institutional facilities provided are satisfactory;

(c) to conduct examinations and award diplomas and certificates;

(d) to establish and develop co-operative relationship with industry and commerce;

(e) to perform such other functions as may be prescribed.

(4) The State Government may, by notification, establish such Board other than those specified in sub-sections (1) to (3), to discharge such functions and to exercise such powers as may be prescribed.

CHAPTER III

ENFORCEMENT OF COMPULSORY PRIMARY EDUCATION

11. State Government to direct by notification primary education to be compulsory in specified areas.- (1) The State Government may, by order, direct that with effect from the commencement of such academic year and for children with such age group as may be specified in the order, primary education shall be compulsory in any area :

Provided that a child who has completed the age of five years shall not be denied admission into the school.

(2) Every order under sub-section (1) shall be,-

(a) published in the official Gazette and in such other manner as the State Government may decide;

(b) so made as to ensure that there is an interval of not less than thirty days between the date of the publication of the order and the first day of the specified academic year.

(3) No order shall be made under sub-section (1) in respect of any area unless the State Government is satisfied that necessary facilities have been

provided in that area for imparting primary education to all children to whom the order is intended to apply.

12. Schemes for primary education.- (1) Any local authority, if called upon by the State Government so to do, shall within such time as may be specified by the State Government submit to them a scheme for compulsory primary education in such area within its jurisdiction for children ordinarily resident therein of such ages and upto such standard as the State Government may specify.

(2) The scheme submitted under sub-section (1), shall be in such form as the State Government may specify and shall contain the following particulars namely:-

(a) the area in which primary education will be compulsory;

(b) the approximate number of children to whom the scheme will apply classified according to age and mother tongue;

(c) a list of existing approved schools and the schools if any, proposed to be opened for the purpose, classified by languages in which instruction is given or is proposed to be given;

(d) the number of teachers already employed and the additional staff proposed to be recruited;

(e) the recurring and non-recurring cost of the scheme; and

(f) such other particulars as may be prescribed.

(3) The State Government may, after such inquiry as it may consider necessary, sanction with or without modification the scheme submitted by the local authority under sub-section (1). The implementation of the scheme so sanctioned shall be subject to the general control of and the directions issued from time to time, by the State Government.

(4) No sanction shall be accorded under sub-section (3) in respect of any scheme unless the State Government are satisfied that such steps, as may be prescribed, have been taken to provide the necessary facilities for imparting compulsory primary education to all children to whom the scheme will apply.

(5) On receipt of sanction under sub-section (3) the local authority shall give effect to the scheme so sanctioned by means of a declaration that with effect from the first day of the next academic year, primary education for children of both sexes upto such class or standard and within such age

group as may be specified therein shall be compulsory in any area which may be so specified.

(6) Every declaration under sub-section (5) shall be published before the first day of April of each year immediately preceding the academic year, in the official Gazette and in such other manner as the local authority or the Director for Compulsory Primary Education, as the case may be, may decide:

Provided that the State Government may, for any good and sufficient cause, condone any delay in the publication of such declaration in any year.

(7) Where any local authority fails to submit a scheme when called upon to do so under sub-section (1) or to give effect to any sanctioned scheme, under sub-section (5) to the satisfaction of the State Government, the State Government may cause the scheme to be submitted or the sanctioned scheme to be implemented as the case may be, by such person or authority as they think fit. The State Government may, at any time, entrust the administration of the sanctioned scheme to the local authority concerned.

13. Attendance authorities and their powers and duties.- (1) A local authority in the case specified under section 12 and in other cases, the Director for Compulsory Primary Education may appoint as many persons as it or he thinks fit to be attendance authorities for the purpose of this Act, and may also appoint as many persons as are considered necessary, to assist the attendance authorities in the discharge of their duties.

(2) It shall be the duty of the local authority and in any other case, the attendance authority, to cause to be prepared as early as possible in such manner as may be prescribed list of children within the age group specified in the order under section 11 or in the scheme under section 12 in any specified area. Such lists shall also be prepared in every year in every specified area at such time and in such manner as may be prescribed.

(3) The attendance authority or any person appointed to assist the attendance authority may put such question to any parent or require any person to furnish such information about his child, as it or he considers necessary, and every such parent shall be bound to answer such questions or to furnish such information, as the case may be, to the best of knowledge or belief.

(4) It shall be the duty of the attendance authority to notify the parent of every child to whom the order under section 11 applies, but against whom

no attendance order has been passed under section 17 that he is under an obligation to cause the child to attend an approved school with effect from the commencement of the specified academic year.

14. Responsibility of parent to cause his child to attend school.- It shall be the duty of the parent of every child to cause the child to attend an approved school, unless there is a reasonable excuse for his non-attendance within the meaning of section 15.

15. Reasonable excuse for non attendance.- For the purpose of this Act, any of the following circumstances shall be deemed to be a reasonable excuse for the non-attendance of the child at an approved school, namely:-

(a) that there is no approved school within the prescribed distance from his residence;

(b) that the only approved school within the prescribed distance from the residence of the child to which the child can secure admission is one in which religious instruction of a nature not approved by his parent is compulsory;

(c) that the child is receiving instruction in some other manner which is declared to be satisfactory by the State Government or by an officer authorised by the State Government in this behalf;

(d) that the child has already completed primary education upto the standard specified in the order under section 11.

(e) that the child suffers from a physical or mental defect which prevents from attendance;

(f) that the child has been granted temporary leave of absence not exceeding the prescribed period by the prescribed authority or by any other person authorised by the prescribed authority in this behalf;

(g) that there is any other compelling circumstance which prevents the child from attending school, provided the same is certified as such by the attendance authority; and

(h) such other circumstances as may be prescribed.

16. Special schools for physically or mentally deficient children.- If there is in existence a special school within the prescribed distance from the residence of a child who is suffering from physical or mental defect, the attendance authority may, if it is satisfied that the child is not receiving any instruction in some other manner considered by it to be satisfactory, by order require the child to attend the special school; and it shall be the duty

of the parent of such child to cause the child to attend the special school unless there be a reasonable excuse for the non-attendance of the child within the meaning of clause (f) of section 15.

17. Attendance orders.- (1) Wherever the attendance authority has reason to believe that the parent of the child has failed to cause the child to attend an approved school and that there is no reasonable excuse for the non-attendance of the child within the meaning of section 15, it shall hold an inquiry in the prescribed manner.

(2) If, as a result of the inquiry, the attendance authority is satisfied that the child is liable to attend an approved school under this Act, and that there is no reasonable excuse for the non-attendance of the child within the meaning of section 15, it shall pass an attendance order in the prescribed form, directing the person to cause the child to attend the approved school with effect from the date specified in the order.

(3) An attendance order passed against a parent in respect of his child under this section shall, subject to the provisions of sub-section (6), remain in force for so long as this Act continues to apply to the child.

(4) If any parent against whom an attendance order has been passed in respect of his child under sub-section (2), transfers the custody of the child to any other person during the period in which the attendance order is in force, such parent shall be bound immediately to inform the attendance authority in writing of such transfer.

(5) Where the attendance order has been passed against a parent in relation to his child under this section, such order shall have effect in relation to any other person to whom the custody of the child may be transferred during the period in which the attendance order is in force, as it has effect in relation to the person against whom it was originally passed.

(6) A parent may, at any time, apply to the attendance authority for cancellation of the attendance order on the ground,-

(a) that he is no longer the guardian or the person in actual custody of the child; or

(b) that circumstances have arisen which provide a reasonable excuse for non-attendance;

and thereupon, the attendance authority may, after holding an enquiry in the prescribed manner cancel or modify the attendance order.

18. Children not to be employed so as to prevent them from attending school.- No person shall employ a child in a manner which shall prevent the child from attending an approved school.

19. Primary education to be free.- (1) No fee shall be levied in respect of any child for attending an approved school, which is under the management of the State Government or a local authority or a School Board as the case may be.

(2) Where in respect of any child an attendance order has been passed under section 17 and the only school which he can attend is an approved school under private management falling within sub-clause (b) of clause (3) of section 2, the School Board or the Director for Compulsory Primary Education may take such steps, as he may think fit, for the purpose of ensuring that the primary education which the child is to receive is free.

20. Age of child how to be computed.- The age of a child for the purposes of this Act, shall be computed in terms of years completed by the child on or before the first day of the academic year:

Provided that where the birth day of a child falls on a day not later than sixty days from the first day of the academic year, the birth day shall be deemed to fall on the first day of the academic year for the purpose of computing the age of the child.

CHAPTER IV

EXAMINATIONS AND PREVENTION OF MALPRACTICES ETC.

21. Definitions.-In this Chapter except in section 22,-

(a) "educational institutions" means any University, any college affiliated to or maintained by the University, any junior college, any school or institution imparting primary, secondary or technical education and includes the Karnataka State Secondary Education Examination Board, the Karnataka State Board of Technical Education, the Karnataka Pre-University Board and such other institution or classes of institution as may be notified by the State Government in the official Gazette;

(b) "examination" means an examination for the time being specified in the Schedule II and such other examinations as may be notified by the State Government in the official Gazette and includes evaluation, tabulation, publication of results and all other matters connected therewith;

(c) "refusal to work" in relation to any person to whom any work in connection with any examination has been assigned means, his failure to

attend at, or absence from, the place of work on a working day and during working hours, without obtaining permission of the authority competent to grant such permission or his refusal to do the work or any other conduct on his part, which results in or is likely to result in cessation or substantial retardation of the work and the words "to refuse to do the work", with all their grammatical variations and cognate expressions shall be construed accordingly; and

(d) "malpractice" in relation to any examination means taking or giving or attempting to take or give any help from or to any person or from any material, written, recorded, typed or printed or from any person, in any form whatsoever.

22. Examinations.- (1) The examination system, whether by internal assessment, external assessment or partly internal and partly external assessment, shall be so regulated by the competent authority as to make it a reliable and effective method of student evaluation.

(2) The government may make rules for all matters connected with the implementation of the examination system and the conduct of examination and the pattern of examination system to which different classes of educational institutions should conform.

23. Duties of certain persons entrusted with the examination work.- No person,-

(a) who is appointed as a paper setter at any examination shall supply or cause to be supplied the question paper drawn by him or a copy thereof or communicate the contents of such paper to any person or give publicity thereto in any manner, except in accordance with the instructions given to him in writing by his appointing authority in this behalf; or

(b) who is entrusted with the work of printing, cyclostyling, typing or otherwise producing copies of any question paper set for the purposes of any examination shall supply or cause to be supplied a copy thereof or communicate the contents thereof to any person or give publicity thereto in any manner, except in accordance with the instructions given to him in writing by the authority which entrusted the work to him; or

(c) who is entrusted with the custody, or is otherwise in possession of any question paper set for the purposes of any examination shall supply or distribute or cause to be supplied or distributed any copy thereof or communicate the contents thereof to any person or give publicity thereto in

any manner, except in accordance with the instructions given to him in writing by the authority which entrusted the custody or give possession thereof to him.

24. Prohibition of copying at examination, etc.- (1) No person shall in or near an examination hall copy answers to the question papers set at the examination, from any book, notes or answer papers of other candidates or commit any other malpractices:

Provided that nothing in this section shall preclude such person from taking such assistance from books or materials as is permissible under the rules governing such examination.

25. Prohibition of impersonating at examinations.- No person shall appear or write at any examination for or on behalf of any other candidate.

26. Prohibition of loitering near examination's centre, etc.- No person, save in the discharge of his duties or orders of his superiors, shall during the hours when an examination is conducted or any evaluation or tabulation work relating to any examination is done and one hour preceding the commencement of such examination, evaluation or tabulation work, loiter within the premises wherein the examination is held or evaluation or tabulation work is done or at any public or private place within a distance of one hundred meters from such premises:

Provided that nothing contained in this section shall apply in respect of *bonafide* activities of any such person.

27. Alteration of the answers written at an examination, etc.- No person shall,-

(a) save in accordance with the rules or orders governing the conduct of an examination,-

(i) change, modify, vary or alter the answers written by an examinee at such examination; or

(ii) introduce additional answer books or sheets into an answer script or remove or substitute the answer scripts or any part thereof;

(b) intentionally or knowingly,-

(i) make incorrect entries in an answer script or marks register or marks card; or

(ii) total or retotal wrongly the marks obtained by any candidate; or

(iii) feed wrong data to the computer,

intending thereby to wrongfully increase or decrease the marks awarded or to be awarded to the examinee at an examination.

28. Duty of employees of educational institutions to do examination work.- Notwithstanding anything contained in any law for the time being in force or in any contract or any judgment, decree or order of any court or tribunal, it shall be the duty of every officer, teacher or other employee of every educational institution and every person in the service or pay of or remunerated by any educational institution to do any work assigned to him, in connection with any examination.

CHAPTER V

CLASSIFICATION AND REGISTRATION OF EDUCATIONAL INSTITUTIONS

29. Classification of educational institutions.- The educational institutions shall be classified as follows:-

(a) state institutions, that is to say, educational institutions established or maintained and administered by State Government;

(b) local authority institutions, that is to say, educational institutions established or maintained and administered by a local authority, and

(c) private educational institutions, that is to say,. educational institutions established or maintained and administered by any person or body of persons registered in the manner prescribed.

30. Educational institutions to be registered.- (1) Save as otherwise provided in this Act, every local authority institution and every private educational institution established on or before the date of commencement of this Act or intended to be established thereafter, shall notwithstanding anything contained in any other law for the time being in force, be registered in accordance with this Act and the rules made thereunder.

(2) No person or local authority shall establish or as the case may be, run or maintain an educational institution requiring registration under this section, unless such institution is so registered.

31. Procedure for registration of educational institutions.- (1) Any local authority or any person or registered body of persons intending to,-

(a) establish an institution imparting education, or

(b) maintain an institution imparting education established on or before the date of commencement of this Act and in existence on such date,

shall make an application for registration of such institution to the registering authority within such period and in such manner along with such fee as may be prescribed.

(2) While registering an institution under sub-section (1), the registering authority shall have due regard to the following matters, namely:-

(a) that there is need for providing educational facilities to the people in the locality or for the type of education intended to be provided by the institution;

(b) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority;

(c) that the institution is proposed to be located in sanitary and healthy surroundings;

(d) that the site for the building, playground and garden proposed to be provided and the building in which the institution is proposed to be housed conform to the rules prescribed therefor;

(e) that the teaching staff qualified according to rules made by the State Government in this behalf, is or shall be appointed; and

(f) that the application satisfies the requirements laid down by this Act and the rules and orders made thereunder.

(3) The registering authority shall within a period of three months from the date of receipt of the application,-

(a) register the institution and issue a certificate in the prescribed form, if the conditions specified or prescribed for registration have been complied with; or

(b) specify or extend from time to time, the period for compliance with such conditions:

Provided that the registering authority, may if it deems necessary, obtain and consider a report on the need for such institution from the expert body constituted under section 37 before granting or refusing the registration.

(4) Where any period is specified or extended under clause (b) of sub-section (3), the registering authority may register the institution if the conditions prescribed or specified for registration have been fulfilled within such period and issue a certificate in the prescribed form but shall refuse registration where there has been no such compliance. Every order of

refusal shall disclose the grounds for such refusal and shall be in writing and shall be communicated to the concerned applicant.

(5) The Governing Council of an educational institution registered under this section shall give intimation to the registering authority of any change in any of the particulars furnished under sub-section (1) or of closure of the institution, in such form, in such manner and within such time as may be prescribed and the registering authority shall, on receipt of such intimation, amend the register and the registration certificate wherever necessary or, as the case may be, cancel the certificate.

32. Upgradation of educational institutions etc.- (1) Any local authority or any person or registered body of persons intending to,-

(a) open higher classes in an institution registered under this Act imparting education; or

(b) upgrade any such institution,

may make an application to the registering authority for grant of permission therefor within such period and in such form accompanied by such fee as may be prescribed.

(2) Subject to such rules as may be prescribed, the provisions of sub-sections (2) and (3) of section 31 shall, *mutatis mutandis*, apply to the granting of permission on such application.

(3) Where permission is granted under this section the certificate of registration issued to the institution shall be altered or modified accordingly.

33. Registration of a recognised educational institution.- (1) Notwithstanding anything contained in section 30, the registering authority shall register a local authority institution or a private educational institution if such institution has been recognised by the State Government or the authority competent to grant such recognition, as the case may be, before the date of commencement of this Act, in accordance with the rules or orders applicable to such recognition and the local authority or the Governing Council, as the case may be, files a statement in the prescribed form before the registering authority within a period of six months from such date.

(2) No fee shall be payable for the registration of an educational institution under sub-section (1).

(3) Notwithstanding anything in sub-section (1), where the registering authority is of opinion that a local authority institution or a private

educational institution does not conform to the provisions made by or under this Act, it may direct the local authority concerned or as the case may be, the Governing Council of the private educational institution to bring it in conformity with the same within such period or extended period as it may allow.

34. Cancellation of registration.- (1) Where it appears to the registering authority that in respect of any private educational institution or a local authority institution,-

(a) any condition for registration prescribed or specified under sub-section (2) of section 31 or the provisions of this Act or the rules made thereunder relating to registration are violated; or

(b) the local authority or the Governing Council to which a direction was given under sub-section (3) of section 33 has contravened the direction,

it may, after holding such enquiry as it deems fit, send report to the competent authority recommending the cancellation of registration of such institution.

(2) The competent authority may upon the receipt of the report under sub-section (1), after giving the local authority or the Governing Council an opportunity of being heard, order the cancellation of the certificate of registration of the institution and the removal of its name from the register. Every such order shall be communicated to the local authority or the Governing Council and to the registering authority.

35. Registration of Tutorial Institutions.- (1) (a) On or after the commencement of this Act, no tutorial institution shall be started without prior registration and an application for such registration shall be made to the registering authority in the prescribed manner along with such fee as may be prescribed;

(b) In the case of a tutorial institution in existence at the commencement of this Act, any person or body of persons managing such institution shall within ninety days from such commencement make an application for registering to the registering authority and if no such application is so made or if the registering authority communicates to him an order refusing the registration of institution under sub-section (2), the person or body of persons managing such institution shall not run the institution

from the date of expiration of ninety days aforesaid or the date of communication of such order of refusal as the case may be.

(2) On receipt of an application under sub-section (1),. the registering authority may, after satisfying itself whether or not the application contains all the prescribed particulars and that the tutorial institution complies with the minimum requirements prescribed in regard to the sanitary condition of the premises and the qualifications of the teaching staff, either register the tutorial institution in a separate register to be maintained for the purpose or refuse the registration, and shall, where it so registers the institution, issue in the prescribed form a registration certificate in the name of the tutorial institution.

(3) The person or body of persons managing every tutorial institution so registered, shall submit to the registering authority within two months after the end of every academic year, an annual report regarding the coaching facilities provided by it during the academic year.

(4) The persons or body of persons managing every tutorial institutions so registered shall give intimation to the registering authority of any change in any of the particulars furnished under sub-section (2), or of closure of the institution, in such form, in such manner and within such time as may be prescribed, and the registering authority shall, on receipt of such intimation, amend the register referred to in sub-section (2) and the registration certificate wherever necessary, or as the case may be, cancel the certificate and notify the same.

(5) Where the person or body of persons managing any tutorial institution has, in the opinion of the registering authority, contravened any of the conditions subject to which the registration certificate is issued, the registering authority may, after giving the person or body of persons an opportunity of making a representation, cancel the registration certificate and remove the name of the institution from the register referred to in sub-section (2) and notify the same.

CHAPTER VI

RECOGNITION OF EDUCATIONAL INSTITUTIONS, ETC.

36. Recognition.- (1) Recognition may be accorded to any educational institution registered under this Act in accordance with the provisions of this Act and the rules made thereunder.

(2) The granting of recognition shall be subject to fulfillment of the following conditions, namely:-

(a) security deposit of the prescribed amount shall be made within the time specified;

(b) the Governing Council shall possess or be assured of adequate funds to run the institution on a stable footing; and

(c) such other general or special conditions as may be prescribed in regard to accommodation, appointment of teaching and other staff, the code of conduct to be accepted and observed by the Governing Council, furniture and equipment, syllabi, text-books and such other matters relating thereto.

(3) Any local authority or Governing Council seeking recognition, as the case may be, for a local authority institution or a private educational institution shall make an application to the competent authority furnishing such particulars and in such manner and accompanied by such fee as may be prescribed.

(4) The competent authority after satisfying itself that the application is in accordance with the rules, may dispose the application in accordance with sub-sections (6) to (8), or if deemed necessary forward the application to the expert body for obtaining its report under clause (b) of sub-section (1) of section 37.

(5) The expert body receiving the application forwarded under sub-section (4) shall return it to the competent authority along with its report within such time as may prescribed.

(6) The competent authority, after considering the report, if any, received from the expert body and after holding such inspection or enquiry as it may deem necessary shall, by order, in writing,-

(a) grant recognition, where the conditions for recognition applicable to such institutions are fulfilled; or

(b) grant approval provisionally subject to the fulfillment of the conditions for recognition within a period specified or extended from time to time by such authority:

Provided that the educational institution shall not admit any fresh batch of students during the period of such provisional approval.

(7) If a period is specified or extended under sub- clause (b) of sub-section (6), the competent authority may immediately after the expiry of

such period, obtain from the expert body, a report or a further report under section 37. The competent authority, after considering the report or the further report, if any, and holding such inspection or enquiry as may be deemed necessary shall, by order in writting grant recognition where all the conditions for recognition applicable to such institutions are fulfilled or for reasons to be recorded in writing, refuse recognition where such conditions are not fulfilled:

Provided that recognition shall not be so refused unless the applicant is given an opportunity of being heard.

(8) Every order of grant or refusal of recognition passed under this section shall be communicated to the registering authority and to the applicant.

37. Expert body.- (1) The State Government shall subject to such rules, as may be prescribed, constitute such number of bodies of experts as may be deemed necessary,-

(a) to consider the need for providing educational facilities to the people in the locality or for the type of education;

(b) to consider whether the special conditions, if any, for recognition applicable to any institution have been fulfilled by such institution;

(c) to recommend to the State government from time to time, modifications or changes in the conditions for recognition; and

(d) to make recommendations to the State Government or the competent authority on such other matters as may be referred to it by the State Government or the competent authority.

(2) The board of experts constituted under sub-section (1) shall in accordance with the rules prescribed thereunder submit its report or further report to the competent authority or the State Government, as the case may be.

38. Recognition of existing institution, etc.- (1) Notwithstanding anything contained in section 36,-

(a) educational institutions established and run by the State Government or by any authority sponsored by the Central or State Government or by a local authority and approved by the competent authority in accordance with such conditions as may be prescribed shall be deemed to be educational institutions recognised under this Act;

(b) all educational institutions or any local authority institutions other than those specified in clause (a) imparting education, which are established and recognised in accordance with rules in force immediately before the commencement of this Act and in existence at such commencement shall be deemed to be educational institutions established and recognised under this Act, provided they comply with the provisions of this Act and the rules made thereunder within such period and in accordance with such procedure as may be prescribed.

(2) Any private educational institution imparting education which is in existence at the commencement of this Act but which has not been recognised in accordance with the rules in force immediately before such commencement shall discontinue to impart education from such commencement, unless within sixty days of such commencement, an application for recognition is made, in accordance with the provisions of this Act and the rules made thereunder and every such application shall be disposed of within sixty days of its receipt by the competent authority. No person shall run any such institution after the application for recognition is rejected.

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

(a) fails to fulfill all or any of the conditions of recognition or fails to comply with the orders of the competent authority in regard to accommodation, equipments, syllabi, text books, appointment, punishment and dismissal of teachers;

(b) denies admission to any citizen on ground of religion, race, caste, language or any of them;

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

(d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered by the competent authority after due enquiry to be unfit or undesirable to be a teacher or arbitrarily terminates the services of a teacher or fails

to comply with the orders of the competent authority in this regard;

(e) fails to remedy the defects in the instruction or accommodation or deficiencies in the management or discipline within such time as may be specified therefor by the competent authority;

(f) contravenes any of the provisions of this Act, the rules and orders made thereunder,

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

(2) Where the State Government is of the opinion that the recognition granted to any local authority institution or private educational institution should, in the public interest be withdrawn, they may after giving to the local authority or as the case may be the Governing Council of the institution one month's notice to make any representation, withdraw by notification the recognition granted to the said institution.

(3) Notwithstanding anything contained in any other law for the time being in force, no educational institution which has not been recognised, or the recognition of which has been withdrawn under this Act shall be entitled to,-

(a) receive any grant-in-aid from the State funds or other financial assistance or other facilities from the Government;

(b) send up or present candidates for examinations in courses of study conducted by a University or the Government.

CHAPTER VII

MANAGEMENT OF RECOGNISED PRIVATE EDUCATIONAL INSTITUTIONS AND LOCAL AUTHORITY INSTITUTIONS, ETC.

40. Duties of management of local authority institution.- (1) It shall be the duty of the management of local authority institution to comply with all the provisions of this Act and the rules or orders made thereunder.

(2) Without prejudice to the generality of the fore-going provision, it shall be the duty of the management of a local authority institution,-

(a) to ensure that all monies collected by or granted or allotted to the local authority by or under this Act, are expended for educational purposes; and

(b) to submit every year before such date and to such authority, as may be prescribed, an annual report relating to the administration of the local authority institution and an annual budget estimate relating thereto.

41. Management of recognised educational institutions.- (1) No recognised private educational institutions shall be managed except in conformity with the rules which the State Government may frame for such institutions after previous publication.

(2) The rules under sub-section (1) may, *inter alia*, include,-

(a) qualification for posts of teaching and non-teaching employees;

(b) the manner of recruitment of the teaching and non-teaching employees;

(c) scales of pay and allowances admissible;

(d) leave, pension, provident fund, insurance and such other benefits;

(e) maintenance and enforcement of discipline of employees;

(f) powers, functions and responsibilities of the management;

(g) duties and responsibilities of the Secretary; and

(h) maintenance and submission of records, accounts and other returns to the prescribed authority.

(3) While recruiting the teaching and non-teaching employees, every recognised educational institution shall comply with the orders issued by the State Government from time to time for reservation of posts to Scheduled Castes, Scheduled Tribes and other backward classes of citizens and the weaker sections of people.

(4) The Governing Council shall have the power to appoint the head of the institution and also to take disciplinary action against him according to the prescribed rules.

(5) If there is a change in the Governing Council of the institution or change in the location of the institution a fresh application for recognition shall be made as if it were a newly started institution.

42. Managing Committee.- (1) Every recognised private educational institution shall have a Managing Committee by whatever name called.

(2) the Managing Committee shall be reconstituted once in two years.

(3) the Managing Committee shall consist of not less than eleven and not more than fifteen members nominated by the Governing Council, of whom not less than three including the academic head of the institution and two members of the teaching staff shall be representatives of teachers of the institution and at least two others shall be representatives of parents selected in accordance with the prescribed rules:

Provided that,-

(a) such members of the staff shall be nominated by rotation according to seniority for a period of two years each; and

(b) where the institution has less than three members of the teaching staff, all of them shall be representatives of the teachers:

Provided further that not more than two persons who are close relations shall be nominated as members of the Managing Committee. For the purpose of this proviso close relations means, spouses, parents, children, brothers, sisters, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, parents-in-law, father's brothers and sisters, mother's brothers and sisters, brothers or sister's sons or daughters.

***Explanation*.-** The number mentioned in this sub-section shall be in addition to the representatives, if any, of the University Grants Commission, the Medical Council of India, the All India Council for Technical Education, the State Government or of the University concerned, required by or under any law for the time being in force.

(4) Notwithstanding anything contained in sub-sections (1) to (3), the Board of trustees or Governing Body or wakf board, by whatever name called, constituted or appointed under any other law for the time being in force relating to charitable and religious institutions and endowments and wakfs, shall be deemed to be a Managing Committee constituted under this sub-section.

43. President and Secretary.- (1) There shall be a President and Secretary for every Managing Committee appointed from among its members:

Provided that no employee of the private educational institution other than its academic head shall be chosen as the secretary:

Provided further that every person who, on the date of commencement of this Act, is exercising the powers of the secretary, shall be deemed to be the Secretary of the institution.

(2) The Secretary shall, subject to the general superintendence and control of the Managing Committee, be the Chief Executive of the institution in all matters pertaining to the private educational institution and all acts done by the Secretary in connection with the affairs of the educational institution shall be binding on the Governing Council provided that the Governing Council may within a period of fifteen days from the date of the aforesaid acts of the Secretary, modify or cancel such act.

(3) The Secretary shall be the custodian of all its property and records and shall be responsible for their proper custody, maintenance and safety. He shall exercise such other powers and perform such other duties as may be prescribed.

44. Removal of the Secretary.- Notwithstanding any-thing contained in section 43, if at any time the competent authority is satisfied that the Secretary is not managing the private educational institution in accordance with the provisions of this Act and the rules, it may direct the Governing Council to replace the Secretary by another person. The Governing Council shall be bound to comply with the said direction.

45. Meetings, etc.- (1) The Managing Committee shall hold such number of meetings at such place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at the meetings) as may be prescribed:

Provided that the Managing Committee shall meet at least once in three months.

(2) The President or in his absence, any member chosen by the members present shall preside at a meeting.

(3) All questions at the meeting shall be decided by a majority of votes of the members present and voting and in the case of equality of votes, the person presiding shall have the right to exercise a second or casting vote.

46. Powers and functions of the Managing Committee.- (1) Subject to the provisions of this Act and the rules prescribed thereunder, the Managing Committee shall have the following powers and functions, namely:-

(a) to carry on the general administration of the private educational institution;

(b) to appoint teachers and other employees of the private educational institutions except the head;

(c) to take disciplinary action against the teachers and other employees except the head of the institution;

(d) to supervise and control the employees of the institution; and

(e) any other matters which may be prescribed.

(2) Any decision or action taken by the Managing Committee shall be communicated by the secretary to the Governing Council within fifteen days therefrom. Any decision or action taken and so communicated shall be deemed to be the decision or action taken by the Governing Council unless the Governing Council within a period of twenty-one days from the date of receipt of the communication rescinds or modifies it.

CHAPTER VIII

ADMISSION TO RECOGNISED EDUCATIONAL INSTITUTIONS, SCALES OF FEES, ETC

47. Admission etc., to be according to rules.- Admission of students to a recognised educational institution including the maximum number of students to be admitted thereto, their transfers, migrations and removal shall be in accordance with such rules as may be prescribed.

48. Fees.- (1) Subject to any other law for the time being in force, no Governing Council of a recognised educational institution shall levy or collect any fees or charges or donations or other payments, by whatever name called, save such and at such rate and in such manner as may be prescribed.

(2) The amounts levied or collected under sub-section (1) shall be utilised by the educational institution in accordance with such rules as may be prescribed.

CHAPTER IX

GRANTS-IN-AID

49. Government to set apart sum for giving grant-in-aid to certain recognised institution.- (1) The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid (hereinafter in this Act referred to as grant) to local authority institutions and private institutions in the State recognised for this purpose in accordance with rules made in this behalf.

(2) The rules made under sub-section (1) may also require the institution receiving the grant to comply with any provision for the reservation of appointments or posts in favour of Scheduled Castes, Scheduled Tribes and any backward classes subject to such modification, if any which the State Government may make in the application of such provision to any class or classes of such institutions.

50. Authorities which may sanction grant.- (1) The State Government may in such cases as they think fit, by order, sanction grant to any recognised local authority educational institution or private educational institution subject to such conditions as they may impose in the order relating to such grant.

(2) Every grant sanctioned under sub-section (1) shall be disbursed by the Commissioner of Public Instruction or the Director or such other officer subordinate to the Commissioner or the Director as the State Government may, by general or special order, authorise in this behalf in such manner and subject to such conditions as may be prescribed.

(3) The Governing Council of every recognised institution which is receiving any grant out of State funds shall be responsible for the fulfillment of all the conditions subject to which such grant has been given.

51. Monies received from sources other than grant.- (1) Subject to any law for the time being in force any money received by way of voluntary donation from donors may be accepted by the institution or the Governing Council and the fact shall be intimated within ninety days from the date of such acceptance to the competent authority. Such money shall be deposited in the account of the institution in such Nationalised or Scheduled Bank as may be approved by the State Government and shall be applied and expended for the improvement of the institution and the development of educational facilities and for such other purposes as may be prescribed.

(2) Subject to any law for the time being in force no money shall be collected before, during or after admission of any person by any educational institution as a condition precedent to such admission except towards the prescribed fees.

52. Application for sanction of grant and the conditions to be fulfilled on such sanction.- (1) Every application for the sanction of grant shall be made to the State Government, in such form as may be prescribed and shall contain a declaration signed by the Governing Council of the

recognised institution to the effect that the conditions of recognition and of grant are being and shall continue to be fully observed, that all facilities for inspection of that institution, its accounts, registers and other records relating to the grant shall be afforded to the inspecting staff deputed for the purpose and that all the returns and reports prescribed in this behalf shall be submitted to the competent authority within the time specified by it.

(2) The State Government may sanction such grant or for good and sufficient reasons refuse to sanction such grant.

(3) Subject to the other provisions of this Act, any order passed by the State Government refusing to sanction the grant shall be final and shall not be questioned in any court of law.

53. Powers of State Government to withhold, reduce or withdraw grant.- (1) Notwithstanding anything contained in this Chapter, the State Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable during the year to an educational institution having regard to the funds at the disposal of the State Government or the conduct and efficiency and the financial condition of such institution, after giving an opportunity to the Governing Council of the institution concerned of making a representation against such withholding, reduction or withdrawal.

(2) Without prejudice to the generality of the provisions of sub-section (1) or any other provision of this Act, the State Government may, after such enquiry as they may deem fit, withhold, reduce or withdraw any grant payable to any educational institution if the Governing Council of the institution concerned,-

(i) fails to fulfil all or any of the conditions of grant;

(ii) denies admission to any citizen on grounds only of religion, race, caste, language or any of them;

(iii) allows any employee of the institution to take part in any agitation intended to bring or attempt to bring into hatred or contempt or intended to excite or attempt to excite disaffection towards the Government established by law in India;

(iv) directly or indirectly, encourages any propaganda or practice of wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class;

(v) is guilty of falsification of registers or mis-use of funds for purposes other than those for which they are collected;

(vi) fails to remedy within such reasonable time as specified by the competent authority the defects in the maintenance of accounts pointed out by the auditors; or

(vii) fails to restore, within the time specified by the competent authority, an employee whose services have been wrongfully dispensed with or fails to pay him any arrears of salary or other benefits when directed to do so by the competent authority.

(3) Subject to the other provisions of this Act every order passed under this section shall be final and shall not be questioned in any court of law.

54. Utilisation of funds and movable property of private institutions.- (1) All the monies received or held by or on behalf of every private institution shall be utilised for the purposes for which they are intended, and shall be accounted for by the Governing Council in such manner as may be prescribed.

(2) All the monies received or held by or on behalf of every private institution shall be deposited in a Bank.

(3) The surplus fund of every such institution shall be invested in such manner as may be prescribed and shall be utilised towards educational development only.

***Explanation*.-** For the purpose of this section "surplus fund" means all the monies that remains unused with the institution at the beginning of each academic year, after providing for all the objects, needs, requirements or improvements of the institution during the previous three academic years.

CHAPTER X

ACCOUNTS, AUDIT, INSPECTION AND RETURNS

55. Accounts.- Every educational institution receiving grants out of State funds and other sources shall maintain accounts in such manner and containing such particulars as may be prescribed.

56. Annual audit of accounts.- (1) The accounts of every educational institution receiving grants out of State funds shall be audited at the end of every academic year in such manner, after following such procedure and by such authority, officer or person as may be prescribed and different authorities, officers or persons may be prescribed for different classes of educational institutions.

(2) (a) The prescribed authority, officer or person shall have full access to the account books and other documents required to be maintained by the educational institution in respect of grants received by it out of State funds and shall send a copy of the report on the audit of the accounts under sub-section (1) to the competent authority who shall forward the report to the educational agency;

(b) The educational agency shall, within such time as may be prescribed, submit that report together with the comments of that agency to the competent authority.

57. Inspection or inquiry etc.- (1) The State Government or the competent authority may *suo motu* or otherwise cause an inspection of or inquiry in respect of any educational institution, its accounts, its buildings, laboratories, libraries, workshops and equipments and also of the examinations, teaching and other work conducted or done by the institution to be made by such person or persons as it may direct or to cause an inquiry to be held in respect of examination, working and financial condition of such institution or of any other matter connected with the institution in accordance with such rules as may be prescribed.

(2) The Governing Council and the employees of the educational institution shall at all reasonable times be bound to afford to the aforesaid officer all such assistance and facilities as may be required for the purpose of such inspection or inquiry.

(3) The officer empowered under sub-section (1) shall have the following powers, namely:-

(a) he shall, at all reasonable times have access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the Governing Council and may summon any person in possession or responsible for the custody of such books, accounts, documents, securities, cash or other properties to produce the same at any place as he may direct;

(b) he may summon any person who, he has reason to believe has any knowledge as to the affairs of the educational institution to appear before him and may examine such person on oath.

(4) The State Government or the competent authority shall communicate to the educational agency the views of such authority with reference to the result of such inspection or inquiry and may after ascertaining the opinion of

the educational agency thereon advise that agency upon the action to be taken.

(5) The educational agency shall report to the State Government or the competent authority as the case may be the action, if any which is proposed to be taken or has been taken upon the results of such inspection or inquiry. Such report shall be furnished within such time as the State Government or the competent authority may direct.

(6) Where the educational agency does not, within a reasonable time, take action to the satisfaction of the State Government or the competent authority, they may, after considering any explanation furnished or representation made by the educational agency, issue such directions as may deem fit, and the educational agency and the head of the institution shall comply with such directions and shall be responsible for the implementation of every such direction.

58. Furnishing of returns etc.- Every educational agency shall within such time or within such extended time as may be fixed by the competent authority in this behalf, furnish to the competent authority such returns, statistics and other information as the competent authority may from time to time, require.

CHAPTER XI

PROHIBITION OF TRANSFER OF PROPERTIES BY AIDED EDUCATIONAL INSTITUTIONS.

59. Definitions.- In this Chapter,-

(a) "Governing Council" means the owner, trustee or other person who has power to transfer any land or building belonging to an educational institution and includes a local authority;

(b) "transfer" includes sale, exchange, mortgage, charge, lease or gift.

60. Prohibition of transfer of lands and buildings by educational institutions without the permission from Government in certain cases.- (1) Where before or after the commencement of this Act,-

(a) any land or building has been acquired, constructed, improved or altered for the purposes of any educational institution with the aid of any grant made from the State funds;

(b) any land or building has been transferred by the Government for use for the purposes of any educational institution,

then notwithstanding anything to the contrary in any other law for the time being in force or in any deed of transfer or other document relating to the land or building, it shall not be transferred without the permission of the State Government under sub-section (2) nor shall the land or building be used for any purpose other than the purposes of the educational institution or purposes ancillary thereto without the permission of the State Government.

(2) The State Government may, by order in writing permit the transfer of any such land or building, subject to such conditions as it may impose, if,-

(a) the transfer is made in furtherance of the purposes of the educational institutions or of ancillary purposes approved by the State Government and the proceeds of such transfer are to be wholly utilised in furtherance of the said purposes;

(b) the transfer is made only in part in furtherance of the purposes aforesaid, provided repayment is made to the State Government of such portion as the State government may direct in the circumstances of the case, of the grant referred to in clause (a) of sub-section (1) or of the current market value of the land or building referred to in clause (b) of sub-section (1) or of both, as the case may be;

(c) the transfer is made for any other valid reason provided repayment is made to the State Government in full of the grant referred to in clause (a) of sub-section (1) or of the current market value of the land or building referred to in clause (b) of sub-section (1) or of both, as the case may be.

(3) Any transfer of land or building made without obtaining the permission of the Government under sub-section (2), shall be null and void.

61. Consequence of breach of provisions of section 60.- Where, in any case, the State Government, after giving the Governing Council of the educational institution concerned an opportunity to make its representation in regard to the matter, is satisfied that the provisions of sub-section (1) of section 60 have been contravened in respect of any land or building it may, by order,-

(a) if the land or the land together with the building standing thereon belonged to the State Government and was transferred by it for the purposes of the educational institution, direct the Deputy Commissioner to

take possession of the land or land together with the building standing thereon as the case may be, or at their option, direct the Governing Council to pay to it in full, the current market value of the land or of the land together with that of the building where it was also transferred by it and also the amount of the grant, if any, made by the State Government for improving the land or altering or constructing the building; and

(b) if the land or the building, if any, standing thereon does not belong to the State Government, direct the Governing Council to repay in full the grant made by the State Government with interest from the date of the contravention, at such rate as may be notified by the State Government.

62. Effect of Orders under sub-section (2) of section 60 and 61.- (1) Every order passed by the State Government under sub-section (2) of section 60 or section 61 shall, subject to the provisions of sub-sections (2) and (3), be final.

(2) The Governing Council of the institution not being a local authority, in respect of which such an order is passed, may on the ground that the amount repayable or payable by or to it has been wrongly fixed in the order, apply within sixty days from the date on which the order is received by it to the District Judge having jurisdiction over the area in which the property in question is situated for fixing such amount correctly in accordance with the provision of sub-section (2) of section 60 or section 61, as the case may be.

(3) The District Judge shall determine the amount which is properly repayable or payable by or to the Governing Council in accordance with the provisions of sub-section (2) of section 60 or section 61, as the case may be and such determination shall be final.

63. Land or building to vest in Government absolutely on possession being taken.- (1) When, in pursuance of an order under section 61, the Deputy Commissioner takes possession of any land or building by himself or through another, it shall vest absolutely in the State Government free from all encumbrances.

(2) If the Deputy Commissioner or any person authorised by him in this behalf is opposed or impeded in taking possession of any land or building under this Chapter he shall, if he is a Magistrate, enforce the surrender of such land or building to himself and if he is not a Magistrate, he shall apply to a Magistrate and such Magistrate shall enforce the surrender of the land or building to the Deputy Commissioner.

(3) Whoever opposes or impedes the Deputy Commissioner or any person authorised by him in taking possession of any land or building under this chapter shall be punished with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

64. Recovery of sums due under this chapter.- Any sum required to be repaid or paid to the State Government in pursuance of section 60 or section 61 or section 62 may, without prejudice to any modes of recovery provided in any other law for the time being in force, be recovered from the properties of the institution or from the Governing Council thereof as if it were an arrear of land revenue due from such educational institution or Governing Council.

65. Court not to attach, sell etc., in the absence of permission of the State Government.- (1) No land or building referred to in sub-section (1) of section 60 shall be liable to be attached, sold or made subject to a charge by any court whether in execution of a decree or order or otherwise, unless the person seeking such relief from the court has obtained the permission of the State Government to do so and files such permission in the court.

(2) When granting such permission, the State Government may impose such conditions as it deems fit.

(3) If any such land or building is attached or sold, or a charge is created thereon by any court without obtaining and filing the permission of the State Government as aforesaid or if any condition imposed by it when granting such permission is contravened, then the attachment, sale or charge, as the case may be, shall be null and void.

CHAPTER XII

TAKING OVER OF MANAGEMENT, REQUISITIONING AND ACQUISITION OF EDUCATIONAL INSTITUTIONS.

66. Definitions.- In this chapter,-

(a) "educational institution" means any school, college or other institution for imparting education which is managed by an individual, body or local authority and is recognised by the State Government.

(b) "persons interested" includes all persons claiming or entitled to claim interest in the amount payable on account of the taking over of the management of the educational institution or requisitioning or acquisition of the property used for the purposes of an educational institution or of any other institution connected therewith under this Act.

67. Taking over of management of educational institutions in public interest.- (1) Where the State Government is of opinion that the management of any educational institution should either in the public interest or in order to secure the proper management of the said educational institution be taken over, it may, after giving one month's notice to the person or body of persons incharge of the management of such educational institution to make any representation, direct by notification, that the management of the said educational institution shall with effect on and from the date specified therein vest in the State Government [1][for a period of one year][1]:

Provided that no private educational institution under the management of a Religious Institution, Endowment or a Wakf shall be taken over without the prior consent of such management:

[2][Provided further that if the State Government is of the opinion that in order to secure the proper management of the educational institution, it is expedient that such management should continue to vest in the State Government after the expiry of the said period of one year, it may issue direction for the continuance of such management for a further period not exceeding one year as it may think fit, so however, the total period for which such management shall continue to vest in the State Government shall not, in any case, exceed two years.][2]

1. Substituted by Act 8 of 1998 w.e.f. 11.4.1998.
2. Inserted by Act 8 of 1998 w.e.f. 11.4.1998.

(2) The educational institution referred to in sub-section (1) shall be deemed to include all assets, rights and lease holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, stores instruments and vehicles, cash balances, revenue fund, investments and book debts and all other rights and interests arising out of such property as were immediately before the date of taking over of the management under sub-section (1) (hereinafter in this Chapter referred to as the date aforesaid) in the ownership, possession, power or control of the management of such educational institution and all books of account, registers and all other documents of whatever nature relating thereto.

(3) Any contract, whether express or implied, or other arrangement (not being a contract) or agreement specified in section 61 in so far as it relates to the management of the educational institution and in force immediately

before the taking over, shall be deemed to have terminated on the date aforesaid.

(4) All persons, in whom the managment of the educational institution vested immediately before the taking over shall, as form the date aforesaid, cease to be so vested and shall be deemed to have vacated their offices as such on the date aforesaid.

(5) Notwithstanding anything in any other law for the time being in force, no person in respect of whom any contract of management or other arrangement is terminated by reason of the provisions contained in sub-section (3) or who ceases to hold any office by reason of the provisions contained in sub-section (4) shall be entitled to claim any compensation for the premature termination of the contract of management or other arrangement or for the cessation of management or for the loss of office, as the case may be.

(6) Notwithstanding any judgement, decree or order of any court, tribunal or other authority or anything contained in any other law for the time being in force, every person in whose possession or custody or under whose control the educational institution or any part thereof or any properties attached thereto vest shall transfer the same to the special officer appointed by the State Government for the purpose of carrying on the management of such educational institution for and on behalf of the State Government, or where no special officer is appointed, to such other person as the State Government may direct.

(7) For the removal of any doubt, it is hereby declared that any liability incurred by the private management in relation to the educational institution before the taking over shall be enforceable against the said Governing Council and not against State Government or the Special Officer.

(8) The amount payable in respect of the vesting in the State Government or the Governing Council of an educational institution under sub-section (1) shall be an amount equal to the average net annual surplus income of such educational institution during the period of its existence, or the period of five consecutive accounting years immediately preceding the date of such vesting whichever is less:

Provided that no such amount shall be payable if the trusts or Governing Council under which the educational institution is founded makes provision for the running of such institution.

Explanation.- In this sub-section, the expression "accounting year" means the period beginning on the 1st day of July of any year and ending on the 30th day of June of the year next following.

(9) The amount payable under sub-section (8) shall subject to rules made under this Act, be paid by the competent authority to the person interested in the educational institution in such manner and within such time as may be prescribed.

[1][**67A. Relinquishment of management of educational institutions.-** (1) After the expiry of the period specified in sub-section (1) of section 67, the management of educational institution shall vest in accordance with the order, if any, of any court and if there be no such order, vest in the Governing Council or managing committee (by whatever name called) of such educational institution or such other body or person, as the case may be, entitled thereto.

(2) If at any time before the expiry of the period referred to in sub-section (1) of section 67, it appears to the State Government that the purpose of vesting of the management of educational institution in the State Government has been fulfilled or that for any other reason it is not necessary that the management of such educational institution should remain vested in the State Government, it may, by order published in the official gazette, relinquish the management of such educational institution with effect from such date as may be specified in the order.

(3) On and from the date specified under sub-section (1) the management of the educational institution shall be transferred in accordance with the order, if any, of any court, and if there be no such order, shall be transferred to the Governing Council or managing committee (by whatever name called) of the educational institution or such other body or person, as the case may be, entitled thereto.][1]

1. Inserted by Act 8 of 1998 w.e.f. 11.4.1998

68. Power to terminate contract of employment.- If the State Government or the Special officer appointed under section 67 is of opinion that any contract of employment entered into by the Governing Council in relation to the educational institution at any time before taking over is unduly onerous, it or he may, by giving to the employee one month's notice in writing or salary or wages for one month in lieu thereof, terminate such contract of employment.

69. Contracts etc., made in bad faith may be cancelled or varied.- (1) If the State Government is satisfied, after such enquiry as it may think proper, that any contract or agreement entered into at any time within a period of two years immediately preceding the date aforesaid between the Governing Council in relation to the educational institution and any other person, in relation to any service, sale or supply to, or by the educational institution and in force immediately before the taking over has been entered into in bad faith or is found detrimental to the interest of the educational institution, it may make, within one hundred and eighty days from the date aforesaid an order cancelling or varying (either unconditional or subject to such conditions as it may think fit to impose) such contract or agreement and thereafter the contract or agreement shall have effect accordingly:

Provided that no contract or agreement shall be cancelled or varied except giving to the parties to the contract or agreement one month's notice to make a representation in this regard.

(2) Any person aggrieved by an order under sub-section (1) may, within thirty days from the date of communication of the order, make an application to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the educational institution is situated for the variation or reversal of such order and there-upon such court may confirm, modify or reverse such order.

70. Avoidance of voluntary trusts.- Any transfer of property, movable or immovable, or any delivery of goods made by or on behalf of the educational institution (not being a transfer or delivery made in the ordinary course of transaction or in favour of a purchaser for valuable consideration and in good faith), if made within a period of one year immediately preceding the date aforesaid, shall be void as against the Government or the special officer, as the case may be.

71. Requisitioning of an educational institution.- (1) Where recognition or permission granted to an educational institution is withdrawn by the State Government under sub-section (2) of section 39 or otherwise, or where an educational institution is closed before the last working day of an academic year and if the State Government consider it necessary to requisition any property movable or immovable, which before the withdrawal of the recognition or permission or the closing of the institution or of any other institution connected therewith, such as hostel for students, quarters for the residence of employees or playground, then notwithstanding

anything to the contrary in any other law for the time being in force, the State Government may, within three months from the withdrawal of the recognition or permission or the closing of the educational institution, as the case may be, requisition such property and make such further orders as appears to it to be necessary or expedient in connection with the requisition.

(2) Before requisitioning any property under sub-section (1), the State Government,-

(a) shall call upon the Governing Council or any other person who is in possession of the property by notice in writing to show cause, within fifteen days of the date of the service of such notice to him why the property should not be requisitioned and shall consider the objections, if any, shown by the Governing Council or other person, and

(b) may, by order, direct that the Governing Council or any person shall not, without permission of competent authority, dispose of, structurally alter, lease or in any manner deal with, the property until the expiry of such period, not exceeding three months, as may be specified in the order.

(3) Where any property is requisitioned under sub-section (1) the Government may,-

(a) use or deal with such property for any educational purpose; or

(b) by order, permit any person or body or local authority to use or deal with such property for any such purpose, subject to the payment of such rent and other sums to the Government and the observance of such conditions as may be specified in the order.

72. Summary power for taking possession of property.- (1) Any person remaining in possession of any property in contravention of an order issued under section 71 may be summarily dispossessed of such property by an officer empowered by the State Government in this behalf and in the case of a building if free access to it is not afforded to such officer, he may after giving reasonable warning and facility of withdrawing to any women not appearing in public according to the customs in the country, remove or open any lock or bolt or break open any door or do any other act necessary for effecting such dispossession.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer, direct any police officer not below the rank of

Sub-Inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.

73. Release from requisitioning and discharge of liability of the State Government.- (1) The State Government may, at any time, release any property requisitioned under this Chapter and in such a case the possession of the property released from requisition shall be delivered to the Governing Council or any person from whose possession the property requisitioned, was taken or if there were no such Governing Council or person, the person deemed by the State Government to be entitled to the possession of such property, and such delivery or possession shall be full discharge of the State Government from all liabilities in respect of that property which any other person may be entitled, by the due process of law, to enforce against the person to whom possession of the property is so delivered.

(2) Where the person to whom possession of any such property is to be delivered cannot be found or has no agent or other person empowered to accept delivery on his behalf, the State Government shall cause to be published in the official Gazette a notice declaring that the property is released from requisition and in the case of any immovable property, the State Government shall also cause a copy thereof to be affixed, on some conspicious part of such property.

(3) When the notice referred to in sub-section (2) is published in the official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof, and the State Government shall not be liable for any amount, rent, or other claim in respect of such property for any period after the said date.

74. Acquisition of property.- (1) Where any property is vested under sub-section (1) of section 67 in connection with the management of an educational institution or is subject to requisition under sub-section (1) of section 71, the State Government may, if it considers it necessary to acquire the property for any public purpose connected with education, acquire at any time [1][but before the expiry of the period referred to in sub-section (1) of section 67][1] such property for the said public purpose by publishing in the Official Gazette a notice to the effect that the State Government has decided to acquire the property in pursuance of this section:

1. Inserted by Act 8 of 1998 w.e.f. 11.4.1998

Provided that before issuing such notice, the State Government shall call upon the Governing Council or any other person who in the opinion of the State Government is the person interested in such property to show cause why the property should not be acquired; and after considering the objections, if any, shown by the Governing Council or other person interested in the property the State Government may pass such orders as it deem fit.

(2) When notice as aforesaid is published in the Official Gazette, the requisitioned property shall from the day on which the notice is so published, cease to be subject to requisition and vest absolutely in the State Government free from all encumbrances.

75. Principles and methods of determining amount for property requisitioned or acquired.- (1) Where any property is requisitioned or acquired under this Act, the amount payable therefor shall be as determined and paid in the manner and in accordance with principles hereinafter set out, that is to say,-

(a) where the amount is settled and fixed by agreement it shall be paid accordingly;

(b) where there is no such agreement, the State Government shall appoint as arbitrator a person who is holding or has held a judicial office not below the rank of a District Judge, for determining the amount;

(c) at the commencement of the proceedings before the arbitrator the State Government and the person to whom the amount is payable shall state what according to them is the fair amount;

(d) the arbitrator shall after the enquiry determine the amount which appears to him to be just and specify the person or persons to whom such amount shall be paid and in making the award determining the amount he shall have regard to the circumstances of each case and the provisions of sub-section (2), (3), (4) and (5) so far as they are applicable;

(e) where there is any dispute as to the person or persons who are entitled to the amount, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to the amount, he shall apportion the amount amongst such persons according to their rights: and

(f) nothing in the Arbitration Act, 1940 (Central Act 10 of 1940) shall apply to artibrations under this section.

(2) The amount payable for the requisitioning of any property, movable or immovable, shall in respect of the period of requisition, be a sum equal to the rent which would have been payable for the use and occupation of the immovable property or for the use of the movable property if it had been taken on lease for that period.

(3) The amount payable for the acquisition of any immovable property under section 74 shall be,-

(a) the price which the requisitioned property would have fetched in the open market if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or

(b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition,

whichever is less.

(4) The amount payable for the acquisition of any movable property shall be the price which such property would have fetched in the open market if it had been sold on the date of acquisition.

(5) Where any property requisitioned or acquired under this Act was acquired with the grant from the State funds, the amount of such grant shall be taken into account in the prescribed manner in determining the amount payable.

Explanation.- For purposes of this sub-section, all the property acquired by the educational institution shall be deemed to have been acquired with the aid of such grant, contribution, donation or collection unless the Governing Council of the educational institution proves to the satisfaction of the arbitrator that the property has been acquired otherwise.

76. Payment of amount for property requisitioned or acquired.- The amount payable under the award of arbitrator shall subject to any rules made under this Act, be paid by the competent authority to the person interested in such manner and within such time as may be specified in the award.

77. Appeal from the award of the arbitrator under section 75 in respect of amount.- Any person aggrieved by the award of the arbitrator under section 75 may, within sixty days from the date of such award, prefer an appeal to the High Court:

Provided that the High Court may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

78. Arbitrator to have certain powers of civil court.- The arbitrator appointed under this chapter, while holding arbitration proceedings under this Act, shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) reception of evidence or affidavits;

(d) requisitioning any public record from any court or office;

(e) issuing commissions for examination of witnesses.

79. Powers of entry and inspection and calling for information.- The competent authority may, for the purpose of requisitioning or acquiring any property under this Chapter, by order,-

(a) empower any authority to enter and inspect any property specified in the order liable to be requisitioned or acquired under this Act;

(b) require any person to furnish to such authority such information in his possession relating to the property as may be specified in the order.

80. Provisions for existing staff of educational institutions.- Notwithstanding anything to the contrary in any contract or agreement or any law for the time being in force the following provisions shall apply in regard to the persons on the staff of the educational institution immediately before the date on which the management of the educational institution is vested in the State Government, namely:-

(a) the State Government shall have power to terminate the services of any such person for reasons to be recorded in writing after giving him three calendar month's notice in writing or paying him three month's pay in lieu of such notice;

(b) a person whose services have been retained shall be governed at his option either by the conditions of service as may from time to time be prescribed or by the conditions of service applicable to him immediately before such vesting.

81. Posts of employees of educational institutions vested under this Chapter to be treated as a unit for certain purposes.- The posts in each category of employees of the educational institutions in a district which have vested in the State Government under this Chapter shall be a separate unit for all purposes including seniority, promotion, discharge or reversion for want of vacancies.

CHAPTER XIII

PROVISION FOR ANCILLARY SERVICES IN RECOGNISED EDUCATIONAL INSTITUTIONS

82. Medical Examinations and Health services.- (1) The State Government may prescribe rules as to the conduct of medical examinations and medical inspections of students in recognised educational institutions, and such rules, in particular make provision requiring that any class of such examinations or inspections shall be conducted by duly qualified medical practitioners having such special qualifications or experience as may be prescribed, or shall be conducted by a duly qualified medical practitioners selected by any educational authority.

(2) The State Government shall endeavour to establish an educational health service for the purpose of rendering medical or health assistance to students attending the recognised educational institutions.

83. Provision of meals and refreshments.- The State Government shall endeavour to provide mid-day meals and other refreshments as may be deemed necessary for pupils in attendance at recognised educational institutions. The State Government may make provisions by rules as to the manner in which and the persons by whom the expense of providing such meals or refreshments is to be defrayed, as to the facilities to be afforded and the services to be rendered by the Governing Council with respect to the provision of such meals or refreshments and as to such other consequential matters.

84. Provision of facilities for recreation and physical training.- (1) It shall be the duty of every recognised education institution to ensure that the facilities for education provided therein include adequate facilities for recreation and physical training.

(2) The State Government may establish, maintain, and manage or assist the establishment, maintenance and management of camps, vacation classes, playing fields, play and physical education centres and

other places at which facilities for recreation sports and training as specified in sub-section (1) are available for persons receiving education in recognised educational institutions.

85. Guidance services.- The State Government shall endeavour to make adequate provisions for giving educational, vocational and personal guidance service to students studying in recognised educational institutions.

86. Library service.- The State Government shall endeavour to make adequate provision for the establishment of school and college libraries in recognised educational institutions and provide the necessary facilities for the proper use of such libraries by the students studying in such institutions.

CHAPTER XIV

TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES IN PRIVATE EDUCATIONAL INSTITUTIONS.

87. Qualifications, conditions of service of employees.- The State Government may after previous publication make rules regulating the recruitment and conditions of service (including rights as regards disciplinary matters) of the employees in recognised private educational institutions:

Provided that the minimum qualifications for recruitment, age of recruitment, and retirement and benefits of retirement for employees in educational institutions receiving maintenance grant from the State Government shall be the same as those applicable for the corresponding category of employees, if any, in State Institutions unless otherwise prescribed.

88. Appointment of employees.- No person who does not possess the requisite qualifications prescribed under section 87 shall on and from the date of commencement of this Act be appointed as an employee in a recognised private educational institution.

89. Pay and allowances of teachers and other employees.- The pay and allowances of persons employed in the recognised private institutions shall be paid on or before such day in every month, in such manner and by or through such officer or authority as may be prescribed.

90. Schedule of employment to be maintained.- (1) Every private educational institution shall maintain a Schedule of employees indicating therein the number of persons in its employment, the name and qualification of each employee, the grade of pay and such other particulars as may be prescribed.

(2) Within three months from the date of commencement of this Act and within a like period after any alteration in such schedule is made, a private educational institution shall submit a copy of the schedule or alterations made therein, as the case may be, to the Director of the Department concerned or such other officer as may be notified for this purpose.

(3) The Schedule of appointments for the time being in force shall be kept at the office of the private educational institution and shall during office hours, be open free of charge, to inspection by any employee of that private educational institution. The names and qualifications of the teaching staff shall be displayed in a prominent place in the institution.

91. Code of conduct.- (1) Every employee of a private educational institution shall be governed by the prescribed code of conduct and if he violates any provision thereof he shall be liable for the prescribed disciplinary action.

(2) The managing committee may with prior approval of the State Government or any authority authorised in this behalf by the State Government also prescribe standards of conduct to be observed by employees, provided they are not inconsistent with those prescribed under sub-section (1).

92. Dismissal, removal etc.- (1) Subject to such rules as may be made in this behalf no teacher or other employee of a private educational institution shall be dismissed, removed or reduced in rank except,-

(a) in accordance with the conditions of service governing him;

(b) after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the said charges, and where it is proposed after such inquiry to impose on him such penalty, it may impose such penalty, on the basis of the evidence adduced during such inquiry:

Provided that this sub-section shall not apply to temporary employees or to the dismissal, removal or reduction in rank of a teacher or other employee on the ground of misconduct which has led to his conviction on a criminal charge involving moral turpitude.

(2) No order imposing any penalty other than those referred to in sub-section (1) shall be passed except after,-

(a) the teacher or employee is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be

taken and given an opportunity to make any representation which he may wish to make; and

(b) such representation, if any, is taken into consideration.

(3) (a) A teacher or other employee may be placed under suspension by the managing committee,-

(i) where disciplinary proceeding against him is contemplated or is pending; or

(ii) where a case against him in respect of any criminal offence is under investigation or trial.

(b) No such suspension shall remain in force for more than six months:

Provided that if the enquiry is not completed within the period of six months, the secretary shall report the matter to the competent authority, who may permit extension of the period of suspension beyond six months, if he is satisfied that the enquiry could not be so completed due to circumstances beyond the control of the Governing Council.

(c) the Managing Committee placing an employee under suspension shall forthwith report to the competent authority the circumstances in which the order was made.

(d) Subject to such rules as may be prescribed, every employee placed under suspension under this section shall be entitled to such subsistence allowance as may be prescribed.

93. Communication of order.- (1) Every order of the Managing Committee imposing any penalty or otherwise affecting the conditions of service of an employee to his prejudice, shall be communicated to the employee in the prescribed manner.

(2) No order which has not been communicated in accordance with sub-section (1) shall be valid or be of any effect whatsoever.

94. Appeals.- (1) Any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank may within three months from the date of communication of the order prefer an appeal to the Tribunal.

(2) The provisions of sections 4 and 5 of the Limitation Act, 1963 shall be applicable to such an appeal.

(3) If, before the date of commencement of this Act, any teacher or other employees has been dismissed, or removed or reduced in rank or his appointment has been otherwise terminated and any appeal preferred before that date,-

(a) by him against such dismissal or removal or reduction in rank or termination; or

(b) by him or by the Governing Council against any order made in any appeal referred to in clause (a);

is pending before any officer, such appeal shall, notwithstanding anything in sub-section (1), stand transferred to the Tribunal, if he makes an application in that behalf to such officer.

(4) The Tribunal shall dispose of the appeal filed under sub-section (1) or transferred under sub-section (3) after giving the parties the opportunity of being heard.

(5) In respect of an order imposing a penalty other than those specified in sub-section (1) of section 92, on any teacher or other employee, an appeal shall lie to the competent authority within three months from the date of communication of the order imposing such penalty.

(6) The competent authority shall dispose of an appeal preferred under sub-section (5) after giving the parties the opportunity of being heard.

(7) An appeal against an order of the competent authority under sub-section (6) shall lie within the prescribed period to the Tribunal, whose decision shall be final.

95. Court Fee.- Notwithstanding anything in the Karnataka Court Fees and Suits Valuation Act, 1958, every appeal to the Tribunal shall bear a court fee stamp of rupees twenty-five.

96. Tribunal.- (1) The State Government shall, by notification in the official gazette constitute one or more Educational Appellate Tribunals for the adjudication of appeals preferred under this Act and where more than one Tribunal is constituted, the State Government shall specify the territorial jurisdiction of each such Tribunal.

(2) The Educational Appellate Tribunal shall consist of one person who is or has been a Judicial Officer not below the rank of a District Judge:

Provided that pending constitution of the Educational Appellate Tribunal under sub-section (1), the District Judge of each District shall function as the Educational Appellate Tribunal of the District.

(3) The Educational Appellate Tribunal,-

(a) may, if satisfied from the material on record that the order is arbitrary, perverse, malafide, violative of the rules of natural justice or not sustainable on any other ground, pass such orders including one for the reinstatement of the employee, as it deems fit on such terms and conditions, if any, including payment of salary allowances and costs;

(b) shall for the purposes of the disposal of the appeals referred under this Act have the same powers as are vested in a court of appeal under the Code of Civil Procedure, 1908 (Central Act 5 of 1908);

(c) shall have the power to stay the operation of the order appealed against on such terms as it may think fit;

(d) shall for the purpose of executing its own orders have the same powers as are vested in a court executing a decree of a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) as if such orders were decrees of a civil court.

(4) All expenses incurred in connection with the Tribunal shall be borne from out of the Consolidated Fund of the State.

(5) No Civil Court shall have jurisdiction in respect of matters over which the Tribunal exercises any power under this Act.

97. Resignation.- (1) Any employee of a private educational institution may resign his service by giving a notice to the Governing Council in accordance with sub-section (2).

(2) Every such notice of resignation shall,-

(a) conform to the terms and conditions of service governing such employee; and

(b) be in the prescribed form attested by an officer duly authorised in this behalf by the State Government.

(3) No resignation which is not in accordance with sub-section (2) shall be valid or be of any effect whatsoever.

98. Retrenchment of employees.- (1) Where retrenchment of any employee is rendered necessary by the Governing Council or competent authority consequent on any change relating to education or course of instruction or due to any other reason, such retrenchment may be effected

with the prior approval of the competent authority or the next higher authority, as the case may be.

(2) Where any retrenchment of the member of the teaching staff in any aided Educational Institutions is effected, the State Government or the competent authority shall, subject to prescribed rules or orders governing the reservation in posts to Scheduled Castes and Scheduled Tribes and other Backward Classes, appoint such person to a similar post where available in any other aided educational institution.

(3) If the management of an institution wants a transfer of an employee to some other institution, where there is a vacancy or if any employee of an institution, wants a transfer or if two employees apply for mutual transfer, the State Government may grant the request of the institution or of the employee as the case may be.

99. Termination of service.- An employee of a private educational institution who has been confirmed and whose services are retrenched or terminated by the Governing Council for reasons other than as a measure of punishment shall be entitled to compensation at the rate of fifteen days salary for every completed year of service subject to minimum of three months salary and maximum of fifteen months salary.

100. Over-riding effect of this Chapter.- The provisions of this chapter shall have effect notwithstanding anything in,-

(i) any law for the time being in force, or

(ii) any award, agreement or contract of service made before or after the date of commencement of this Act, or

(iii) any judgment, decree or order of a court, Tribunal or any other authority:

Provided that where under any such law, award, agreement, contract of service, judgment, decree or order or otherwise, any employee is entitled to benefits more favourable than accorded under this chapter such teacher or other employee shall continue to be entitled to such benefits:

Provided further that nothing in this chapter shall preclude the teacher or other employee from entering into employee shall continue to be entitled to such favorable benefits:

101. Power of Government to impose penalties.- Notwithstanding anything contained in sections 92 and 94 and subject to such rules as may be prescribed, where the competent authority is of the opinion that

disciplinary action against an employee is necessary, it may direct the Governing Council to take action within a specified period. If the Governing Council fails to comply with the direction, the competent authority shall report the matter to the State Government, which after considering the report may specify by order, a person or authority to take disciplinary action against the employee. The person or authority so specified may thereupon take disciplinary action against the employee and impose all or any of the penalties which the Governing Council can impose. An appeal shall lie from a decision of such person or authority to the tribunal, within the prescribed period.

CHAPTER XV

CONTROL OF PRIVATE EDUCATIONAL INSTITUTION

102. Code of Conduct for Governing Council.- The Governing council of private educational institutions shall be governed by such Code of Conduct as the State Government may after previous publication prescribe. In such other matters arising under this Act and not covered by the Code of Conduct aforesaid, the Governing Council shall be governed by such Code of Conduct prepared by it with the prior approval of the State Government as is not inconsistent with the Code of Conduct prescribed by the State Government which shall be communicated to the competent authority for information.

103. Furnishing of list of properties.- (1) Every private educational institution shall, maintain a list of the properties, both moveable and immoveable owned or possessed by it.

(2) The management shall, on or before the prescribed date, furnish to the competent authority a copy of such list in the manner and form as may be prescribed.

104. Utilisation of Funds, etc.- (1) All moneys collected, grants received and all property held by the management on behalf of a private educational institution shall be utilised for the prescribed purposes and the purposes for which they are intended and shall be accounted for by the private educational institution in such manner as may be prescribed.

(2) The funds of the private educational institution shall be deposited by it in such manner as may be prescribed.

(3) The Governing Council shall, within a time which the competent authority may fix, reimburse to the account of the private educational

institution any money which it has failed to account for under sub-section (1). If the money is not so reimbursed within the time so fixed the competent authority shall recover the same from the Governing Council, as arrears of land revenue and credit it to the account of the institution.

105. Private Institution not to be closed down, etc., without sufficient notice.- (1) Save as otherwise provided in this Act, no private educational institution shall be closed down or discontinued, unless a notice of not less than one academic year and indicating the intention to do so, has been given by the Governing Council to the officer authorised by the competent authority in this behalf.

(2) On the closure of a recognised private educational institution, all its properties relatable to the grant-in-aid given by the State Government as may be determined by the competent authority shall vest in the State Government.

106. Governing Council to hand over properties, records, etc., to competent authority on closure, etc., of private educational institution.- (1) In the event of the private educational institution being closed down or discontinued or its recognition being withdrawn the Governing Council shall hand over or cause to be handed over to the competent authority the custody of all the properties, records and accounts of the institution in its possession.

(2) (a) Where the competent authority is resisted in or prevented from obtaining the custody of properties, records or accounts of the institution by such management, any Judicial Magistrate of the First Class having jurisdiction shall, on an application made by the competent authority, by order, after notice to the Governing Council, direct the handing over of the custody of such properties, records or accounts of the institution to the competent authority within the time specified in such order.

(b) Where the Governing Council fails to hand over the custody of the properties, records or accounts within the time specified in the order of the Magistrate under clause (a), it shall be punished with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both, and the Magistrate shall cause the custody of the properties, records or accounts to be handed over to the competent authority taking such police assistance as may be necessary.

(3) Nothing in this section shall apply to a private educational institution under the management of a charitable or religious institution, charitable or religious endowment or wakf.

107. Restriction on alienation of property of private educational institution.- (1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of a private educational institution shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf.

(2) (a) No permission applied for under sub-section (1) shall be refused by the competent authority except where the grant of such permission will in its opinion, adversely affect the working of the institution.

(b) The competent authority shall pass an order, either granting or refusing permission applied for, within a period of sixty days from the date of receipt of the application.

(3) Any person aggrieved by an order refusing permission under sub-section (2) may, in such manner and within such time, as may be prescribed, appeal to the prescribed authority.

(4) Any transaction made in contravention of sub-section (1) shall be null and void.

108. Liability of Secretary to repay debts incurred in certain cases.- Where any secretary incurs debt for the purpose of running an educational institution without proper authorisation by the Governing Council or the Managing Committee as the case may be of such institution and where it is found by the competent authority after making an enquiry that the monies received through such debts have not-been utilised for running the institution. It shall be the personal liability of such secretary to discharge the said debts.

CHAPTER XVI

STATE EDUCATIONAL ADVISORY COUNCIL ETC.

109. State Educational Advisory Council.- (1) For the purpose of advising the Government on matters pertaining to educational policies and programmes, the State Government, shall, by notification, constitute a State Educational Advisory Council, (hereinafter referred to as the Council) consisting of officials and non-officials.

(2) The Minister-in-charge of Education shall be the Chairman and the other Ministers concerned, if any, shall be the Co-Chairmen and the Minister of State and Deputy Minister for Education, if any, shall be the Vice-Chairmen of the council.

(3) The Secretary to Government in the Education department shall be the member-secretary.

(4) The Council shall also consist of the following members:-

(a) the Vice-Chancellors of Universities constituted under the Karnataka State Universities Act, 1976 and University of Agricultural Sciences Act, 1963;

(b) the Commissioner of Public Instruction, the Director of Collegiate Education, the Director of Technical Education, the Director of Medical Education, the Director of Adult Education, the Director of Vocational Education, the Director of Youth Services, the Director of Social Welfare, the Director of Women and Children Welfare, the Director of Backward Classes and Minorities, the Director of Agriculture;

(c) the nominated members of each of the Standing Committees constituted under section 110;

(d) not exceeding ten members nominated by the State Government of whom three shall be persons belonging to Scheduled Castes and Scheduled Tribes and atleast one shall be a woman, two from other Backward Classes and one from minorities.

(5) The powers and functions and term of members shall be such as may be prescribed.

110. Standing Committee.- (1) There shall be Standing Committee of the State Educational Advisory Council for each of the Departments, namely, Public Instruction, Collegiate Education, Technical Education, Medical Education, Vocational Education and Adult Education.

(2) Each such committee shall consist of the following members:-

(a)	the Commissioner or the Secretary to Government of the concerned department,	Chairman
(b)	the Commissioner for Public Instruction or the Director of Collegiate Education or the Director of Medical Education or the Director of Adult Education	Member

	or the Director of Vocational Education, as the case may be,	
(c)	three other persons to be nominated by the State Government among the educationists in the concerned area	Members

(3) The powers and functions and term of office of the members of the Standing Committee shall be such as may be prescribed.

111. Advisory Committee.- (1) The State Government may constitute separate advisory Committees for Pre-primary Education, Primary Education, Secondary Education, Technical Education, Vocational Education, Adult Education, Pre-University Education, Collegiate Education, Medical Education, Teacher Education, Sanskrit Education, Arabic and Persian Education, Commerce Education, Arts and Craft Education, Physical Education, Hindi Education, Music, Dance, Talavadya and Drama Education, Education of the handicapped, Education of the Scheduled Castes and Scheduled Tribes, Education of Girls and Women, Education of minorities, Educational buildings and for such other disciplines as may be deemed necessary.

(2) Each Advisory Committee shall consist of such number of official and non-official members, not exceeding nine, as may be prescribed. The State Government shall appoint one of the members to be the Chairman of each Committee and also appoint Secretary to each Committee.

(3) The powers and functions and term of office of the members of the Committee shall be such as may be prescribed.

112. Procedure of Meetings.- The procedure to be followed at the meetings of the State Educational Advisory Council and the Advisory Committees shall be such as may be prescribed.

CHAPTER XVII

PENALTIES

113. Penalty for contravention of section 17.- (1) If any person fails to furnish any information as required by sub-section (4) of section 17, he shall, on conviction, be punished with fine which may extend to twenty-five rupees.

(2) If any parent fails to comply with an attendance order passed under section 17, he shall, on conviction, be punished with fine not exceeding two rupees and in the case of a continuing contravention, with an additional fine

not exceeding one rupee for every day during which such contravention continues after conviction for the first of such contraventions:

Provided that the amount of fine in any one year shall not exceed one hundred rupees.

114. Penalty for contravention of section 18.- If any person contravenes the provisions of section 18, he shall, on conviction, be punished with fine which may extend to twentyfive rupees, and in the case of a continuing contravention, with an additional fine not exceeding one rupee for every day during which such contravention continues after conviction for the first of such contraventions.

115. Penalty for contravention of section 23.- Any person who contravenes the provisions of section 23 shall on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

116. Penalty for ragging.- (1) No person who is a student in an educational institution including an institution under the direct management of the University or of the Central Government shall commit ragging.

(2) Any person who contravenes sub-section (1) shall on conviction be punished with imprisonment for a term which may extent to one year or with fine which may extend to two thousand rupees or with both.

117. Penalty for copying at examinations.- Whoever is found by an invigilator or any other person appointed to supervise the conduct of an examination contravening section 24 shall, on conviction, be punished with an imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

118. Penalty for impersonating at examinations.- Any person who contravenes the provisions of section 25 shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees but not less than one hundred rupees or with both.

119. Punishment for loitering, etc., near an examination centre.- Any person who contravenes the provisions of section 26 shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

120. Punishment for alteration of answers written at an examination.- (1) Any person who contravenes the provisions of section 27

shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees but not less than one hundred rupees or with both.

(2) Any person who commits any offence affecting the body or against the property of any person entrusted with any work relating to or appointed in connection with any examination, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees but not less than one thousand rupees or with both.

121. Prohibition of other malpractices at examinations etc.- Any person who adopts or takes recourse to any malpractice other than those punishable under sections 115, 117, 118, 119 and 120 shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to three thousand rupees but not less than five hundred rupees or with both.

122. Punishment for contravention of section 28.- Any person, who, without reasonable excuse, refuses to do any work connected with any examination and assigned to him, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

123. Penalty for establishing unregistered educational institutions etc.- Any person, who, establishes or as the case may be, maintains or runs an educational institution in contravention of section 30 or after registration is refused for such institution under section 31 or cancelled under section 34, shall on conviction, be punished with imprisonment for a term which may extend to three years but shall not be less than six months and with fine which may extend to five thousand rupees but not less than one thousand rupees.

124. Penalty for maintaining or running unregistered tutorial institutions.- (1) Any person who maintains or runs a tutorial institution in contravention of the provisions of clause (b) of sub-section (1) of section 35 or who establishes and maintains a tutorial institution without obtaining the registration certificate under sub-section (2) of the said section or who after the cancellation of the registration certificate issued to him under that sub-section continues to run such an institution, shall, on conviction, be punished with fine which may extend to two hundred and fifty rupees:

Provided that for a second or any subsequent conviction under this section, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

125. Penalty for collecting money in contravention of section 51.- Where any educational institution is found to be collecting money in contravention of the provisions of sub-section (2) of section 51, every person, who at the time of such collection was incharge of, and shall be responsible to the institution for its management shall, on conviction, be punished with imprisonment for a term which may extend to six months and with fine which may extend to one thousand rupees. On such conviction the institution shall refund the monies so collected to the person from whom it was collected.

126. Penalty for contravention of code of conduct by Governing Council.- Where any Governing Council, intentionally or knowingly contravenes any code of conduct prescribed in sub-section (1) of section 102, every member thereof, shall without prejudice to any other action as may be taken under this Act and the rules made thereunder, be punished, on conviction, with fine not exceeding five hundred rupees for every such contravention.

127. Penalty for failure to give notice of closure of institutions.- If the Governing Council of any private educational institution fails to give the notice required under sub-section (1) of section 105 every member thereof shall on conviction be punished with simple imprisonment which may extend to two months or with fine which may extend to one thousand rupees or with both and with fine of fifty rupees for every day's default.

128. Penalties not otherwise provided for.- If any person contravenes or attempts to contravene or abets the contravention of any of the provisions of this Act or rules made thereunder other than those punishable under the provisions hereinbefore contained, he shall, on conviction, be punished with fine which may extend to five hundred rupees for every such contravention and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of contravention of the Act or rules.

129. Offences by companies.- (1) Where an offence against any of the provisions of this Act or any rule made thereunder has been committed by a company, every person who, at the time the offence was committed, was in-charge of and was responsible to the company, for the conduct of business

of the company as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any such offence has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of the director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) a company, means any body corporate and includes a trust a firm a society or other association of individuals; and

(b) the director in relation to,-

(i) a firm, means a partner in the firm.

(ii) a society, a trust or other association of the individuals, means the person who is entrusted, under the rules of the society, trust or other association with management of the affairs of the society, trust or other association as the case may be.

CHAPTER XVIII

MISCELLANEOUS

130. Appeals.- Save as otherwise provided in this Act, any person or Governing Council, aggrieved by an order passed by an officer or authority under this Act may within the prescribed period prefer an appeal to the prescribed appellate authority.

131. Revision by the State Government.- (1) The State Government may either *suo motu* or on an application from any person interested, call for and examine the record of an educational institution or of any authority, officer or person in respect of any administrative or quasi-judicial decision or order, not being a proceeding in respect of which a reference to an arbitrator or an appeal to the High Court is provided, to satisfy themselves as to the regularity, correctness, legality or propriety of any decision or order

passed therein, and if, in any case it appears to the State Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass order accordingly:

Provided that the State Government shall not pass any order adversely affecting any party unless such party has had an opportunity of making a representation.

(2) The State Government may stay the execution of any such decision or order pending the exercise of powers under sub-section (1) in respect thereof.

(3) Every application preferred under sub-section (1) shall be made within such time and in such manner and accompanied by such fees as may be prescribed.

132. Review.- (1) The State Government or the Commissioner of Public Instruction or the Director may *suo motu* at any time or on an application received from any person interested within ninety days of the passing of any order under the provisions of this Act review any such order, if it was passed by them or him under any mistake, whether of fact or of law, or in ignorance of any material fact.

(2) The provisions contained in the proviso to sub-section (1) and in sub-sections (2) and (3) of section 131 shall, so far may be, apply in respect of any proceeding under this section as they apply to a proceeding under sub-section (1) of that section.

133. Powers of Government to give directions.- (1) The State Government may, subject to other provisions of this Act, by order, direct the Commissioner of Public Instruction or the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Governing Council or the owner, as the case may be, of such institution shall comply with every such direction.

(3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of such officer or authority to comply with such directions.

134. Power to enter and inspect.- (1) Every officer not below such rank as may be prescribed, shall subject to such conditions as may be prescribed, be competent to enter at any time during the normal working hours of an educational or tutorial institution, any premises of any such institution within his jurisdiction and to inspect any record, register or other documents or any movable or immovable property relating to such institution for the purpose of exercising his powers and performing his functions under this Act.

(2) Any officer authorised by the State Government in this behalf, may at any time during the normal working hours of any educational institution enter such institution or any premises thereof or any premises belonging to the Governing Council of such institution, if he has reason to believe that there is or has been any contravention of the provisions of this Act and search and inspect any record, accounts, register or other document belonging to such institution or of the Governing Council, in so far as any such record, accounts, register or other document relates to such institution and seize any such records, accounts register or other documents for the purpose of ascertaining whether there is or has been any such contravention.

(3) In order to secure proper and effective utilisation of the finances or resources or other assets of any educational institution in existence at the commencement of this Act it shall be competent for the State Government to invoke the provisions of sub-section (2) and ascertain such finances, resources and assets of any institution and after such ascertainment to give such directions to the Governing Council as they deem fit.

(4) The provisions of Criminal Procedure Code, 1973 (Central Act 2 of 1974) relating to searches and seizure shall apply, so far as may be to searches and seizures under sub-section (2).

135. Penalty for obstructing officer or other person exercising powers under this Act.- Any person who obstructs an officer of the State Government in the exercise of any power conferred on him or in the performance of any function entrusted to him by or under this act or any other person lawfully assisting such officer in the exercise of such power or in the performance of such function or who fails to comply with any lawful

direction made by such officer or person shall be punished with fine which may extend to two hundred and fifty rupees.

136. Protection.- No suit, prosecution or other legal proceeding shall lie against the State Government or any authority, officer or servant of the State Government for anything in good faith done or intended to be done under this Act or the rules made thereunder.

137. Investigation and cognizance of offences.- (1) No court shall take cognizance of any offence punishable under this Act, except under sections 115 to 122 (both inclusive) or the abetment of any such offence, save on complaint made by the competent authority or with the previous sanction of such authority.

(2) All offences punishable under sections 115 to 122 (both inclusive) shall,-

(a) be investigated by an officer of and above the rank of Inspector of Police; and

(b) be cognizable and non-bailable:

Provided that where the accused is a woman, she shall be released on bail on her offering a personal bond for her appearance during the stage of investigation or trial.

138. Punishment for abatement of offences.- Whoever instigates or abets the commission of any offence punishable under this Act shall, on conviction, be punished with the punishment provided for the offence.

139. Enquiry and proceedings.- All proceedings or enquiries before the tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 288 of the Indian Penal code, 1860 (Central Act XLV of 1860).

140. Amendment of Karnataka Act No. 16 of 1966.- The Karnataka Secondary Education Examination Board Act, 1966 (Karnataka Act No. 16 of 1966) is hereby amended to the extent and in the manner specified in Schedule 1 to this Act.

141. Application of the Act to certain institutions.- Nothing in this Act or the rules made thereunder shall apply to any minority educational institution to the extent they are inconsistent with the rights guaranteed under Article 30 of the Constitution of India.

142. Removal of difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such

provisions not inconsistent with the said provisions as appear to them to be necessary or expedient to remove the difficulty.

143. Delegation.- The State Government may by notification in the official gazette, delegate all or any powers exercisable by it under this Act or rules made thereunder, in relation to such matter and subject to such conditions, if any as may be specified in the direction, to be exercised also by such officer or authority subordinate to the State Government as may be specified in the notification.

144. Transfer of pending proceedings.- All appeals and all proceedings pending before the Educational Appellate Tribunal constituted under the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (Karnataka Act 10 of 1975) immediately before the date of commencement of this Act shall stand transferred to the Educational Tribunal under this Act and shall be disposed of by such tribunal in accordance with the provisions of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (Karnataka Act 10 of 1975), as if the said Act had not been repealed by this Act.

145. Power to make rules.- (1) The State Government may, by notification and after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for,-

(i) the classes or standards of education and upto which shall be considered as primary education;

(ii) the curricula, etc., specified under sub-section (1) of section 7;

(iii) the duties and functions of the Vigilance Cells;

(iv) the authorities and the manner in which appointments are to be made to the posts sanctioned under sub-section (2) of section 9 and the powers and functions of the officers and staff;

(v) the composition and powers of the boards constituted under section 10;

(vi) the steps to be taken for providing necessary facilities for imparting compulsory primary education before notifying any area to be specified area;

(vii) the manner in which lists of children shall be prepared by the attendance authority in any specified area;

(viii) the distance beyond which a child cannot be compelled to attend an approved school;

(ix) the manner in which any enquiry under this Act shall be passed;

(x) the form in which an attendance order under this Act shall be held;

(xi) the registers, statements, reports, returns, budgets and other information to be maintained or furnished by approved schools for the purpose of this Act;

(xii) the declaration as to what constitutes secondary or higher secondary education, technical education, special education, school places, school-age and attendance in schools or other institutions;

(xiii) the establishment or maintenance and administration of educational institutions;

(xiv) the grant of registration or recognition to educational institutions and the conditions therefor;

(xv) the period and the manner for applying for registration of institutions;

(xvi) the form of the register maintained for registration of educational institutions and tutorial institutions and of the registration certificate;

(xvii) the manner of submission of the report of the expert body;

(xviii) the conditions for recognition of existing institutions and the procedure therefor;

(xix) regulating the rates of fees, the levy and collection of fees in educational institutions;

(xx) the manner in which accounts, registers, records and other documents shall be maintained in the educational institutions and the authority responsible for such maintenance;

(xxi) the submission of returns, statements, reports and accounts by managements or owners of properties of educational or tutorial institutions;

(xxii) the inspection of educational and tutorial institutions and the officers by whom inspection shall be made;

(xxiii) the mode of keeping and the auditing of accounts of such institutions;

(xxiv) the standards of education and courses of study in educational institution;

(xxv) the grant of sums by the State Government to educational institutions towards providing scholarships, bursaries, fee concessions and the like;

(xxvi) the preparation and submission of development plan for educational institutions in general and for technical education and the contents of such plans;

(xxvii) the powers and the functions of the officers and other sub-ordinate staff of the Education Department;

(xxviii) the preparation and sanction of building plans and estimates of the educational institutions and the requirements to be fulfilled by the buildings for the educational institutions maintained by the local authorities and private institutions;

(xxix) the purposes for which the premises of the educational institutions may be used and the restrictions and conditions subject to which such premises may be used for any other purpose;

(xxx) the regulation of the use of text books, maps, plans, instruments and other labouratory and sports equipment in the institution;

(xxxi) the regulations for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat;

(xxxii) the qualifications necessary and other conditions to be fulfilled for appearing at the examinations conducted by the authorities under this Act and the method of valuation or revaluation of answer scripts;

(xxxiii) the opening of special night schools and conditions for their working and of parallel sections or classes in the institutions for linguistic minorities;

(xxxiv) the manner of conducting the class and terminal examination and promotion of pupils to higher classes;

(xxxv) the donations or contributions and the conditions subject to which they may be accepted by the educational institutions from the public and the naming of institutions.

(xxxvi) the conditions for co-education in the educational institutions and the regulation of the conduct and discipline of pupils and the penalty for misconduct or indiscipline;

(xxxvii) the manner of services of notices, orders and other proceedings, of presenting appeals or applications for revision or review and the procedure for dealing with them and the fee in respect thereof;

(xxxviii) the scale of fees or charges or the manner of fixing fees or charges payable in respect of any certificate, permission, marks lists or other document for which such fees may be collected;

(xxxix) elections to the Student Associations or Unions;

(xL) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the State Government, necessary for the proper implementation of this Act;

(3) Any rule may be made under this Act with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.

(4) Every notification issued and every rule made under this Act, shall immediately after it is issued or made be laid before each House of the State Legislature if it is in session and if it is not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiration of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or in the rule or in the annulment of the notification or the rule, the notification or the rule shall from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

146. Repeal and Savings.- (1) The Karnataka Compulsory Primary Education Act, 1961 (Karnataka Act 9 of 1961) and the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 (Karnataka Act 10 of 1975) are hereby repealed.

(2) Notwithstanding such repeal, any act or thing done under the said Act shall be deemed to have been done under this Act and may be continued and completed under the corresponding provisions of this Act.

(3) Notwithstanding anything contained in this Act, all rules, orders, notifications, Grant-in-aid Codes, appointments, schemes, bye-laws, regulations, official memoranda-circulars or any other orders made or issued before the commencement of this Act and in force on the date of such commencement providing for or relating to any of the matters for the furtherance of which this Act is enacted shall continue to be inforce and effective as if they are made under the corresponding provisions of this Act unless and until superseded by anything done or any action taken or any notification, Grant-in-aid code, rule, order, appointment. scheme, bye-law, regulation, official memorandum, circular or any other order made or issued under this Act.

SCHEDULE I

Amendment of the Karnataka Secondary Education Examination Board Act, 1966 (Karnataka Act 16 of 1966)

In the Karnataka Secondary Education Examination Board Act, 1966 (Karnataka Act 16 of 1966),-

(1) in section 2, after clause (d), the following clause shall be inserted:-

"(da) 'Director' means the Director of the Board;"

(2) in section 4,-

(a) in sub-section (1) at the end, the following shall be inserted namely:-

The Commissioner for public Instruction shall *ex-officio* be the Chairman of the Board;

(b) In sub-section (2) for the words Chairman and Joint Director the words "Director:" and "Additional Director" shall respectively be substituted:

(c) In sub-section (3), for the words The Joint Director of Public Instruction, incharge of secondary education the word "Director" shall be substituted;

(d) in sub-section (4),-

(i) after clause(d), the following clause shall be inserted namely:-

"(da) Director of Text Books or his nominee".

(ii) in clause (e) for the word "seven" the word "eight" shall be substituted and after the words Sanskrit Education, a comma and the words "State Education Unit" shall be inserted:

(3) in sub-sections (2), (3) and (4) of section 17, section 18, section 19, section 20 [1][and section 21][1], for the word "Chairman" wherever it occurs, the word "Director" shall be substituted;

(4) in section 17, in sub-section (4), for the words"The Director of Public Instruction" the words "The Chairman" shall be substituted; and

(5) In section 36, section 37 and section 38, for the words "Vice-Chairman" the words "Director or Vice Chairman" shall be substituted.

1. Substituted for section 21 and section 38 by Act No. 13 of 2003 we.f. 1.6.1995

SCHEDULE II

1. Any examination conducted by or under the authority of any University established by an Act of the State Legislature.

2. Any examination conducted by or under the authority of the Karnataka Secondary Education Examination Board.

3. Any examination conducted by the Karnataka State Board of Technical Education.

4. Any examination conducted by the Karnataka Pre-University Education Borad.

5. Any examination conducted by the State Council for Vocational Education.

NOTIFICATION

Bangalore, dated 30th May, 1995 [No.ED 2 MES 95].

S.O. 522.- In exercise of the powers conferred by sub-section (4) of section 1 of the Karnataka Education Act 1983, (Karnataka Act no. 1 of 1995) the Government of Karnataka hereby appoints the 1st day of June 1995 to be the day from which all provisions of the said Act shall come into force.

By order and in the name of the
Governor of Karnataka,
M.Pankaja
Special Officer & Ex-Officio
Deputy Secretary to Government,
Education Dept (Planning)

(Published in Karnataka Gazette Part IV 2c (ii) No. 761 dated 30.5.1995.)

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ANNEXURE P-2

THE KARNATAKA EDUCATIONAL INSTITUTIONS (CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA ETC.,) RULES, 1995

CONTENTS

Rules

[1][ED 116 VIVIDHA 95][1]

Karnataka Government Secretariat,
Multistoreyed Building,
Bangalore, Dated 4.10.96.

THE KARNATAKA EDUCATIONAL INSTITUTIONS (CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA ETC.,) RULES, 1995

(As amended in Notification No ED 71 Vivida 97 dated 8.10.99 &
ED 4 ViVida 2001 dated 5-7-2001)

NOTIFICATION

Where as the draft of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula) Rules, 1995 was published in No. ED 116 VIVIDHA 1995, dated 14th November, 1995 in Part-IV section 2c (i) of the Karnataka Gazette Extraordinary dated 14th November, 1995, inviting objections and suggestions from the persons likely to be affected thereby;

And whereas the said Gazette was made available to the public on 14th November, 1995;

And whereas the objections and suggestions received in this regard have been duly considered by the State Government;

Now, therefore in exercise of the powers conferred by sub-section (1) of section 145 of the Karnataka Education Act, 1983 (Karnataka Act 1 of 1995), the Government of Karnataka hereby makes the following rules, namely:-

1. Title and commencement.- (1) These rules may be called the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc.,) Rules, 1995.

1. Published in the Karnataka Gazette Part IV section 2c(i) Extraordinary No 1227 dated 4.10.1996.

(2) They shall come into force from the date of publication in the Official Gazette.

2. **Definitions.-**In these rules unless the context otherwise requires,-

(a) "Act" means the Karnataka Education Act, 1983, (Karnataka Act 1 of 1995);

(b) "Pre-Primary Education" means informal education below first standard for children between the ages three and five years by whatever name it is called, like play home, kindergarden, nursery etc.

3. Prescription of classes relating to Primary and Secondary Education for the purpose of clauses (25) and (32) of section 2.-

(a) 'Primary Education' shall have classes from 1 to VII standard; with I to IV as lower primary and V to VII as upper primary;

(b) 'Secondary Education' shall have classes from VIII standard to X standard;

4. **General regulations relating to buildings of educational institutions.-**No educational institution or Part thereof shall function in a building, unless,-

(a) it is located in healthy and sanitary surroundings;

(b) it is built with safe roof and structure;

(c) it is built in such a way as to ensure sufficient air and light both inside the classrooms and in the staircase, corridors and alleys;

(d) the height of the building from the floor to the ceiling in each storey is more than eight feet;

(e) it is of not more than seven storeys from the ground level;

(f) where it is of more than one floor from the ground level, safe and proper staircases are provided;

(g) where it is of more than three storeys from the ground level, proper and safe lift facility is provided;

(h) it is not used in any part of the day, week, month or year, for any purpose other than for the furtherance of education;

5. **General regulations relating to minimum accommodation per student furniture and etc.-**(1) Every building of an educational institution shall provide adequate and proper accommodation which shall ensure,-

(i) a separate classroom for each division/section of a standard; in the case of primary schools a separate classroom for each teacher;

(ii) carpet area for each student of not less than six square feet;

(iii) separate rooms, one for the chambers of the head of the institution, one for the staff-room and one for general office;

(iv) separate accommodation for library, reading room and stores, in institutions imparting secondary and higher education;

(2) Every educational institution shall provide sufficient area for play ground, enough for all the students in the institution to assemble, and to play and watch atleast two outdoor games at one time.

(3) All the classrooms, chambers, staffrooms, office room, library, reading room and stores shall be equipped with appropriate furniture of good quality material.

6. **Provision of drinking water, toilet and other facilities.-**Every educational institution shall provide,-

(1) Safe and potable drinking water in quantities sufficient for all the students, located at convenient points within the building.

(2) Adequate toilet facility, urinal accommodation, dining hall and canteen within the premises of the institution and maintained in good sanitary condition, ensuring sufficient water supply at all points. Provided that toilet facility and urinal accommodation shall be provided separately for boy students and girl students.

7. **Time for providing facilities to existing institutions.-**All the educational institutions existing as at the date of commencement of this rules shall provide the facilities specified in rules 4, 5 and 6 within three years from such commencement. No new educational institution shall begin classes unless it has substantively complied with all the provisions of rules 4,5 and 6.

8. **Fencing of dangerous places within the premises of the educational institutions.-** It shall be the duty of the management to ensure that all dangerous places and areas with in the premises of the educational institution are fenced around for the safety of students.

9. **Provision of staff.-** (1) Every recognised educational institution shall appoint only qualified teachers and other staff as specified in the recruitment rules notified by the State Government or the competent authority authorised in this behalf.

(2) In case of primary schools there shall be a minimum of one teacher for every forty students or fraction thereof.

(3) In case of secondary schools and higher institutions the teachers shall be appointed as per the staff pattern specified by the State Government from time to time.

10. **Collection of fees.-**(1) The procedure for collecting fee in all classes from pre-primary upto the degree level in all recognised educational institutions shall be open, transparent and accountable.

(2) The fees to be collected shall be classified as,-

a) Term fees

b) Tuition Fees

c) Special Development Fees

(3) (a) Term Fees,-

(i) No term fees shall be collected from pre-primary and lower primary students;

(ii) In upper primary and higher classes, term fees shall be collected at the rate specified by the State Government or the Competent Authority authorised in this behalf through a notification and shall be collected only for the items listed in the said notification.

(iii) Term fees collected by the recognised educational institutions for each term from the students shall be subject to exemptions made by the State Government from time to time in this regard.

(b) Tuition fees.-

(i) In case of Government and recognised private aided institutions tuition fees shall be collected only from the failed students at the rates specified by the State Government or the Competent Authority authorised in this behalf.

(ii) In case of recognised private unaided institutions tuition fees may be collected from all the students which shall be commensurate with the expenditure incurred towards salary of staff and the quality of education provided by the institution.

(c) **Special Development Fees.-**Special development fees may be collected,-

(i) In the case of a recognised aided educational institution upto a maximum of [1][Rupees Five hundred per year][1].

1. Substituted in Notification No. ED 4 Vivdha 2001 dt. 5.7.2001.

(ii) in the case of a recognised unaided educational institution upto a maximum of Rs. 600/- per year.

(4) Every recognised private educational institution shall maintain a brochure showing the details of items of fees and the amount of fees prescribed for each item. The same shall be displayed prominently on the notice board of the educational institution for the information of parents and students.

(5) The fee specified shall not be varied to the dis-advantage of the parents in the middle of the academic year on any account.

(6) Details of specified fee together with the brochure shall be sent to the Departmental Authorities for information. The specified fee may be collected in cash if the amount of fee is less than Rs. 1000/- and if such amount is Rs. 1000/- and above, either by cash or demand Draft at the option of the parent. It shall be the duty of the head of the Institution to issue official fee receipts for all fees received and it shall be delivered immediately on production of cash or Demand Draft as the case may be to the person making the payment. The receipt shall however be issued in the name of the student concerned.

(7) While specifying the fee structure, provision shall be made to make payment of the fee in monthly, quarterly, half yearly instalments or in one lumpsum at the option of the student or his parent.

(8) The amount of fee collected amount under different items shall be accounted as per specified procedure. The items due to be remitted to the State Government under term fees and tuition fees shal be remitted immediately after collection and the remaining amount pertaining to items of fees under term fees shall be kept in the official personal Deposit Account of the Head of the institution. The Personnel Deposit Account shall be opened for this purpose in any Post Office or any Nationalised Bank located in the surrounding of the institution. All receipts on account of tuition fee (in respect of recognised private unaided institutions) and the special development fees shall be kept in the official joint account of the Head Master and the Secretary/President of the managing committee. All the amount of fees collected shall be accounted and the accounts shall be produced before the competent authority for verification at the time of visits and inspections. The Head of the Institution shall be responsible for safe custody of funds, its proper accounting and for production of the accounts for verification before the concerned authorities.

(9) Compelling students to attend any tutorial class payment of fees, beyond the normal working hours of a class in a recognised educational institution; is prohibited.

11. **Provision of Uniform, Clothing, Text Books etc.,** (1) Every recognised educational institution may specify its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.

(2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.

(3) Purchase of uniform clothing and text books from the school or from a shop etc., suggested by school authorities and stitching of uniform clothing with the tailors suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard.

12. **Parent Teacher Committee.-**(1) It shall be the duty of the head of every recognised educational institution, to constitute a Parent Teacher Committee within thirty days of the commencement of each academic year;

(2) Till a Committee is constituted, under sub-rule (1) the committee constituted in the preceding academic year shall continue to function;

(3) The parent Teacher Committee for each educational institution shall consist of the following:-

(a) Three representatives of the parents of the students who have studied upto SSLC or above of whom one shall be a woman and they shall be selected from among the willing parents.

(b) The head of the institution;

(c) Three class teachers in the institution selected by rotation;

(d) the Secretary of the Governing Council of the Educational Institution;

(4) Whereas, the members of the Parent teacher committee specified by clauses (b) and (d) of sub-rule (3) shall be ex-officio, the members selected under clause (a) and (b) of sub-rule (3) shall hold office, for the period till the next committee is constituted under sub-rule (i).

(5) The functions of the Parent-Teacher Committee shall be as follows:-

(a) to redress the grievances of the students and their parents, if any;

(b) to devise such action programmes as could be conducive for a healthy student-teacher, parent-teacher, teacher-management, parent-management relations.

(c) any other activity conducive to the welfare of the students;

(6) The Secretary of the Governing Council shall be the Chairman of the Parent-Teacher Committee.

(7) The Head of the Institution shall be the Member Secretary of the Parent-Teacher Committee. He shall call for all the meetings of the committee, draw up proceedings of the

Board and give effect to the decisions of the committee under the orders of the Chairman of the committee; All the proceedings of the committee shall be authenticated by the Chairman. The correspondence and other secretarial activities shall be carried on by the Member-Secretary.

(8) Every decision of the Parent-Teacher Committee shall be taken by an ordinary majority of the elected members present and voting. In case of equality of votes, the Chairman shall have a casting vote.

(9) The Parent-Teacher Committee shall meet atleast once in three months in the premises of the educational institution. If the Chairman is unable to attend such quarterly meeting, he shall authorise some other member to chair such meeting.

(10) Meeting notice shall be despatched to the members of the parent Teacher Committee at least ten days in advance. The quorum for the meeting shall be one-third of the total members of whom atleast one shall be a parent member.

(11) The first meeting of every monthly constituted parent-Teacher Committee shall be held on the day of its constitution. An order constituting the committee shall be issued by the Head of the Institution.

(12) Meetings of the Parent-Teacher Committee shall be held during working hours of the school with in the premises of the Institution.

13. **Regulation of Admission.-**(1) The State Government or the Competent authority authorised in this behalf shall by notification specify the minimum and the maximum number of students to be admitted in a recognised educational institution subject to the provisions of these rules.

(a) For primary including upper primary schools the maximum admissions shall be Fifty students for each class.

(b) For secondary schools the minimum admission shall be thirty students and the maximum admission shall be sixty students in each class.

(c) For Pre-University College, First Grade College and other Institutions of higher learning the minimum admissions shall be thirty students and the maximum admissions shall be one hundred for each class:

Provided that in case of minority educational institutions the minimum admission for any class shall be fifteen.

(d) Notwithstanding anything contained in these rules, in case of private aided institutions from primary and upto first grade college the maximum and minimum number of admissions for each class shall be as stipulated in the Grant-in-aid rules.

(2) The State Government or the Competent authority shall by notification specify the conditions of admission regarding eligibility, minimum age, migration, removal of students etc., in any recognised educational institution or class of such institutions.

(3) The State Government or the Competent authority shall by notification specify the method of admission to various courses, classes and categories of educational institutions.

14. **Procedure for admission.-**(1) The procedure for admission for any class or institution shall be open and transparent.

(2) Admissions shall commence after a notification is issued and displayed prominently in the premises of the educational institution, inviting applications for admission and specifying the number of seats available for admission. Application forms shall be made available to the parents for at least five working days of not less than four working hours each. The parents shall be given a minimum of three working days of not less than four working hours each for registering the application form. The dates and working hours shall be clearly notified on the Notice Board. The application fee prescribed if any shall not exceed five rupees. In additional a brochure containing all the details may be made available to the parents at their option, the cost of which shall not exceed twenty rupees.

(3) Every recognised educational institution imparting education from pre-primary upto degree level and situated within a largerer urban area or smaller urban area shall admit in each year such number of students not exceeding twenty five percent of its total intake in each class as may be specified by the State Government from time to time.

EXPLANATION: "Larger Urban Area" and "Smaller Urban area " means the area specified as such under the Karnataka Muncipal Corporations Act, 1976 and the Karnataka Municipalities Act, 1963 :

Provided that if sufficient number of such students are not available within the specified area, the educational institution may admit students from other areas.

(4) the State Government while specifying the percentage of students and the distance under sub-rule (3), shall have regard to;

(i) the density of population in the vicinity of the educational institutions;

(ii) the location of the educational institution;

(iii) the availability of transport facility to school going children residing in the locality where educational institution is situated;

(iv) the existence or other similar educational institutions in the same area.

The State government may specify different percentage of students and different distances for different urban areas of for different classes of recognised educational institutions situate in the same urban area;

(5) Every recognised educational institution from pre-primary upto degree level which is established, maintained or aided by the State Government shall make provision for reservation of seats for candidates belonging to Scheduled Castes and Scheduled Tribes and other Backward Classes as per Government Orders in force from time to time.

(6) Every process of admission from pre-primary upto degree classes in educational institutions allowing co-education, shall ensure that fifty percent of the total available seats in each institution in each category and reservation group shall be reserved for girl students. If no

sufficient number of girl students are available for admission against such reservation the unfilled seats may be treated as un-reserved:

Provided that provisions of sub-rules (5) and (6) shall not apply to minority educational institutions to the extent of admissions made by these institutions from among their own community students.

(7) During the month of April of every year the Head of the educational institution shall display on the notice board the details regarding the calendar of events detailing the various stages involve in the admission process like date of issue of applications, last date fixed for receipt of applications, mode and place of issue of application forms, date of announcement of list of selected candidates, last date for admission etc., The process of admission shall be conducted accordingly.

(8) The Head of the educational institution shall alongwith the calendar of events also display on the notice board the details regarding the number of seats available for each class, the fee structure specified and the criteria specified for selection of candidates.

(9) The parent/guardian shall tender the application in person and get proper acknowledgement from the institution. The Head of the educational institution shall enter particulars of every such application in the 'Register of Applications' maintained for that purposes, in the order of their receipt.

(10) The Head of the educational institution shall prepare a list of all eligible candidates who have registered for admission in the institution. Separate sub-lists shall also be prepared in respect of candidates of the Scheduled Castes and Scheduled Tribes and other Backward Classes as the case may be. Every candidate shall be allotted a registration number.

(11) The lists of eligible and rejected candidates containing the name and registration number shall be published on the Notice Board of the institution, inviting objections from any aggrieved party within a date to be specified in the notice so however that a minimum of five working days shall be allowed for filling objections. The objections received shall be registered and proper acknowledgments shall be issued. After considering the objections a final list shall be prepared and published on the Notice Board.

(12) (a) The managing Committee shall from among the list of eligible candidates as published in sub-rule (11) and according to provisions made in sub-rules (2) to (7) shall prepare a list of selected candidates. Separate sub-lists shall also be prepared for each reservation groups in each category as per provision.

(b) In case of admissions to secondary, pre-University and degree courses the Head of the educational institution shall after taking into consideration the total number of seats available for admission in the institution shall allocate eighty percent of such seats for admission through merit and allocate remaining twenty percent for admission by the management.

(c) The procedure for selection shall be as follows:-

(i) The Head of the educational institution, shall from among the list of eligible candidates published under sub-rule (11) and according to provisions made in sub-

rules (2) to (7) and further taking into consideration the marks secured by the student in the qualifying examination prepare a list of selected candidates in the order of merit. Separate lists shall be prepared for each reservation group.

(ii) the Managing Committee shall from among the list of eligible candidates published under sub-rule (11) prepare a list of selected candidates on the basis of merit.

(d) Admissions to all classes shall be made on the basis of selection lists so published. If any of the seats remain unfilled even after the exhaustion of the list, the procedure as specified above shall be repeated till after all admissions are completed.

(13) Educational institutions which are composite in nature shall make admissions to higher classes run by the same educational institution upto and inclusive of secondary level only to the extent the seats in such higher classes are rendered vacant by the students or their parents voluntarily refusing admission for higher classes. A student admitted of lower kinder-garten course or any other course which forms the initial course in that educational institution shall have a right to continue his studentship in the same educational institution upto and inclusive of secondary level provided he passes the terminal or the public examinations. In case of composite educational institutions involving pre-university and degree courses admissions to pre-university course shall be completed in accordance with clause (b) and (c) of sub-rule (12) Provided that a provision of fifteen percent concession in the cut-off percentage shall be allowed to the students of that institution and students of sister institutions run by the same management. The admission to degree courses shall be automatic, subject to the student passing the terminal or public examination. The institution authorities shall have no right to ask the student to quit the educational institution on any ground including his poor performance in examination, provided he has secured a pass in the examination.

(14) These rules shall apply to all admissions made by an educational institution not only to the initial course or standard appeared in that institution but also to admissions made to additional sections in any standard or course whether existing or newly opened.

(15) Not-withstanding anything contained in these rules, the practice of institutions conducting interviews or tests or both to students or to parents or both for admissions upto primary level is expressly prohibited.

(16) The Head of the educational institution shall be responsible for the strict compliance of provisions of this rules. He shall maintain all records concerning admissions and shall produce them for verification before the inspecting authority during visits and inspections. Any deviation or violation of rules noticed by the inspecting authority shall be referred to District level education regulating authority.

15. **Violation of Rules regarding admission fees, or any provisions in the Act or Rules by the Institution.-**[1][(1)][1]Any parent who is aggrieved by,-

1. Renumbered by Notification No. ED 71 Vivdha 97 dt. 8.10.99 w.e.f. 28.10.99.

(a) violation of any of the provisions of these rules with respect to admissions by the institutions;

(b) violation of any of provisions of these rules with respect to collection of fees;

may file a petition in writing to the District Level Education Regulating Authority constituted under [1][rule 16][1]

1. Substituted by Notification No. ED 71 Vivdha 97 dt. 8.10.99 w.e.f. 28.10.99.

[2][(2) "The District Regulating Authority may also suo-moto or on complaint made by any person interested orally or otherwise make an enquiry to satisfy themselves as to the correctness of the complaint and may pass as if may consider fit, after giving an opportunity to the party adversely affected by it an opportunity of making representation.][2]

2. Inserted in Notification No. ED 71 Vivdha 97 dt. 8.10.99 w.e.f. 28.10.99.

16. Constitution and Functions of District Level Education Regulating Authority.- [3][(1) There shall be a District Level Education Regulating Authority (hereinafter called the Regulating Authority, for every district consisting of the following members, namely:-

3. Sub-rules (1), (2) and (3) Substituted in Notification No. ED 71 Vivdha 97 dt. 8.10.99 w.e.f. 28.10.99.

(a) Deputy Commissioner of the District	Chairman
(b) Chief Executive Officer Zilla Panchayat	Member
(c) Executive Engineer, Zilla Panchayat	Member
(d) Deputy Director Pre-University Education, Department of the Concerned District.	Member
(e) Deputy Director of Public Instruction of the Concerned District.	Member Secondary

(2) The State Government may by notification, constitute an Additional Authority in a District having Provisions of rules 3 to 8 shall apply mutatis-mutandis to additional Regulating Authority.

(3) The terms of reference of the Regulating Authority shall be as follows :-

(i) Jurisdiction ;

The authority shall have jurisdiction over all the instances pertaining to violation of the rules by the Educational Institutions Consisting of Pre-Primary and Secondary Institutions in a District.

(ii) Term of reference ;

1. The authority shall have power to investigate into all the instances as contemplated in rule 15.
2. The authority shall act in accordance with the provisions of sub-rules (4) to (9) of this rule,

(iii) conduct of meetings:-

1. The Chairman shall preside over all the meetings of the authority.
2. The quorum of meeting shall be three.
3. Notice for the meeting shall be issued by the Chairman, seven days in advance.][3]

1. Substituted by notification No. ED 71 vividha 97 dt. 8.10.99 w.e.f. 28.10.99

(4) Every petition shall disclose details of violation and shall also cite evidence of such violation. Petitions without concrete evidence may be rejected by the Regulating Authority and endorsement may be given in this regard to the parent. The Petition shall be affixed Court Fee Stamp of value Rupees ten and shall be delivered in person to the Regulating Authority or sent by Registered Post and Proper acknowledgement obtained.

(5) The Regulating Authority shall devise its own procedure in conducting the enquiry. If found necessary the members of the Regulating Authority may visit the institution concerned, make local enquiry and ascertain the factual position regarding the petition filed by the parent upon examining the evidence stated in the petition and other records with a view to verifying the truth of the petition. Sufficient opportunity shall be given to the management of the educational institution and the parent to substantiate their plea.

(6) Every decision of the Regulating Authority shall be taken by an ordinary majority of the members present and voting.

(7) In case of equality of votes the Chairman shall have the right to exercise a second or casting vote.

(8) The quorum for the meeting shall be three of whom atleast one shall be a parent member.

(9) The decision of the Regulating Authority shall be communicated to the institution in writing by the Chairman and he shall pass an order to this effect which shall be binding.

17. Provision for appeal.-Any educational institution or parent aggrieved by the decision of the Regulating Authority may file an appeal before the Commissioner for Public Instruction who shall act as the Appellate Authority in this regard. The decision of the Appellate Authority shall be final and binding.

18. Working days and working hours of educational institutions.-(1) Except to the extent provided by these rules, the working days and working hours of educational institution shall be as may be specified by the Competent Authority.

(2) All educational institutions from pre-primary to secondary education shall work for 5 1/2 hours a day excluding the duration of interval and 5 1/2 days in a week from Monday to Saturday, Saturdays being half-days having morning classes.

(3) The timing of working hours in any educational institution shall be determined by the concerned school authority taking into consideration the convenience the students and prevailing local conditions. The Department shall be informed accordingly.

19. Curricula.-(1) The Competent Authority shall specify curricula for each course or class, subject to the provisions of these rules.

(2) The Curricula specified by the Competent Authority shall not be a burden to the students particularly at the primary level. It shall be in accordance with the objectives both short term and long term specified by the Government or the Competent Authority from time to time.

(3) Educational institutions following state syllabus any other pattern shall strictly adhere to the Curricula and text books prescribed by the concerned Competent Authority.The institution shall not specify any additional curricula or text books of whatever nature.

(4) The specified curricula shall, as far as practicable, make efforts towards group exercises and group achievements and inculcation of moral values

20. Limits relating to home work.-The home work given to students shall be the barest minimum particularly at the primary level. As far as practicable the home work should be of

such type that it brings out the creative talent of the student, without having to repeat from the text books or the class notes.

21. Relaxation of rules.-The State Government or any other authority specified by the State Government in this behalf, may relax the provisions of these rules or exempt from the application of the provisions of these rules, in respect of any person or educational institution or class of persons or class of educational institutions, if the State Government or such authority is satisfied that the operation of any such rule or rules causes an undue and avoidable hardship to such persons or educational institutions.

By Order and in the Name of the
Governor of Karnataka,

H.A. PRAMILA
Under Secretary to Government
Education Department (General)

ANNEXURE P-3

A TRUE TRANSLATED COPY OF THE GOVERNMENT ORDER DATED 5.2.2022

Government Order No: EP14SH2022 Bangalore,

Date: 05.02.2022

KARNATAKA GOVERNMENTS PROCEEDINGS

SUBJECT: Regarding dress code of All colleges in Karnataka 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 student - student 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 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 (2), Pre university education is an important stage in a student's life. Development committees have been set up in all schools and colleges in the

state to comply with the instructions issued by the government and to improve the quality of education and the quality of education to ensure that the grants are released and to comply with the resolutions of the respective school and college development committees. The Board of Supervisors of any Education Institution (Government School Colleges - School Parents - Parents and Teachers Committee and SDMC Private Board of Governance) shall ensure compliance with the policies of the Government in accordance with the Government policies of the respective School Colleges.

The decision of such committee shall be with respect to the respective school colleges. Student Programs are being conducted in all the school colleges in the program to facilitate uniform learning in all school colleges in the state. However, the Department of Education has noticed that students are practicing their religion in a manner that threatens equality and unity in school colleges.

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

1) The High Court of the State of Kerala in WP No 35293/2018 Dated: 14-12-2018 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.

2) The Hon'ble Madras High Court has also v. Dr. MGR against Kamalamma Medical University, Tamil Nadu and others. In this case, the university upheld the decision to modify the dress code. A similar issue is also considered in another (2004) 2 MLJ 653 case against the Sri M Venkatasubbarao Matriculation Higher Secondary School Swan Association in

the High Court of Madras in the case of Shri M Venkatasubbarao Matriculation Higher Secondary School. The Supreme Court of India and the Supreme Court of the various states have directed that the head scarf or head covering should not be used in violation of Article 25 of the Constitution and the provisions of the Karnataka Education Act 1983 and the regulations laid down thereunder.

In the light of the factors outlined in the proposal, the exercise of the powers enshrined in subsection (2) of the Karnataka Education Act 1983 is mandatory in all government schools in the state and private schools shall wear uniforms as determined by their respective governing bodies.

Colleges under the Department of Pre Uniiversity Education shall wear administrative uniforms of the respective College's as per College Development Committee (CDC) or the Board of Supervisors. The deciding chambers, if not allocated to them, ordered the wearing of clothing that would maintain equality and unity and not disrupt public order.

By order of the Governor of
Karnataka and in his name admin
N (Padmani SN)
Secretary to Government Department of
Education (Pre-Graduate)

//True Translated Copy//

WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022 AND WP NO.3044/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[SMT RESHAM AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS]

DATED: 09.02.2022

All these matters essentially relate to proscription of hijab (headscarf) while prescribing the uniform for students who profess Islamic faith. Rule 11 of the extant Rules promulgated under the Karnataka Education Act, 1983 authorizes the management of institutions to prescribe uniform, subject to certain conditions. 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. In support of an affirmative claim, petitioners rely upon three decisions of three neighbouring High Courts, (i.e., Bombay, Madras & Kerala) which the respondent-State also seeks to bank upon, and several decisions of the Apex Court. 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 sometime 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. Learned Advocates appearing for the petitioners made short submissions for the grant of interim relief at the hands of this Court. Learned Advocate General and other advocates appearing for the respondents & impleading applicants opposed the same. The contentions are not recorded nor any opinion is expressed since the papers are being placed before Hon'ble the Chief Justice. In the above circumstances, the Registry is directed to place the papers immediately at the hands of Hon'ble the Chief Justice for consideration. This Court places on record its deep appreciation for the cordiality amongst the advocates appearing for the parties and other members of the Bar who had jam packed the Court Hall during the hearing of these matters.

Annexure P-5

WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022 AND WP NO.3044/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[SMT RESHAM AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS]

CJ & KSDJ & JMKJ:
10.02.2022
(VIDEO CONFERENCING)

ORDER

1. All these writ petitions essentially seek to lay a challenge to the insistence of certain educational institutions that no girl student shall wear the *hijab* (headscarf) whilst in the classrooms. Some of these petitions call in question the Government Order dated 05.02.2022 issued under sections 7 & 133 of the Karnataka Education Act, 1983. This order directs the College Development Committees all over the State to prescribe 'Student Uniform', presumably in terms of Rule 11 of Karnataka Educational Institutions (Classification, Regulation & Prescription of Curricula, etc.) Rules, 1995.

2. A Single Judge (Krishna S Dixit J) vide order dated 09.02.2022 i.e., yesterday, has referred these cases to Hon'ble the Chief Justice to consider if these matters can be heard by a Larger Bench '*regard being had to enormous public importance of the questions involved*'. Accordingly,

this Special Bench comprising of three Judges has immediately been constituted and these cases are taken up for consideration.

3. We have heard the learned Senior Advocates Mr.Sanjay Hegde & Mr. Devadatt Kamat appearing for the petitioners respectively in W.P.No.2146/2022 & W.P.No.2880/2022 for some time. Learned Advocate General appearing for the State also made some submissions.

4. Mr. Sanjay Hegde, learned Sr. Adv. argues that:

The 1983 Act does not have any provision which enables the educational institutions to prescribe any uniform for the students. The 1995 Rules apart from being incompetent are not applicable to Pre-University institutions since they are promulgated basically for Primary & Secondary schools. These Rules do not provide for the imposition of any penalty for violation of the dress code if prescribed by the institutions. Even otherwise the expulsion of the students for violating the dress code would be grossly disproportionate to the alleged infraction of the dress code. All stakeholders should make endeavors to create an atmosphere of peace & tranquility so that the

students go back to the schools and prosecute their studies. Nobody should pollute the congenial atmosphere required for pursuing education. All stakeholders should show tolerance & catholicity so that the girl students professing & practicing Islamic faith can attend the classes with *hijab* and the institutions should not insist upon the removal of hijab as a condition for gaining entry to the classrooms.

5. Learned Sr. Advocate Mr. Devadatt Kamat basically assailed the subject Government Order contending that the decisions of Kerala, Madras & Bombay High Courts on which it has been structured have been wrongly construed by the Govt. as hijab being not a part of essential religious practice of Islamic faith and that there is a gross non-application of mind attributable to the Government. He also submits that the State Government has no authority or competence to issue the impugned order mandating the College Development Committees to prescribe student uniform. He submits that dress & attire are a part of speech & expression; right to wear hijab is a matter of privacy of the citizens and that institutions cannot compel them to remove the same.

6. In response, learned Advocate General shortly contends that no *prima facie* case is made out for the grant of any interim relief. The impugned order *per se* does not prescribe any uniform since what uniform should be prescribed by the institutions is left to them. The agitation should come to an end immediately and peace & tranquility should be restored in the society; there is no difficulty for the reopening of the institutions that are closed for a few days in view of disturbances and untoward incidents. The agitating students should go back to schools. He denies the submissions made on behalf of petitioners. Learned Advocate General also brought to the notice of the Court that there are several counter agitations involving students who want to gain entry to the institutions with saffron and blue shawls and other such symbolic clothes and religious flags. Consequently, the Government has clamped prohibitory orders within the radius of 200 metres of the educational institutions.

7. Mr.Devadatt Kamat, learned Sr. Adv. is continuing with his arguments. Learned advocates appearing for petitioners in other connected writ petitions, learned AG appearing for the State and Mr. Sajjan Poovayya, learned

Sr. Adv. appearing for some institutions are also to be heard. This apart, there are advocates who want to argue for the impleading applicants. These matters apparently involve questions of enormous public importance and constitutional significance. We are posting all these matters on Monday (14.02.2022) at 2.30 p.m. for further consideration.

8. Firstly, we are pained by the ongoing agitations and closure of educational institutions since the past few days, especially when this Court is seized off this matter and important issues of constitutional significance and of personal law are being seriously debated. It hardly needs to be mentioned that ours is a country of plural cultures, religions & languages. Being a secular State, it does not identify itself with any religion as its own. Every citizen has the right to profess & practise any faith of choice, is true. However, such a right not being absolute is susceptible to reasonable restrictions as provided by the Constitution of India. Whether wearing of *hijab* in the classroom is a part of essential religious practice of Islam in the light of constitutional guarantees, needs a deeper examination.

Several decisions of Apex Court and other High Courts are being pressed into service.

9. Ours being a civilized society, no person in the name of religion, culture or the like can be permitted to do any act that disturbs public peace & tranquility. Endless agitations and closure of educational institutions indefinitely are not happy things to happen. The hearing of these matters on urgency basis is continuing. Elongation of academic terms would be detrimental to the educational career of students especially when the timelines for admission to higher studies/courses are mandatory. 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. The academic year is coming to an end shortly. We hope and trust that all stakeholders and the public at large shall maintain peace & tranquility.

10. In the above circumstances, we request the State Government and all other 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.

11. We make it clear that this order is confined to such of the institutions wherein the College Development Committees have prescribed the student dress code/uniform.

12. List these matters on 14.02.2022 at 2.30 p.m. for further consideration.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

AHB
List No.: 1 Sl Nos.: 1, 2, 3

Annexure P-6

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ORIGINAL JURISDICTION

I.A. No. /2022

In

W. P. No. 2347/2022

In the matter of

Ms. Reshma **Petitioner**

AND

State of Karnataka & others **...Respondent**

AND

Ms. Niba Naaz and Manal **...Impleading Applicant**

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3.	Vakalathnama	

Bangalore

14.02.2022 **Advocate for Impleading Applicant**

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

I.A. No. /2022

In

W. P. No. 2347/2022

In the matter of

Ms. Reshma ...Petitioner

AND

State of Karnataka & others ...Respondent

AND

1. **Ms. Niba Naaz,**
   Daughter of Mr. B. Naseer,
   Aged about 19,
   Residing at: No.13 – 73, A2,
   Bailakere, Kodavoor,
   Tenkanidyoor,
   Udupi – 576106

   .... **Impleading Applicant No.1**

2. **Ms. Manal,**
   Care of Mr. Noor Mohammed,
   Aged about 19,
   Residing at: No.29-115A - 5,
   Baputhota, Kadovoor,
   Malpe, Udupi – 576108

   ... Impleading Applicant No.2

APPLICATION FOR IMPLEADMENT AND DIRECTION UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 READ WITH THE HIGH COURT OF KARNATAKA RULES, 1959

1. The intervening applicant/petitioner is a student of Mahatma Gandhi Memorial College, Udupi. She is a woman practicing and professing the Muslim faith. She is directly affected by the outcome of this case as it affects her course work and personal security and thus has a legal and constitutional interest in the above case.

2. That the Applicant wishes to bring forth more critical arguments and nuances to the case hitherto undiscussed and unrepresented before this Hon'ble Court, which are relevant to adjudicating the issue of banning the hijab for Muslim female students studying in government and/or government funded educational institutions.

I. ESSENTIAL RELIGIOUS PRACTICE

3. It is submitted that the linguistic meaning of the word "Hijab" means "To Cover" or "To Have a Barrier" is insufficient to bring out the root belief of Muslim girls in covering the head. It must not be read in vacuum, but be read in conjugation with the concept of "Awrah". "Awrah" refers to anything that an individual considers indecent or embarrassing to uncover. Schools of Islamic Law already agree that it is a religious obligation for both men and

women who have reached puberty to cover their "Awrah" from anyone who, as per Islamic tenets, is not permitted to see. With respect to girls in public places like schools and colleges, covering the Awrah means covering every part of their body except their face and hands. The direct Quranic evidence for this obligation is Surah Noor, Chapter 24, Verses 30 to 31. Verse 31 first tells the men to lower their gazes and guard their chastity. Verse 32 then tells women to lower their gaze and guard their chastity, and not to reveal their adornments (i.e., hair, body shape and underclothes) except what normally appears (i.e., face, hands, outer clothes, rings, kohl, henna etc.) (*Saheeh International*). This verse directs the women to draw their veils over their chests, and not reveal their ˹hidden˺ adornments (i.e., hair, arms and legs) except to their husbands, their fathers, their fathers-in-law, their sons, their stepsons, their brothers, their brothers' sons or sisters' sons, their fellow women, those ˹bondwomen˺ in their possession, male attendants with no desire, or children who are still unaware of women's nakedness. It goes on to prevent women from stomping their feet thereby drawing attention to their hidden adornments. Exceptions to these are allowed on

a case necessity, such as medical treatment. Thus, hijab is merely a tool to achieve the actual edict of covering up the Awrah, that is the entire body except face and hands. It is not to be confused with the backward and non-religious practice of Purdah, which was enforced reclusion upon women, barring them from mingling with society at large.

4. It is submitted that the religious belief of hijab is not a general The Hadith of Abu Dawood (4:358) where the Prophet (PBUH) tells Asma bint Abi Bakr, the elder sister of his wife Ayesha, who had come in his presence wearing a thin garment, that when a woman reaches menarche, it is not right for any part of her body to be visible except for her face and hands. The opaqueness of the garment is also properly defined. The garment cannot be so thin that that it reveals what is beneath it. Rather, it should be thick enough so that the colour of the skin is not visible. It is submitted that as the average age of menarche among girls in India is 15 years, a ban on the wearing of headscarf in schools will necessarily exclude girls in standard 8 onwards, which is both unfair and exclusionary given that they cover their head from a practice of conscience and are no threat to decency that is expected out of a school uniform. It is also a threat to their

higher education as the formative years of Standards 9, 10, 11 and 12 will be lost on them.

5. It is submitted that "Khimar" is another term that Islamic tenets have used repeatedly which in this context means "Garment women wear to cover their head". Islamic pronouncements that govern the khimar are similar to that of the Awrah. According to Al Qurtubi (a widely revered Jurist, scholar and a Muhaddith), wearing the Khimar, traditionally worn by women in a way to leave the neck and ears uncovered, was directed to be worn in such a way that it was thick enough to cover without revealing and that it was draped in such a way that covered the neckline and the chest of the woman wearing it. Thus, it is not just a Quranic edict that women must cover their head, but is also supported from Quran and Hadith exactly how to cover, the thickness of the cloth, and the areas that must absolutely be covered when women are in a public place.
6. It is submitted that to rule on the issue of whether the headscarf for girl students is an essential practice of their religion, this Hon'ble Court shall have to necessarily abandon its gravitas as a Constitutional court and venture into the realm of being a theological institution. The Applicant also

submits that given the religious rulings of Islamic practice mentioned before, she and thousands like her are placed in a difficult situation of either being true to their conscience or getting basic and critical education for themselves. The edict of covering up their Awrah, which necessarily includes the headscarf is part of their core belief as Muslim girls and being forced by the State to abandon it has plunged them in guilt as they feel they cannot remain true to their beliefs if they are to stop wearing the headscarf. It is a major roadblock in their lives as citizens of this country, a direct attack upon their right to self- determine themselves and realize their true destiny. If education seeks to empower, then how can the Applicant be expected to empower herself by giving up her power to follow her conscience.

7. The issue of wearing of Hijab has been dealt with by Court on previous occasions. In *Nadha Raheem vs. CBSE*, 2015 SCC OnLine Ker 21660; two aggrieved Muslim girls approached the Kerala High Court contending that the dress code prescribed by the CBSE would prejudice them, insofar as their religious custom mandates them to wear a headscarf and also full sleeve dresses. The Single Judge observed *"it cannot be ignored that in our country with its varied and*

diverse religions and customs, it cannot be insisted that a particular dress code be followed failing which a student would be prohibited from sitting for the examinations." It directed that: *….at the two centres indicated in the writ petitions, the Invigilator along with a woman Invigilator or another authorised officer shall be present half an hour before the examination commences. The petitioners who intend to wear a dress according to their religious custom, but contrary to the dress code, shall present themselves before the Invigilator half an hour before the examination and on any suspicion expressed by the Invigilator, shall also subject themselves to any acceptable mode of personal examination as decided by the Invigilator, but however carried on only by an authorised person of the same sex. If the Invigilator requires the head scarf or the full sleeve garments to be removed and examined, then the petitioners shall also subject themselves to that, by the authorised person. It is also desirable that the C.B.S.E issue general instructions to its Invigilators to ensure that religions sentiments be not hurt and at the same time discipline be not compromised.*

The issue came up before a Single Judge of the Kerala High Court once again in *Amna Bint Basheer and Anr v CBSE*, 2016 SCC OnLine Ker 41117 : AIR 2016 Ker 115. The Ld. Single Judge (A. Muhamed Mushtaque), considered the place of a hijab under Islamic Law (Paragraphs 20-29). The Court held :

"30. The discussions as above would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code."

Having held thus, the Court sought to balance the right of the Muslim women with the interest of the CBSE in conducting a fair exam. The Court directed:

36. However, the practical difficulty in implementing the direction of this Court has to be considered. This Court taking note of the practical difficulty of the Board for the conduct of the examination during the last year, in W.P. (C). No. 21696/2015 had provided sufficient safeguards. This Court is of the view that the same can be followed for this year as well, and the Board can take necessary steps for the next year onwards, while inviting applications itself, to protect such rights. It is to be noted practical difficulty cannot be an excuse to honour the fundamental rights.

Therefore, this Court is of the view that for this year the Board shall permit all candidates, who based on the religious practice want to wear head scarf and full sleeved length dress, to appear for the exams. This Court need not interfere with the dress code prescription as referred in the Board's prospectus as others are bound by such prescription except to hold that the dress code as above shall not be enforced against the candidates, who by virtue of Article 25(1) are protected from wearing such dress as prescribed in the injunctions of their faith. The writ petition is allowed and disposed of by granting relief as ordered in W.P. (C). No. 21696/2015 to all who fall within the same class as protected under Article 25(1). It is made clear that all such candidates will have to report at the Centre at least half an hour before the schedule time.

The CBSE appealed against the decision to a Division Bench of the High Court. However, by the time the matter was heard, the CBSE had issued a notification complying with the directions passed by the Single Judge. The Writ Appeal [CBSE V Amna Bint Basheer, 2016 SCC OnLine Ker 487] was thus disposed of. Besides the fact, the wearing of Hijab has been found to be an "essential religious practice", one other aspect is of note. The Court in these cases was dealing with a temporary prohibition on the use of Hijab.

Even in that circumstance, it chose to balance the rights of the girls with those of the institutions. In this case, the "ban" on hijab is more permanent in nature.

In *Fathima Thasneem Vs. State Of Kerala,* 2018 SCC OnLine Ker 5267: (2019) 1 KLT 208; the Ld. Single Judge (A. Muhamed Mushtaque); was dealing with another petition filed by two minor girl students challenging the dress code prescribed by the school. According to them, the dress code was against their religious belief, inasmuch as it denied them the right to wear a headscarf as well as full sleeve shirt. Pertinently, the school was a private school (and perhaps also a Christian Minority Institution). In this case, the Court held that the right of the girls had to be balance with the right of the private school to "establish, manage and administer". The Court thus held: "*…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." This Judgment is distinguishable in the facts of the case.

Additionally, in its counter-affidavit, the State has sought to contend that the Petitioners have submitted undertakings, stating that they will abide by the uniforms prescribed. They are hence estopped from challenging an imposition of a uniform. This submission is liable to be rejected as fundamental rights cannot be waived by an undertaking. [*Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545]

8. The Applicant also submits that the hijab/headscarf is not a departure from the uniform of the institutions they study in, rather it is a mere accessory to their uniform by virtue of it being essential to her religion. There is no compulsion from the Muslim religion as to what colour it must be, so the blending in of Muslim girl students with the rest of the students shall be seamless and the uniformity that is the objective of dress code in schools can be achieved in a way that is inclusive and respecting of the Applicant's conscience and does not accord her any special status. It is also submitted that Muslim women wearing headscarves is a fairly common sight in public at large and that if the same were to be allowed in public schools would not be anything new.

9. The Applicant also submits that Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 make a provision for uniform. The Rule is reproduced below:

11. Provision of Uniform, Clothing, Text Books etc., (1) Every recognised educational institution ***may specify*** *its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.*

(2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.

(3) Purchase of uniform clothing and text books from the school or from a shop etc., suggested by school authorities and stitching of uniform clothing with the tailors suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard.

As is clear from the above, the rule does not make it mandatory for an institution to prescribe a uniform. The same is

left to the discretion of the school/ institution. In this case, no uniforms were prescribed by the respective institutions. The students were peacefully attending school, were not stopped by the college authorities at all and neither was there any requirement under this Act for the impugned government order to be challenged. It is pleaded by the Applicant that the aim and objective of the Act was to focus on standardising education. Instead the Government Order has managed to alienate only one type of students from attending classes and giving exams, despite there being no doubt as to the fact that the students themselves hold steadfast on the belief that they are discharging an essential practice of their religion when they cover their heads in public places.

II. DISRUPTION OF NORMAL LIVING

10. The Applicant further submits that there can be no prohibition on the students from getting access to education. Every executive action that operates to the prejudice of a person, must be supported by some legislative authority. [*State of M.P. v. Bharat Singh*, AIR 1967 SC 1170; Satvant Singh Sawhney v. Ramarathanana, AIR 1967 SC 1836]. Presuming that there indeed is a mandate to wear a

particular uniform, it is submitted that there is no punishment prescribed in case a student does not wear the uniform. Chapter XVII prescribes penalties for various offences under the Act. This includes penalties for impersonation during examination, penalty for ragging etc. No penalty is prescribed for failure to wear a uniform. Similarly, Rule 15 of the 1995 Rules prescribes penalties that can be levied for violation of any provision of the Acts or rules by institutions. There is no rule prescribing punishments for any conduct by students. There is absolutely no justification that students must be barred from attending classes and appearing for exams simply because an arbitrary uniform was suddenly imposed on them.

11. The Applicant further submits that the practice of wearing the headscarf as part of Indian Muslim women dressing is part of custom, practice and usage. It is within the vision of good conduct (*Sadachaar*) of the Muslim religion and is therefore conscientiously rooted in the choice of clothes Muslim women wear in public. It is also humbly pointed out that as early as four years before this cause of action, the girl students were wearing their headscarves and were peacefully attending their school and college

uninterrupted and without protest of any kind. Thus the status quo as established when the impugned government order was circulated was that the Schools and Colleges were allowing the girls to wear the headscarf and attend school like any normal student is expected to do.

12. The Applicant is also constrained to point out that a perusal of Section 133 (2) of the Karnataka Education Act reveals that the State Government can (a) issue directions to institutions; (b) such directions must be necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the rules made thereunder. Thus, the notification issued by the State Government does not mention the objective or provision of the Act it seeks to achieve. It is difficult to see how a mandatory uniform fulfils any of these. Further, as has already been stated, there is no provision in the Act or in the rules, mandating uniforms. This being the position, the notification is beyond the scope of the powers under S.133 (2). In any event, the notification seeks to create a new obligation. This is not permissible. In *Kunj Behari Lal Butail* v. *State of H.P.*, (2000) 3 SCC 40 the Court held:

"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.

14. We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

In this case, the power to issue direction to carry out the purposes of the Act, has in effect been used to bring into existence an obligation to wear a particular uniform. The same is not permissible. As has been stated earlier, the Petitioner

contends that the actions complained of are liable to be declared as illegal on this ground alone.

13. The Applicant further submits that when the impugned government order was circulated and this Hon'ble Court pronounced its interim order on 10/02/2022, the hitherto status quo of Muslim girls wearing the headscarf and going to attend class was altered and now they have been deprived of their power self-determine themselves and have been plunged into guilt for having to choose between two essential practices of living in Indian society, namely freedom of conscience and right to education. It is also respectfully submitted that a massive disruption in the ordinary living of the Applicant and others like her, has been caused up to this point. This Hon'ble Court is now being asked to continue this harmful deviation and having suspended the Applicant's right to freedom of conscience even for a few days has placed a massive tax on her psyche as she is now being told that she is responsible for the disruption of law and order.

14. The Applicant submits that this entire cause of action is being vilified everyday and that people who share her faith are being told that school and college functioning has been

disrupted because of the girls wearing headscarves to school. They are being put on trial by anti-social elements that heckle at them and say that it because of their religion that education is being disrupted. It is respectfully submitted that the Applicant and many like her are being effectively pushed back into the ages of *Purdah* as they are being told that in order to practice their religion with a freedom guaranteed to everybody by the Constitution, they may not leave their houses at all. The objective of the Interim Order dated 10/02/2022 has been defeated because now even the degree colleges are disallowing female students to appear in exams and are being turned away from the gates of the institution, when a dress code is not even an issue for them.

15. It is also humbly stated that in the Karnataka Education Act, 1983 itself, Section 7 (2) (e) talks of promotion of National Integration which is being directly attacked by alienating Muslim girl students who wear headscarves to be removed from the school. Further Section 7 (2) (g) (v) envisages schemes to protect the 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 submitted that by resorting to government orders telling Muslim girl students that they must necessarily abandon their conscience in order to continue studying is highly damaging to the dignity of women as stated by the Karnataka Education Act itself.

III. DISRUPTION OF LAW AND ORDER

16. It is submitted by the Applicant that public order being threatened is an excuse being resorted to by the State Government as it refuses to take accountability for maintaining said public order. Instead, the burden of peace and tranquillity being maintained is being put upon the Applicant and School/College authorities depriving the Applicant of her fundamental rights.

17. The Applicant submits that all reasoning by the State Government stating that law and order is being threatened because Muslim girl students are insisting on wearing headscarves with their uniform must be disallowed because it shows their reluctance and inability to control public order given the resources they commandeer for this very purpose. It is also submitted that there is plenty video graphic

evidence available to show persons who were actually disrupting public order and it was not the students who have been attending school peacefully assimilating their headscarves into the mandated uniform.

18. That the Applicant also submits that the State Government has failed in its ability to maintain public order and secondly, has failed to be accountable for public order. In the process the fundamental rights and peaceful living of the Muslim girl students has been majorly disrupted. It is pleaded by the Applicant that this Hon'ble Court disallows the State Government from going scot-free and actually take steps instead of using public order as an excuse to deprive citizens of their fundamental rights. It is humbly submitted that the State Government be ordered to undertake investigation against disrupters of law and order instead of nullifying Constitutional rights and just telling students to go home and take off their headscarves, because pieces of cloth in the head of schoolgirls is too provocative to maintain public peace and tranquillity.

IV. CONSTITUTIONAL RIGHTS

19. The Applicant submits that with regard to clothing and appearance under Article 19 (1)(a) The Supreme Court in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 has recognized that clothing and appearance fall within the ambit of the right of expression guaranteed under Article 19 (1) (a) of the Constitution. In *Jigya Yadav v. CBSE,* (2021) 7 SCC 535, the Court was dealing with bye-laws of CBSE that restricted a student from changing his/her name in the records. The Court observed:

> *125. Identity, therefore, is an amalgam of various internal and external including acquired characteristics of an individual and name can be regarded as one of the foremost indicators of identity. And therefore, an individual must be in complete control of her name and law must enable her to retain as well as to exercise such control freely "for all times". Such control would inevitably include the aspiration of an individual to be recognised by a different name for a just cause. Article 19(1)(a) of the Constitution provides for a guaranteed right to freedom of speech and expression. In light of Navtej Singh Johar [Navtej Singh Johar v. Union of*

India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] , ***this freedom would include the freedom to lawfully express one's identity in the manner of their liking. In other words, expression of identity is a protected element of freedom of expression under the Constitution.***

20. The Applicant humbly submits that in this case, wearing of a Hijab is an expression of religious identity. The same is a right protected under Article 19 (1) (a) of the Constitution. It can only be curtailed by way of reasonable restrictions under the grounds mentioned in Article 19 (2). None of the grounds are made out in this case. It is also relevant to submit that there is a *"positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised"* In *Indibily Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436; the Court held:

50. The freedoms which are guaranteed by Article 19 are universal. Article 19(1) stipulates that all citizens shall have the freedoms which it recognises. Political freedoms impose a restraining influence on the State by carving out an area in which the State shall not

interfere. Hence, these freedoms are perceived to impose obligations of restraint on the State. But, apart from imposing "negative" restraints on the State these freedoms impose a positive mandate as well. In its capacity as a public authority enforcing the rule of law, the State must ensure that conditions in which these freedoms flourish are maintained. In the space reserved for the free exercise of speech and expression, the State cannot look askance when organised interests threaten the existence of freedom. The State is dutybound to ensure the prevalence of conditions in which of those freedoms can be exercised. The instruments of the State must be utilised to effectuate the exercise of freedom. When organised interests threaten the properties of theatre owners or the viewing audience with reprisals, it is the plain duty of the State to ensure that speech is not silenced by the fear of the mob. Unless we were to read a positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised, there is a real danger that art and literature would become victims of

intolerance. In the present case, we are of the view that there has been an unconstitutional attempt to invade the fundamental rights of the producers, the actors and the audience. Worse still, by making an example out of them, there has been an attempt to silence criticism and critique. Others who embark upon a similar venture would be subject to the chilling effect of "similar misadventures". This cannot be countenanced in a free society. Freedom is not a supplicant to power."

21. The Applicant also submits that Article 25 of the Constitution of India confers two distinct fundamental rights :

i. Freedom of Conscience

ii. Free profession, practice and propagation of religion

The right under Article 25 is made subject to (a) Public order; (b) Morality, (c) Health and (d) Other fundamental rights. Article 25 rights are conferred upon communities as well as individuals. The vast majority of cases adjudicated by Constitutional courts in India deal with the second aspect of Article 25, i.e. free profession, practice and propagation of religion. These cases have involved the determination of

status of practices that can be broadly understood as group or community practices. This Court has held that only an "essential religious practice" is protected under Article 25. In this case, the Petitioners claim the right to wear hijabs on the basis of their **individual freedom of conscience.** It is important to note that the lead Judgment on the point – *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615 dealt with the issue without going into the question of essential religious practices at all. While the Court did cite the Judgments in Shirur Mutt etc., it ultimately held:

25. 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.*

It is clear from the above, that the issue as formulated by the Court was not whether refusal to sing the national anthem was an "essential religious practice" to Jehovah's Witnesses. Rather, the

issue was whether the person claiming a religious exemption was doing so on the basis of their bona fide faith.

PRAYER

Wherefore, in light of above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:

A. Allow the present Application and permit the Applicant to intervene in the present proceedings as intervenors and enable her to make submissions before this Hon'ble Court.
B. Pass any such further orders and/or directions that this Hon'ble Court may deem fit in the interest of justice.

Date:

Place: **Counsel for the Impleading Applicant**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) NO. OF 2022

[Arising out of the impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in the Writ Petition bearing No. 2146 of 2022]

IN THE MATTER OF:

Manal and Another …PETITIONER

VERSUS

State of Karnataka and Others …RESPONDENT

APPLICATION FOR EXEPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT

To

Hon'ble the Justice and his
Companion justices of the
Supreme Court of India

The Humble Petition of the
Petitioner Abovenamed

MOST RESPECTFULLY SHOWETH:

1. That the Petitioneris filing the present application along with thePetition under Article 136 of the Constitution of India for grant of Special Leave to Appeal the Impugned Final Judgment and Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition bearing No. 2146 of 2022.

2. That the facts of the case are not repeated hereinafter for the sake of brevity and the same may be read as part and parcel this application also.
3. That due to the pandemic of COVID-19 petitioner has not been able to obtain the certified copy of the impugned final judgment and order of the Hon'ble High Court of Judicature at Allahabad.
4. In the circumstances it is most respectfully prayed from this Hon'ble Court to exempt the petitioner form filing certified copy of the impugned judgment dated 05.01.2021 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition bearing No. 2146 of 2022.

P R A Y E R

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

(a) exempt the petitioner from filing the certified copy of the final judgment and order15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition bearing No. 2146 of 2022,;

(b) pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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

(ANAS TANWIR.)
Advocate for the Petitioner

FILED ON: 16 .03.2022

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:

Manal and Another …PETITIONER

VERSUS

State of Karnataka and Others …RESPONDENT

APPLICATION FOR PERMISSION TO FILE SPECIAL LEAVE PETITION

To

Hon'ble the Chief Justice of India
And his companion judges of the
Supreme Court of India.

The humble application of the
above- named
Applicant/Petitioner

MOST RESPECTFULLY SHOWETH:-

1. That the present petition by way of special leave is filed by the Petitioner against the dismissal of the Writ Petition challenging ban on face covering/ headscarves/ hijab by the Hon'ble High Court of Karnataka at Bengaluru.
2. That the Petitioner/Applicant seeks to rely upon the facts and averments in the accompanying Special Leave Petition and the

same are not being reproduced herein for the sake of brevity. The same maybe treated as part of the present Application.

3. It is submitted that the Petitioners herein had preferred an Impleadment Application before the Hon'ble High Court bearing I.A. No. 12 of 2022. However, the same was not considered and was disposed of in terms of final order by the Hon'ble Court. A copy of the Impleadment Application filed by the Petitioners herein is marked and annexed hereto as **Annexure A-1.**
4. It is most humbly submitted that the Petitioners herein are students of B.Com at MGM College, Udupi and are adversely affected by the order and Judgment of the Hon'ble High Court. The Petitioners have been observing Hijab as per the religious tenets since a long time. The Petitioners herein had to miss their practical examinations as they were not allowed to appear for them while wearing Hijab.
5. This application is made bonafide and in the interests of justice.

P R A Y E R

It is, therefore, most respectfully prayed that, in the interests of justice, this Hon'ble Court may be graciously pleased to:

a) permit the Petitioner/Applicant to file the accompanying Special Leave Petition against the Judgment and Order of the Hon'ble High Court of Karnataka at Bengaluru in W.P.(C) No.2146/2022 dated 15.03.2022; and/or,

b) Pass any other or further orders as may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE APPELLANT/APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

NEW DELHI
FILED ON: 16.03.2022

(Anas Tanwir)
Advocate for the Applicant