

IN THE SUPREME COURT OF INDIA

[ORDER XXI RULE 3 (1) (a)]

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) No. 11396 OF 2022

**[WITH PRAYER FOR INTERIM RELIEF]**

[Arising out of impugned judgment and final order dated 15.03.2022 in Writ Petition No.3038 of 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru]

**IN THE MATTER OF:-**

Miss Shaheena

...Petitioner

Versus

The State of Karnataka & Ors.

...Respondents

**WITH**

**I.A. NO. \_\_\_\_\_ OF 2022**

**APPLICATION FOR EXEMPTION FROM FILING  
CERTIFIED COPY OF THE IMPUGNED ORDER**

**AND**

**I.A. NO. \_\_\_\_\_ OF 2022**

**AN APPLICATION FOR EXEMPTION FROM FILING  
OFFICIAL TRANSLATION**

**PAPER BOOKS**

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ADVOCATE FOR THE PETITIONER:: **RANBIR SINGH YADAV**

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**A**

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

**IN THE MATTER OF:-**

Miss Shaheena  
Versus  
The State of Karnataka & Ors.

...Petitioner  
...Respondents

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and there is delay of \_\_\_\_ days in filing the same against order dated 15.03.2022 and petition for condonation of \_\_\_\_ days delay 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

New Delhi  
Dated: 04.04.2022

# A1

## PROFORMA FOR FIRST LISTING

SECTION: IVA

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

	Central Act: (Title)	N/A
	Section:	N/A
	Central Rule: (Title)	N/A
	Rule No(s):	N/A
	State Act: (Title)	
	Section Rule: (Title)	N/A
	Rule No(s):	N/A
	Impugned Interim Order: (Date)	N/A
	Impugned Final order/ Decree: (Date)	15.03.2022
	High Court: (Name)	High Court of Karnataka at Bengaluru
	Names of Judges:	Hon'ble Mr. Chief Justice Ritu Raj Awasthi, Hon'ble Mr. Justice Krishna S. Dixit Hon'ble Mr. Justice J. M. Khazi
	Tribunal/Authority: (Name)	N/A

1.	Nature of matter:	Civil
2. (a)	Petitioner/Appellant No.1:	Miss Shaheena
(b)	e-mail ID:	N/A
(c)	Mobile phone number:	N/A
3. (a)	Respondent No.1:	The State of Karnataka & Ors.
(b)	e-mail ID:	N/A
(c)	Mobile phone number:	N/A
4. (a)	Main category classification:	18 Ordinary Civil Matters
(b)	Sub classification:	1807 Others
5.	Not to be listed before:	N/A
6(a)	Similar disposed of matter with citation, if any & case details	No similar matter disposed
6(b)	Similar pending matter with case details	No similar matter pending
7.	Criminal Matters:	N/A
(a)	Whether accused/ convicted has surrendered:	N/A
(b)	FIR No. N/A	Date: N/A

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(c)	Police Station:	N/A
(d)	Sentence Awarded:	N/A
(e)	Period of sentence undergone including period of Detention/ Custody Undergone:	N/A
8.	Land Acquisition Matters:	N/A
(a)	Date of Section 4 notification:	N/A
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(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

Senior citizen > 65 years   SC/ST   Woman/child   Disabled  
Legal Aid case   In custody

11.	Vehicle Number (in case of Motor Accident Claim matters):	N/A
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Date: 04.04.2022



**RANBIR SINGH YADAV**  
Advocate for the petitioners  
Registration No.959  
Email: [33chamber@gmail.com](mailto:33chamber@gmail.com)

**SYNOPSIS**

1. The Petitioner in the present petition only seeks to permit her to attend the college without removal of her head scarf and thereby protecting her from being subject to a Hobson's choice.
2. The Petitioner has not challenged the prescription of dress code as portrayed by the Impugned Judgement but has challenged the proscription of the hijab violating her right to freedom of conscience. It is imperative to understand the controversy the Petitioners are not seeking for a jilbab i.e. a full length outer garment traditionally covering the head and the hands. The Petitioners are only seeking a head scarf/hijab of the same colour and material of the dress code prescribed which essentially covers only the hair, neck and bosom without covering the face.
3. The Hon'ble Court below has misconstrued the crux of the matter and passed the Impugned Judgement limiting the issue at hand to the determination of whether Petitioners can object to prescription of a school uniform. At this juncture, it is reiterated that none of the Petitioners have contended that prescription of a school uniform is legally impermissible, but instead have only sought for relief against the proscription of hijab as it infringes upon the Petitioner's valuable right.

**WEARING OF HIJAB IS AN ESSENTIAL RELIGIOUS PRACTICE**

4. The wearing of hijab is an essential religious practice in Islam which is socially, culturally and manifestly accepted

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worldwide including India. The practice is prevalent since the inception of Islam.

5. The wearing of hijab is authorised by Quranic injunction and should be considered as one's belief towards his/her own god which is conducive to their spiritual well-being. Wearing of hijab is one's expression of faith in the religion to satisfy his/her conscience. Therefore, the holding of the Court below that wearing of hijab is not an essential practise is absurd and does not hold water as it is contrary to the sacrosanct revelations from God (Allah) in the Holy Quran.
6. It is also pertinent to note that there is consensus amongst religious scholars of all Muslim schools of thought as well, namely, Hanafi, Maliki, Shafai and Hambali that the practice of Hijab is '*wajib (mandatory)*'. Wajib is the "*First Degree*" of obedience. If the said obligation is not followed then an individual would commit "sin" or become a "sinner". In effect the erroneous finding of the Impugned Order only promotes a secular state's unreasonable interference in restricting the satisfaction of one's conscience in violation of Fundamental Rights enshrined under Article 14, 19, 21 and 25 of the Constitution.

### GOVERNMENT ORDER IS VIOLATIVE OF ARTICLE 14

7. The Hon'ble Court below upholding the G.O. only creates a "forced uniformity" against the tenets of diversity and plurality guaranteed by the Constitution.



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8. The Government Order proscribing the wearing of hijab is violative of Article 14 of the Constitution as it deprives Petitioner of her equal rights. The object sought to be achieved is uniform dress code in the school premises. It is submitted that the Hon'ble Court below ought to have observed that wearing of hijab does not in any way cover or offend the dress code. It is merely an addition to the dress code and that too of the same color.

### HIJAB IS ONE'S EXPRESSION OF FAITH IN THE RELIGION:

9. The Hon'ble Court below ought to have observed that wearing of hijab, which is not affecting the dress code, is one's expression of faith in the religion to satisfy his/her conscience. Thus, an individual's right to express his/her faith under Article 19 is hand in hand with the freedom of conscience under Article 25.
10. The proscription of wearing of hijab is an unreasonable restriction and is violative of Article 19 of the Constitution. It is submitted that the same woman and also other women are allowed to wear hijab in the whole of this country. However, they are proscribed from wearing the same in the school premises under the garb of dress code. The Hon'ble Court below ought to have appreciated that the dress code is not even getting affected as it is merely a minor addition and does not cover the uniform.
11. The right of an individual has also been pressed through Article 14, 19 and 21 of the Constitution of India. It should

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not be construed that the relevance of religious beliefs and practices in Islam in any manner becomes an issue of lesser importance for a believer.

### GOVERNMENT ORDER IS CONTRARY TO ARTICLE 25 AND THE PRINCIPLE OF SECULARISM

12. The G.O. violates the fundamental right of freedom of conscience and profession of religion as it encroaches upon the relationship between woman and god. Non observance of wearing of hijab leads to a sense of guilt. Proscription of hijab thereby leads to a violation of freedom of conscience especially when such is not held contrary to public order, morality or health.
13. The G.O. is violative of the concept of secularism which implies that one's faith ought to be respected and accepted. It does not imply obliviousness towards one's faith in order to inculcate secular outlook. The G.O. is blatantly ignorant of the positive duty cast upon the State to ensure secularism, promote tolerance and accept individual beliefs, religion and conscience. It propagates the idea of social separateness and fear of religious segregation instead of inculcating secular values amongst the students in their impressionable & formative years.
14. The Impugned Judgment upholding the G.O. will lead to grave encroachment on the children of Muslim community and shall lead to a situation where a large section of Muslim Girls will be deprived from stream of general education leading them to remain in vulnerability. The Impugned

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Judgment further erases and invisibles basic religious freedom and freedom of expression, agency of Muslim women, principles of equality, perpetuates discrimination, communal discord and intervenes in the protected area of privacy.

### IMPUGNED ORDER FAILS TO COMPREHEND THE MEANING OF HIJAB IN ITS TRUE SENSE:

15. The Hon'ble Court below failed to distinguish between hijab and jilbab. Hijab is merely a head scarf that covers only the hair and bossoms without covering the face. On the other hand, jilbab is a full length outer garment traditionally covering the head and the hands. It is submitted that wearing of hijab does not in any way cover or offend the dress code. It is merely an addition to the dress code and that too of the same colour. Therefore, there should be no reason to prohibit the Petitioner from wearing the hijab order to satisfy his/her conscience.
16. The Hijab does not disturb the entire uniform as portrayed BY the Impugned Judgement but is only a minor variation and can be reasonably accommodated within the constitutional norm being part of religious practices. The Impugned Judgement laying too much emphasis on bringing "uniformity" in the uniform fails to accommodate the practise of a person belonging to a particular religion 'to cover her hair with a piece of cloth' leading to a travesty of justice.
17. The Hon'ble Court below views the hijab as something that is oppressive, it's cultural and religious history is neglected and

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the explanation is lost in the rhetoric of how oppressive the veil is. Therefore the court below does not see it as a woman's identity but sees it as oppressive thereby negating her personal conscience and expression by giving her protection by laws which cater to all.

18. The Court below has erroneously observed that as long as wearing hijab is regarded religiously sacrosanct, it is impossible to install a scientific temperament and therefore by proscription of hijab through prescription of uniform dress code inculcates secular values among the students in their impressionable and formative years. It is submitted that the inculcation of a secular outlook in a diverse country like ours can only be achieved through acceptance and respect of one's religion for which one's faith needs protection rather than restriction.

### HON'BLE COURT BELOW MISUNDERSTOOD THE ISSUE/ HIJAB DOES NOT VIOLATES THE DRESS CODE

19. The Court below has gone down in flames in understanding the issue for consideration. The issue since the beginning was pertaining to the proscription of hijab and not prescription of dress code. It is pertinent to note that none of the petitioners ever challenged the prescription of dress code as the G.O. only relates to proscription of hijab and not prescription of dress code.
20. The court below has misconstrued the issue and question at hand wherein the Petitioners herein have never contended that the prescription of dress code offends students' fundamental right to expression or their autonomy. The Petitioners' are

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contending that the proscription of hijab while prescribing a dress code offends students' fundamental right to expression or their autonomy. It is submitted that the Court below deciding the wearing of hijab on the touchstone of dress code is completely erroneous as it nowhere violates or offends the dress code.

21. The Petitioner had never objected to wearing the prescribed uniform. In fact, the request was merely to wear a headscarf/hijab in addition to the prescribed uniform and that too in the same color as the uniform to make it compatible with the religious beliefs. The Court below has failed to appreciate the argument of the Petitioners. The submission has not been dealt with by the Hon'ble Court below. The Hon'ble Court below has not even recorded this clear, categoric and oft repeated stand of the Petitioner and rendered the judgment as if the Petitioners argued that the prescription of school uniform violated their fundamental rights, which is again reiterated, was not their case.

## GOVERNMENT ORDER INFRINGES THE PETITIONER'S RIGHT TO EDUCATION:

22. The Impugned Judgement violates the Petitioner's right to education envisaged under Article 21 of the Constitution. It is submitted that the right to life entails the right to lead a dignified life and thereby a quality education is an essential ingredient to lead such a dignified life. The embargo placed on the Petitioners leads to the deprivation of such right as it

discriminates and bars the Petitioner from stream of general education.

EMANCIPATION OF WOMEN:

23. The Court below by observing that wearing of the hijab hinders the emancipation of Muslim women have taken upon themselves the burden of emancipating all Muslim women without providing them a choice to express or profess their conscience taking away their autonomy.

THE HON'BLE COURT'S ORDER WITHOUT HEARING ALL THE STAKEHOLDERS IS OPPOSED TO PRINCIPLES OF NATURAL JUSTICE

24. The finding of the Hon'ble Court below to the effect: “ what is made recommendatory to the Holy Quran cannot be metamorphosed into mandatory dicta by Al-Hadith which is treated as supplementary to the Scripture”, in order to buttress that wearing of Hijab as not Islam specific, is rendered ignoring the sources of Islamic Jurisprudence in the right perspective and without hearing the Islamic scholars or institutions having interest and are major stakeholders.

25. The approach of the High Court in shutting out the doors to the interested parties by dismissing various applications filed for intervening on one hand and holding that no maulana/religious head filed any affidavit clarifying the stand on Hijab is mutually destructive and opposed to principles of Natural Justice more particularly, the much cherished principle of audi alteram partem.

26. The Hon'ble court below fails to appreciate the social impact of the Impugned order on the girl students of the Muslim

community. The Impugned Order promotes sectarianism and segregation leading to decreased autonomy, education and upliftment of the community. In essence, the court's actions constitute a classic case of Heckler's veto.

27. Hence the Present Petition.

**LIST OF DATES**

2020	Petitioners joined the 5 <sup>th</sup> respondent college and they are perusing their pre university course.
03.02.2022	The Petitioner was refused entry by the college administration who insisted that she remove the Hijab/Headscarf. The Petitioner and similarly situated women refused to remove their Hijab/Headscarf and as a result were restricted from entering the college premises.
04.02.2022	Being aggrieved by the actions of the College authorities, the Petitioner herein and other similarly situated women made a representation to the Deputy Commissioner, Udupi District, voicing their grievance.
05.02.2022	The State of Karnataka in purported exercise of its powers under Section 133(2) of the <i>Karnataka Education Act, 1983</i> , issued G.O.dtd. 05.02.2022, whereby the College Development Committees were directed to prescribe uniforms, indicating therein that wearing of Hijab/Headscarf is a non-essential religious practice, not being a part of the rights under Article 25. A true and translated copy of the G.O. dated. 05.02.2022 is annexed

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hereunder as **ANNEXURE P-1** [Page nos. 154 to 158].

07.02.2022 The Petitioner herein being aggrieved by the G.O. dtd. 05.02.2022 was constrained to file Writ Petition No.3038 of 2022 in the Hon'ble High Court of Karnataka *inter alia* seeking quashing of the G.O. dtd. 05.02.2022 on the grounds of it being violative of Articles 14, 19, 21, 25 and 29 of the Constitution as well as consequential reliefs. A true typed copy of W.P. No. 3038 of 2022 dated 07.02.2022, without annexures, filed by the Petitioner before the Hon'ble High Court of Karnataka at Bangalore is annexed hereunder as **ANNEXURE P-2** [Page nos.159 to 180].

15.03.2022 The Hon'ble High Court pronounced the impugned final judgment and order dismissing the Writ Petition.

24.03.2022 In light of the Impugned Order the Government of Karnataka has issued another Government Order dated 24.03.2022 imposing an embargo on the wearing of Hijab in the SSLC Examination. A true and translated copy of the G.O. dated. 24.03.2022 is annexed hereunder as **ANNEXURE P-3** [Page Nos. 181 to 182].

04.04.2022 Hence, the present Special Leave Petition against the decision of Hon'ble High Court of Karnataka at Bengaluru.



DATED THIS THE 15<sup>TH</sup> 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 2022BETWEEN:

- 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, 18<sup>TH</sup> 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 . SHAFI  
 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  
UNAUTHORIZED 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.

**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 GOVERNMENT 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 UNIVERSITIES 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 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents happen to be the State Government & its officials, and the 2<sup>nd</sup> 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 1<sup>st</sup>, 3<sup>rd</sup> & 4<sup>th</sup> respondents happen to be the State Government & its officials and the 2<sup>nd</sup> 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

- 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 1<sup>st</sup> and 2<sup>nd</sup> respondents happen to be the Central Government and the 3<sup>rd</sup> 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 1<sup>st</sup> respondent is the Central

Government, 2<sup>nd</sup> & 3<sup>rd</sup> respondents happen to be the State Government & its Principal Secretary, Department of Primary & Secondary Education; the 4<sup>th</sup> & 5<sup>th</sup> 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*<sup>1</sup> and *AJMAL KHAN vs. ELECTION COMMISSION OF INDIA*<sup>2</sup>. Neither the State Government nor the Schools can prescribe a dress code/uniform that does not permit the students to wear *hijab*. The action of the respondent – schools in insisting upon the removal of *hijab* in the educational institutions is impermissible, as being violative of the fundamental right guaranteed under Article 25 of the

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<sup>1</sup> (2016) SCC OnLine Ker 41117

<sup>2</sup> (2006) SCC OnLine Mad 794

Constitution vide *SRI VENKATARAMANA DEVARU vs. STATE OF MYSORE*<sup>3</sup> and *INDIAN YOUNG LAWYERS ASSOCIATION vs. STATE OF KERALA*<sup>4</sup>

(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*<sup>5</sup>.

(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*<sup>6</sup>; 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*<sup>7</sup>. The Government Order and the action of the schools to the extent that they do

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<sup>3</sup> 1958 SCR 895

<sup>4</sup> (2019) 11 SCC 1

<sup>5</sup> (1986) 3 SCC 615

<sup>6</sup> (2014) 5 SCC 438

<sup>7</sup> (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*<sup>8</sup> and *MOHD. FARUK V. STATE OF MADHYA PRADESH*<sup>9</sup>.

(v) The impugned Government Order suffers from '*manifest arbitrariness*' in terms of *SHAYARA BANO VS. UNION OF INDIA*<sup>10</sup>. 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*<sup>11</sup>, the High Courts in Writ Petition(C) No. 35293/2018, *FATHIMA HUSSAIN vs. BHARATH EDUCATION SOCIETY*<sup>12</sup>, *V.KAMALAMMA vs. DR. M.G.R. MEDICAL UNIVERSITY and SIR*

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<sup>8</sup> (2016) 7 SCC 353

<sup>9</sup> (1969) 1 SCC 853

<sup>10</sup> (2017) 9 SCC 1

<sup>11</sup> (2017) 4 SCC 397

<sup>12</sup> AIR 2003 Bom 75

*M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL STAFF ASSOCIATION vs. SIR M. VENKATA SUBBARAO MARTICULATION HIGHER SECONDARY SCHOOL*<sup>13</sup> 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*<sup>14</sup> and *MANOHAR LAL vs. UGRASEN*<sup>15</sup>. 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*.<sup>16</sup>

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

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<sup>13</sup> (2004) 2 MLJ 653

<sup>14</sup> (1970) 3 SCC 76

<sup>15</sup> (2010) 11 SCC 557

<sup>16</sup> 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*<sup>17</sup> read with *RAI SAHIB RAM JAWAYA KAPUR vs. STATE OF PUNJAB*<sup>18</sup>, and *STATE OF WEST BENGAL vs. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS*<sup>19</sup> also infringes upon of the principle of accountability vide *BHIM SINGH vs. UNION OF INDIA*<sup>20</sup>. This committee has no power to prescribe school uniforms.

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<sup>17</sup> AIR 1973 SC 1461

<sup>18</sup> AIR 1955 SC 549

<sup>19</sup> (2010) 3 SCC 571

<sup>20</sup> (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*<sup>21</sup>. 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*<sup>22</sup>, *INDIBILY CREATIVE PVT. LTD vs. STATE OF WEST BENGAL*<sup>23</sup>. 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*<sup>24</sup>, *BROWN vs. LOUISIANA*<sup>25</sup>, *TINKER vs. DES MOINES*<sup>26</sup>, which view is affirmed by the Apex Court in *UNION OF INDIA vs. K.M.SHANKARAPPA*<sup>27</sup>. This duty is made more onerous because of positive secularism contemplated by the

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<sup>21</sup> (2004) 7 SCC 467

<sup>22</sup> (1982) 1 SCC 71

<sup>23</sup> (2020) 12 SCC 436

<sup>24</sup> 337 U.S. 1 (1949)

<sup>25</sup> 383 U.S. 131 (1966)

<sup>26</sup> 393 U.S. 503 (1969)

<sup>27</sup> (2001) 1 SCC 582

Constitution vide *STATE OF KARNATAKA vs. PRAVEEN BHAI THOGADIA (DR.)*<sup>28</sup>, *ARUNA ROY vs. UNION OF INDIA*<sup>29</sup>.

(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*<sup>30</sup>, *SOCIETY FOR UNAIDED PRIVATE SCHOOLS OF RAJASTHAN vs. UNION OF INDIA*<sup>31</sup> and *NAVTEJ SINGH JOHAR vs. UNION OF INDIA*<sup>32</sup>.

(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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<sup>28</sup> (2004) 4 SCC 684

<sup>29</sup> (2002) 7 SCC 368

<sup>30</sup> (1996) 3 SCC 545

<sup>31</sup> (2012) 6 SCC 1

<sup>32</sup> 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*<sup>33</sup>; petitioners referred to the following decisions of foreign jurisdictions in addition to native ones: *MEC FOR EDUCATION: KWAZULU – NATAL vs. NAVANEETHUM PILLAY*<sup>34</sup>, *CHRISTIAN EDUCATION SOUTH AFRICA vs. MINISTER OF EDUCATION*<sup>35</sup>, *R. vs. VIDEOFLEX*<sup>36</sup>, *BALVIR SSINGH MULTANI vs. COMMISSION SCOLAIRE MARGUERITE - BOURGEOYS*<sup>37</sup>, *ANTONIE vs. GOVERNING BODY, SETTLERS HIGH SCHOOL*<sup>38</sup> and *MOHAMMAD FUGICHA vs. METHODIST CHURCH IN KENYA*<sup>39</sup>.

(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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<sup>33</sup> (2021) SCC OnLine SC 261

<sup>34</sup> [CCT51/06 [2007] ZACC 21]

<sup>35</sup> [2000] ZACC 2

<sup>36</sup> 1948 2D 395

<sup>37</sup> (2006) SCC OnLine Can SC 6

<sup>38</sup> 2002 (4) SA 738 (T)

<sup>39</sup> (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*<sup>40</sup>, *DURGAH COMMITTEE, AJMER vs. SYED HUSSAIN ALI*<sup>41</sup>, *M. ISMAIL FARUQUI vs. UNION OF INDIA*<sup>42</sup>, *A.S. NARAYANA DEEKSHITULU vs. STATE OF ANDHRA PRADESH*<sup>43</sup>, *JAVED vs. STATE OF HARYANA*<sup>44</sup>, *COMMISSIONER OF POLICE vs. ACHARYA JAGADISHWARANANDA AVADHUTA*<sup>45</sup>, *AJMAL KHAN vs. THE ELECTION COMMISSION*<sup>46</sup>, *SHARAYA BANO, INDIAN YOUNG LAWYERS ASSOCIATION*. Wearing *hijab* at the most may be a

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<sup>40</sup> AIR 1954 SC 282

<sup>41</sup> AIR 1961 SC 1402

<sup>42</sup> (1994) 4 SCC 360

<sup>43</sup> (1996) 9 SCC 611

<sup>44</sup> (2003) 8 SCC 369

<sup>45</sup> (2004) 12 SCC 770

<sup>46</sup> 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*<sup>47</sup>.

(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

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<sup>47</sup> (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*<sup>48</sup> and *JANE SATHYA vs. MEENAKSHI SUNDARAM ENGINEERING COLLEGE*<sup>49</sup>. 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*<sup>50</sup> 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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<sup>48</sup> 2018 SCC OnLine Ker 5267

<sup>49</sup> 2012 SCC OnLine Mad 2607

<sup>50</sup> 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*<sup>51</sup>, *S.R. BOMMAI vs. UNION OF INDIA*<sup>52</sup>, *S.K. MOHD. RAFIQUE vs. CONTAI RAHAMANIA HIGH MADRASAH*<sup>53</sup> and *CHURCH OF GOD (FULL GOSPEL) IN INDIA vs. K.K.R MAJECTIC COLONY WELFARE ASSCOIATION*<sup>54</sup>. 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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<sup>51</sup> (2016) 2 SCC 725

<sup>52</sup> (1994) 3 SCC 1

<sup>53</sup> (2020) 6 SCC 689

<sup>54</sup> (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*<sup>55</sup>, *WABE and MH MÜLLER HANDEL*<sup>56</sup>, *REGINA vs. GOVERNORS OF DENBIGH HIGH SCHOOL*<sup>57</sup> and *UNITED STATES vs. O'BRIEN*<sup>58</sup> and *KOSE vs. TURKEY*<sup>59</sup>.

**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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<sup>55</sup> Application No. 44774/98

<sup>56</sup> C-804/18 and C-341/19 dated 15<sup>th</sup> July 2021

<sup>57</sup> [2006] 2 WLR 719

<sup>58</sup> 391 US 367 (1968)

<sup>59</sup> Application No. 26625/02

have broadly framed the following questions for consideration:

SL.NO.	QUESTIONS FOR CONSIDERATION
1.	Whether wearing <i>hijab</i> /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 <i>inter alia</i> guaranteed under Articles, 19(1)(a), (i.e., <i>freedom of expression</i> ) and 21, (i.e., <i>privacy</i> ) 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 <i>Quo Warranto</i> 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*<sup>60</sup> made the following observation lauding the greatness of our heritage:

*“...Throughout the ages endless inundations of men of diverse creeds, cultures and races - Aryans and non-Aryans, Dravidians and Chinese, Scythians, Huns, Pathans and Mughals - have come to this ancient land from distant regions and climes. India has welcomed them all. They have met and gathered, given and taken and got mingled, merged and lost in one body. India's tradition has thus been epitomised in the following noble lines:*

*"None shall be turned away From the shore of this vast sea of humanity that is India" (Poems by Rabindranath Tagore)..."*

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

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<sup>60</sup> (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 42<sup>nd</sup> Amendment (1976) introduced the word ‘*secular*’ to the Preamble when our Constitution already had such an animating character *ab inceptio*. Whatever be the variants of its meaning, secularism has been a *Basic Feature* of our polity vide *KESAVANANDA, supra* even before this Amendment. The ethos of Indian secularism may not be approximated to the idea of *separation between Church and State* as envisaged under American Constitution post First Amendment (1791). Our Constitution does not enact Karl Marx’s structural-functionalist view ‘*Religion is the opium of masses*’ (1844). H.M.SEERVAI, an acclaimed jurist of yester decades in his *magnum opus* ‘Constitutional Law of India, Fourth Edition, Tripathi at page 1259, writes: ‘*India is a secular but not an anti-religious State, for our Constitution guarantees the freedom of conscience and religion. Articles 27 and 28 emphasize the secular nature of the State...*’ Indian secularism oscillates between *sārva dharma samabhāava* and *dharma nirapekshata*. The Apex Court in *INDIRA NEHRU*

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

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<sup>61</sup> (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), 3<sup>rd</sup> 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*’, 8<sup>th</sup> 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*<sup>62</sup> observed assumes relevance: “*...the term religion has reference to one’s views of his relation to his Creator and to*

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<sup>62</sup> (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*<sup>63</sup>, Venkatarama Aiyar J. quoted the following observations of Leatham C.J in

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<sup>63</sup> AIR 1954 MAD 385

COMMONWEALTH<sup>64</sup>:

*“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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<sup>64</sup> (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 ...throughout history, increase of civilization has been correlated with decrease of religiosity.*’

The free exercise of religion under Article 25 is subject to restrictions imposed by the State on the grounds of public order, morality and health. Further it is made subordinate to other provisions of Part III. Article 25(2)(a) reserves the power of State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice. Article 25(2)(b) empowers the State to legislate for social welfare and reform even though by so doing, it might interfere with religious practice.



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

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<sup>65</sup> Constitutional Law of India: A Critical Commentary, 4<sup>th</sup> 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*<sup>66</sup>, in a sense lamented about the absence of a corresponding provision in their Constitution, saying “*If we had a provision in our Constitution for ‘reasonable’ regulation of the press such as India has included in hers, there would be room for argument that censorship in the interest of morality would be permissible*”. In a similar context, what Chief Justice Hidayatullah, observed

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<sup>66</sup> 354 US 436 (1957)

in *K.A.ABBAS vs. UNION OF INDIA* <sup>67</sup> 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*

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<sup>67</sup> 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<sup>68</sup>, 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 precepts 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<sup>69</sup>, what the Apex Court at paragraphs 7 & 54 in *SHAYARA BANO*, *supra*, observed evokes interest:

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<sup>68</sup> Principles of Mahomedan law, 20<sup>th</sup> Edition (2013)

<sup>69</sup> Outlines of Muhammadan, Law 5<sup>th</sup> Edition (2008)

*“7. There are four sources for Islamic law- (i) Quran (ii) Hadith (iii) Ijma (iv) Qiyas. The learned author has rightly said that the Holy Quran is the “first source of law”. According to the learned author, pre-eminence is to be given to the Quran. That means, sources other than the Holy Quran are only to supplement what is given in it and to supply what is not provided for. In other words, there cannot be any Hadith, Ijma or Qiyas against what is expressly stated in the Quran. Islam cannot be anti-Quran...*

*54. ...Indeed, Islam divides all human action into five kinds, as has been stated by Hidayatullah, J. in his Introduction to Mulla (supra). There it is stated:*

*“E. Degrees of obedience: Islam divides all actions into five kinds which figure differently in the sight of God and in respect of which His Commands are different. This plays an important part in the lives of Muslims.*

*(i) First degree: Fard. Whatever is commanded in the Koran, Hadis or ijmaa must be obeyed. Wajib. Perhaps a little less compulsory than Fard but only slightly less so. (ii) Second degree: Masnun, Mandub and Mustahab: These are recommended actions. (iii) Third degree: Jaiz or Mubah: These are permissible actions as to which religion is indifferent (iv) Fourth degree: Makruh: That which is reprobated as unworthy (v) Fifth degree: Haram: That which is forbidden.”*

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

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

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

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

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

*“17. Muslims believe that the Quran was revealed by God to the Prophet Muhammad over a period of about 23 years, beginning from 22.12.609, when Muhammad was 40 years old. The revelation continued upto the year 632 – the year of his death. Shortly after Muhammad’s death, the Quran was completed by his companions, who had either written it down, or had memorized parts of it. These compilations had differences of perception. Therefore, Caliph Usman - the third, in the line of caliphs recorded a standard version of the Quran, now known as Usman’s codex. This codex is generally treated, as the original rendering of the Quran.*

*18. During the course of hearing, references to the Quran were made from ‘The Holy Quran: Text Translation and Commentary’ by Abdullah Yusuf Ali, (published by Kitab*

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

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

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

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

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

**Sūra xxiv (Nūr):**

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

*Privacy should be respected, and the utmost decorum should be observed in dress and manners*

**(xxiv. 27 – 34, and C. 158)**

*Domestic manners and manners in public or collective life all contribute to the highest virtues, and are part of our spiritual duties leading upto God”*

**(xxiv. 58 – 64, and C. 160).**

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

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

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

**(xxiv. 31, C. – 158)**

**Sūra xxxiii (Ahzāb)**

*“Prophet! Tell  
Thy wives and daughters,  
And the believing women\*,  
That they should case  
Their outer garments over\*  
Their persons (when abroad):  
That is most convenient,  
That they should be known\*  
(As such) and not molested.  
And God is Oft – Forgiving, \*  
Most Merciful.”*

**(xxxiii. 59, C. - 189)**

**Is *hijab* Islam-specific?**

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

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\* *Id*



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

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

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

**Sūra xxiv (Nūr)**

*“2984. The need for modesty is the same in both men and women. But on account of the differentiation of the sexes in nature, temperaments and social life, a greater amount of privacy is required for women than for men, especially in the matter of dress and uncovering of the bosom.”*

*“2985. Zinat means both natural beauty and artificial ornaments. I think both are implied here but chiefly the former. The woman is asked ‘not to make a display of her figure or appear in undress except to the following classes of people: (1) her husband, (2) her near relatives who would be living in the same house, and with whom a certain amount of negligé is permissible: (3) her women i.e., her maid-servants, who would be constantly in attendance on her; some Commentators include all believing women; it is not good form in a Muslim household for women to meet other women, except when they are properly dressed; (4) slaves, male and female, as they would be in constant*

*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, 7<sup>th</sup> century B.C.), enjoined the veiling of married women and forbade the veiling of slaves and women of ill fame: see Cambridge Ancient History, III.107”*

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

*“Islam was not the first culture to practice veiling their women. Veiling practices started long before the Islamic prophet Muhammad was born. Societies like the Byzantines, Sassanids, and other cultures in Near and Middle East practiced veiling. There is even some evidence that indicates that two clans in southwestern Arabia practiced veiling in pre-Islamic times, the Banū Ismā‘īl and Banū Qaḥṭān. Veiling was a sign of a women’s social status within those societies. In Mesopotamia, the veil was a sign of a woman’s high status and respectability. Women wore the veil to distinguish 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) cut their waist-sheets from their margins and covered their heads and faces with those cut pieces of cloth.”

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

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<sup>70</sup> 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 negated<sup>71</sup> by a Division Bench, does not make much difference. Therefore, from this decision, both the sides cannot derive much support for their mutually opposing versions.

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

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<sup>71</sup> (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 negated 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.

*BULANDSHAHR*<sup>72</sup>: 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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<sup>72</sup> 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*',

4<sup>th</sup> 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*<sup>73</sup> is worth noting. He had craftily articulated that a decision is an authority for the proposition that is laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down.

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

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<sup>73</sup> (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*<sup>74</sup>:

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

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

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<sup>74</sup> (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 Sanskrit, 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*<sup>75</sup>). 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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<sup>75</sup> 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', 2<sup>nd</sup> 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*, 26<sup>th</sup> 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)*<sup>76</sup> 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*

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<sup>76</sup> (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*<sup>77</sup>, 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*<sup>78</sup>, a regulation prohibiting male students who wore hair over their eyes, ears or collars from participating in a graduation diploma ceremony, which had no effect on the student's actual graduation from high school, so that no educational rights were denied, has been held valid. It is also true that our Constitution protects the rights of school children too against unreasonable regulations. However, the prescription of dress code for the students that

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<sup>77</sup> (D.C. III) 315 F SUP. 94

<sup>78</sup> (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*<sup>79</sup>. 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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<sup>79</sup> 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*<sup>80</sup>, 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*

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<sup>80</sup> (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 detainee 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 detainee. 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*<sup>81</sup>. Similarly, the right to life does not include the right to die under Article 21 vide *COMMON CAUSE vs. UNION OF INDIA*<sup>82</sup>, attempt to

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<sup>81</sup> AIR 1979 SC 25

<sup>82</sup> (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*<sup>83</sup> observed:

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

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<sup>83</sup> (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*<sup>84</sup>. Therefore, a prohibition by the school officials, of a particular expression of opinion is held unsustainable where there is no showing that the exercise of the forbidden right would materially interfere with the requirements of a school' positive discipline. However, conduct by a student, in class or out of it, which for any reason-whether it stems from time, place, or type of behavior-materially disrupts class work or involves substantial disorder or invasion of the rights of others, is not immunized by the constitutional guaranty of freedom of speech vide *JOHN F. TINKER vs. DES MOINES INDEPENDENT COMMUNITY SCHOOL*, *supra* In a country wherein right to speech & expression is held to heart, if school restrictions are sustainable on the ground of positive discipline & decorum, there is no reason as to why it should be otherwise in our land. An extreme argument that the students should be free to choose their attire in the school individually, if countenanced, would only breed indiscipline that may eventually degenerate into chaos in the campus and

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<sup>84</sup> 363 F 2d 744 (5<sup>th</sup> 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<sup>85</sup>. 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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<sup>85</sup> 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

Professor Wade's Administrative Law:

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

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

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<sup>86</sup> 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*<sup>87</sup>. This decision articulated the Administrative Law principle that the validity of a statutory order has to be adjudged only on the reasons stated in the order itself. We have no quarrel with this principle which has been reiterated in *MOHINDER SINGH GILL, supra*. However, we are not sure of its invocation in a case wherein validity of the impugned order can otherwise be sustained on the basis of other intrinsic material. As we have already mentioned, the Government Order is issued to give effect to the purposes of the 1983 Act and to Rule 11 of the 1995 Curricula Rules. That being the position the question of un-sustainability of some of the reasons on which the said Order is constructed, pales into insignificance.

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

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<sup>87</sup> 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*<sup>88</sup>, “a word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.” Thus, there is no much scope for invoking the concept of ‘*law and order*’ as discussed in *ANITA* and *GULAB ABBAS*, *supra*, although the Government Order gives a loose impression that there is some nexus between wearing of *hijab* and the ‘*law & order*’ situation.

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

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<sup>88</sup> 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 5<sup>th</sup> 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<sup>89</sup> . For seeking a Writ of this nature, one has to demonstrate that the post or office which the

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<sup>89</sup> 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*<sup>90</sup> 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-

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<sup>90</sup> 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**



**//TRUE COPY//**

## IN THE SUPREME COURT OF INDIA

[S.C.R ORDER XXI RULE 3(1)(A)]

## CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

**WITH PRAYER FOR INTERIM RELIEF**

(Petition under Article 136 of the Constitution of India arising out of impugned judgment and final order dated 15.03.2022 in Writ Petition No.3038 of 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru)

**BETWEEN****Position of Parties**

**In the  
Hon'ble  
High  
Court**

**In this  
Hon'ble  
Court**

Miss Shaheena  
D/o Abdul Raheem  
Aged about 19 years  
R/at Santosh Nagar  
Hemmadi Post, Kundapur Taluk  
Udupi District, Karnataka – 576230

Petitioner  
No. 1

Petitioner

**And:**

1. The State of Karnataka  
Rep. by its Principal Secretary  
Vidhana Soudha  
Dr. Ambedkar Road  
Bangalore, Karnataka – 560001

Contesting  
Respondent Respondent  
No. 1 No. 1

2. The Under Secretary to Government  
Department of Education  
Vikas Soudha  
Bangalore, Karnataka – 560001

Contesting  
Respondent Respondent  
No. 2 No. 2

3. The Directorate  
Department of Pre-University  
Education  
Bangalore, Karnataka – 560009

Contesting  
Respondent Respondent  
No. 3 No. 3

- |   |                     |                                   |
|---|---------------------|-----------------------------------|
| 4. The Deputy Commissioner<br>Udupi District<br>Shivalli Rajatadri Manipal<br>Udupi, Karnataka – 576104                             | Respondent<br>No. 4 | Contesting<br>Respondent<br>No. 4 |
| 5. The Principal<br>Government PU College<br>Kundapura<br>Udupi District, Karnataka - 576201  | Respondent<br>No.5  | Contesting<br>Respondent<br>No. 5 |
| 6. Miss. Shifa Minaz D/o Nayaz<br>Ahmmad aged about 18 years Santosh<br>Nagar Hemmadi Post, Kundapur<br>Taluk Udupi District-576230 | Petitioner<br>No.2  | Proforma<br>Respondent<br>No.6    |

TO,

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

THE HUMBLE PETITION OF THE  
PETITIONER ABOVENAMED:

**MOST RESPECTFULLY SHOWETH:**

1. The present Special Leave Petition is preferred against the  
impugned judgment and final Order dated 15.03.2022 in Writ  
Petition No.3038 of 2022 (hereinafter referred to as  
“**Impugned Judgment**”) passed by the Hon'ble High Court of  
Karnataka at Bengaluru wherein the Hon'ble Court below  
dismissed the Writ Petition of the Petitioner herein and upheld  
the validity of Government Order dated 05.02.2022 that  
proscribes the wearing of headscarf/hijab in the school  
premises.

1.A It is declared that no Writ Appeal or Letter Patent Appeal lies against the Impugned Judgment. It is further declared that the Petitioner has not filed any other petition against the Impugned Order.

**2. QUESTIONS OF LAW:**

A. Whether the G.O. dated 05.02.2022 is violative of the Part III of the Constitution of India?

B. Whether the Court below has overstepped its bounds and has turned a nelson's eye to the effect and ramifications of framing an issue not limited wearing of hijab for girls in educational institutions but to all women practicing and professing Islamic faith?

C. Whether the Court below has turned a deaf ear to the principles of natural justice by deciding the issue of Hijab as an essential religious practice without hearing the arguments of various stakeholders affected by such decision?

D. Whether the High Court has misconstrued the issue at hand jumbling the prescription of dress code with the proscription of hijab?

E. Whether the Hon'ble Court below failed to appreciate that wearing of Hijab doesn't alter the prescribed uniform?

- F. Whether the issue framed by the High Court to the effect that wearing of Hijab is an essential religious practise in Islam was necessary to decide the issue of implementing a uniform prescribed in the context of denial of the right to education of girl student?
- G. Whether the wearing of Hijab is an essential religious practice?
- H. Whether the Hon'ble Court below has encroached into the interpretation of a religious practice?
- I. Whether the Hon'ble court while holding that wearing of hijab offends the secular outlook discarded the true ideals of secularism as envisaged in the Constitution?

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

The Petitioner states that no other petition seeking leave to appeal has been filed by the petitioner against the impugned Judgement and final Order dated 15.03.2022 in Writ Petition No.3038 of 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru.

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

The Annexures P-1 to P-3 produced along with the Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the

Court/Tribunal below against whose order the leave to appeal is sought for in this petition.

## **5. GROUNDS**

### **IMPUGNED ORDER IS ULTRA VIRES OF THE CONSTITUTION**

5.1. The Impugned Order is violative of the fundamental rights of the Petitioner. It is erroneous, unjust and constitutionally untenable that resulted into miscarriage of justice to the Petitioner. Therefore, the same is liable to be set aside and the Government Order dated 05.02.2022 shall be declared ultra vires of the Constitution.

### **ESSENTIAL RELIGIOUS PRACTICE**

5.2. The Hon'ble Court below ought to have observed that wearing of hijab is an essential religious practice in Islam which is socially, culturally and manifestly accepted worldwide including India. The practice is prevalent since the inception of Islam. It is vehemently submitted that the same is essential to the religion which is accepted by the followers as a method of spiritual upliftment. Thus, the Hon'ble Court below has committed grave error in failing to appreciate that.

5.3. The Hon'ble Court below has speciously held that the wearing of hijab is not an essential religious practice. The practice of wearing of hijab is prescribed in the Holy Quran. It is also pertinent to note that there is consensus amongst religious scholars of all Muslim schools of thought

as well, namely, Hanafi, Maliki, Shafai and Hambi that the practice of Hijab is '*wajib (mandatory)*'. Wajib is the "*First Degree*" of obedience. If the said obligation is not followed then an individual would commit "sin" or become a "sinner".

5.4. The finding of the Hon'ble Court below that wearing Hijab is recommendatory/directory as is not as envisaged in the Quranic verses ignoring the teachings of Islam as recognized under Quran, Hadith, Ijma and Qiyas i.e. the four sources of Islamic Jurisprudence is erroneous.

5.5. The Impugned Order is contrary to the sacrosanct revelations from God in the Holy Quran. The following verses in the Quran establish that the wearing of hijab is an essential religious practise:

*"O you Children of Adam! We have bestowed on you raiment to cover your shame as well as to be an adornment to you. But the raiment of righteousness, that is the best. Such are among the Signs of Allah, that they may receive admonition."***(Quran Chapter 7: verse 26)**

*"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 husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their 'brothers, or their brothers' sons or their sisters' sons, or their women or the servants whom their right hands possess, or male*

*.Servants free of physical needs, or small children who have no Sense of the shame of sex, and that they should not strike their feet in order to draw attention to their hidden ornaments. And O you Believers, turn you all together towards Allah, that you may attain Bliss."***(Quran Chapter 24: verse 31)**

*"O Prophet, tell your wives and your daughters and the women of the believers to draw their cloaks dose round them (when they go abroad). That will be better, so that they may be recognized and not annoyed. Allah is ever Forgiving, Merciful."***(Quran chapter 33: verse 59)**

5.6. Thenarration from the authoritative hadiths like those contained in al-Bukhaari further expresses the wearing of hijab as a religious practise that essentially needs to be followed. It is, therefore, submitted that the Impugned Order is constitutionally untenable.

5.7. The Hadith is supplementary to Holy Quran as they are the words and deeds of the Prophet (PBUH) . In case of Ambiguity in the Quran, the Hadith is considered a clarification as they are the words and deeds of the Prophet(PBUH). The Holy Quran in this regard has stated:

*"your companion (Prophet PBUH)has neither gone astray,nor gone amiss.Nor does he say (aught) of (his own) Desire."*  
*(Chapter 53 Verse 2&3 of the Holy Quran)"*

In the light of the above the Hadith is also a revelation of God(Allah) and is sacrosanct. Therefore, the Court below rejecting Hadith by treating it as inferior to the scripture is untenable and an encroachment into the interpretation of a religious practice



GOVERNMENT ORDER IS VIOLATIVE OF PART III OF  
THE CONSTITUTION

5.8. Religion is one's belief towards his/her own god which is conducive to their spiritual well-being. Wearing of hijab is one's expression of faith in the religion to satisfy his/her conscience. It is, therefore, submitted that a secular state's unreasonable interference in restricting the satisfaction of one's conscience is violative of Fundamental Rights enshrined under Article 14, 19, 21 and 25 of the Constitution.

GOVERNMENT ORDER IS VIOLATIVE OF ARTICLE 14 OF  
THE CONSTITUTION

5.9. The Government Order proscribing the wearing of hijab is violative of Article 14 of the Constitution as it deprives Petitioner the equal rights. It is submitted that the classification is arbitrary as it is not based on intelligible differentia and has no rational nexus with the objects sought to be achieved.

5.10. The Petitioner's right to equality is infringed as she is restrained from wearing of hijab in the school premises but allowed to wear the same outside. Moreover, other Muslim women have all the rights to profess their religion and wear hijab.

5.11. The classification is not reasonable and has no rational nexus with the objects sought to be achieved. The object sought to be achieved is uniform dress code in the school

premises. It is submitted that the Hon'ble Court below ought to have observed that wearing of hijab does not in any way covers or offends the dress code. It is merely an addition to the dress code and that too in the same color.

HIJAB IS ONE'S EXPRESSION OF FAITH IN THE RELIGION PROTECTED UNDER ARTICLE 19 OF THE CONSTITUTION

5.12. The wearing of hijab as a practice is socially, culturally and manifestly accepted since the inception of Islam. It is a practice that is not only prevalent in India but other parts of the world as well.

5.13. The Hon'ble Court below ought to have observed that wearing of hijab, not affecting the dress code, is one's expression of faith in the religion to satisfy his conscience. Thus, an individual's right to express his faith under Article 19 is complimentary to the freedom of conscience under Article 25.

5.14. The proscription of wearing of hijab is an unreasonable restriction and is violative of Article 19 of the Constitution. It is submitted that the same woman or other women are allowed to wear hijab in the whole of this country. However, they are proscribed from wearing the same in the school premises under the garb of dress code. The Hon'ble Court below ought to have appreciated that the dress code is not even getting affected as Hijab is merely a minor addition and does not cover the uniform.

5.15. The right of an individual has also been pressed through Article 14, 19 and 21 of the Constitution of India. It should not be construed that the relevance of religious beliefs and practices in Islam in any manner becomes an issue of lesser importance for a believer.

GOVERNMENT ORDER VIOLATES ARTICLE 25 OF THE CONSTITUTION

5.16. The G.O. is violative of the fundamental right of freedom of conscience and profession of religion enshrined under Article 25 of the Constitution of India. The practise of wearing of hijab is a unique relationship of an individual with its god as ingrained in the Holy Quran. Thus, non-observance of the same would lead to a sense of guilt.

5.17. The Petitioner herein exercising her right to freedom of religion, faith and conscience, enshrined under Article 25 of the Constitution, by wearing a hijab in their educational institutions. This freedom of conscience cannot be subjected to any restrictions which are not contrary to the nature of public order, morality or health.

GOVERNMENT ORDER IS CONTRARY TO THE PRINCIPLE OF SECULARISM

5.18. The G.O. is ultra vires of the Constitution as it is violative of the concept of secularism which is a part of basic structure of the Constitution. It inculcates the idea of social

separateness and fear of religious segregation instead of inculcating secular values amongst the students in their impressionable & formative years.

5.19. The principle of “Secularism” has a positive connotation which implies that one’s faith ought to be respected and accepted. It does not imply obliviousness towards one’s faith in order to inculcate secular outlook. Infact, the Impugned Order is antithesis to the principle of Secularism enshrined in Part III of the Constitution. It is most respectfully submitted that Secularism is acceptance of one’s choice and not an embargo on that.

5.20. The Hon’ble Court below has failed to appreciate the dictum laid down by this Hon’ble Court in the case titled **“State of Karnataka v. Praveen Bhai Thogadia [(2004) 4 SCC 684]**, wherein this Hon’ble Court held that a positive duty is cast upon the State to ensure secularism, promote tolerance and accept individual beliefs, religion and conscience.

5.21. The Impugned Judgment further erases and invisibles basic religious freedom and freedom of expression, agency of Muslim women, principles of equality, perpetuates discrimination, communal discord and intervenes in the protected area of privacy. Moreover, the Impugned Judgment legitimizes **“Hijab ban”** in educational institution in the State of Karnataka which goes against the very basic

structure of Secularism. It is submitted that the Impugned Judgment will lead to grave encroachment on the children of Muslim community and shall lead to a situation where a large section of Muslim Girls will be deprived from stream of general education leading them to remain in vulnerability, creating a sense of insecurity and segregation from the mainstream of the Society in their minds.

IMPUGNED ORDER DOES NOT UNDERSTAND THE MEANING OF HIJAB IN ITS TRUE SENSE

5.22. The Hon'ble Court below failed to understand the true nature of hijab. For the better understanding of the questions for consideration, it is imperative to understand the prayer of the Petitioner. The Petitioner is only seeking to wear a head scarf/hijab of the same colour and material of the dress code prescribed which essentially covers only the hair and bossom without covering the face.

5.23. The Hon'ble Court below failed to distinguish between hijab and jilbab. Hijab is merely a head scarf that covers only the hair and bossoms without covering the face. On the other hand, jilbab is a full length outer garment traditionally covering the head and the hands. It is submitted that wearing of hijab does not in any way covers or offends the dress code. It is merely an addition to the dress code and that too of the same color.

- 5.24. In simple terms, when one is not offending the school uniform then that person shall not be refrained from expressing his/her faith in order to satisfy his/her conscience.
- 5.25. The Hon'ble Court below views the hijab as something that is oppressive, it's cultural and religious history is neglected and the explanation is lost in the rhetoric of how oppressive the veil is. Therefore the court below does not see it as a woman's identity but sees it as oppressive thereby negating her personal conscience and expression by giving her protection by laws which cater to all.
- 5.26. The Impugned Judgement passed by the Hon'ble Court below is a case of direct discrimination against Muslim girls. The High Court has created distinction between the principles laid down in the case of *Bijoe Emmanuel* by giving different contextual meaning (as a case of discipline) and on the other hand the practice of *Hijab*, is reflected as if it was a case disturbing the entire uniform that too when this minor variation (of covering the head like the Sikh's do) can be reasonably accommodated within the constitutional norm being part religious practices. Hence laying too much emphasis on bringing "uniformity" in the uniform without accommodating a person of one religion 'to cover her hair with a piece of cloth' is travesty of justice. The impugned judgment also ignores the doctrine of reasonable accommodation.

HIGH COURT'S ERRONEOUS FINDINGS WITH RESPECT  
TO SECULAR OUTLOOK

5.27. The Court below at page 96 of the Impugned Judgment has erroneously held:-

*“School uniforms promote harmony and 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 proposition 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.**”*

It is submitted that the above finding is against the dictum laid down in this Hon'ble Court's Judgment in case titled **“SR Bommai v. Union of India [(1994) 3 SCC 1]”**. The secular nature of this country is neither anti god nor antithesis of religion. Secularism teaches the spirit of religious tolerance, catholicity of outlook, respect for each other's faith and willingness to abide by the rules of religion. The G.O. by proscribing the wearing of hijab is in no manner cultivating scientific/secular outlook through education. However, on the other hand has gone completely opposite to the principle of secularism.

5.28. The fact of the matter is that in order to inculcate secular outlook, it is imperative to teach the rule of acceptance and respect of one's religion. To elaborate on that it simply

means one's faith cannot be restricted rather needs to be protected in order to inculcate secular outlook in its true sense. It is submitted that Secularism is not about creating impediments but acceptance thereof.

HON'BLE COURT BELOW MISUNDERSTOOD THE ISSUE  
AS WEARING OF HIJAB DOES NOT VIOLATE THE DRESS  
CODE

5.29. The Court below has gone down in flames in understanding the issue for consideration. The issue since the beginning was pertaining to the proscription of hijab and not prescription of dress code. It is pertinent to note that none of the petitioners ever challenged the prescription of dress code as the G.O. only relates to proscription of hijab and not prescription of dress code.

5.30. The court below has misconstrued the issue and question at hand wherein the Petitioner herein has never contended that the prescription of dress code offends students' fundamental right to expression or their autonomy. The Petitioner is contending that the proscription of hijab while prescribing a dress code offends students' fundamental right to expression or their autonomy.

5.31. The Court below has completely misunderstood the issue. The proscription of wearing hijab is the issue for consideration and not the prescription of dress code. The Court below has passed the Impugned Order without taking



a pragmatic approach and failing to understand/comprehend what exactly hijab is. It is submitted that the Court below deciding the wearing of hijab on the touchstone of dress code is completely erroneous as it nowhere violates or offends the dress code.

5.32. The Petitioner had never objected to wearing the prescribed uniform. In fact, the request was merely to wear a headscarf/hijab in addition to the prescribed uniform and that too in the same color as the uniform to make it compatible with the religious beliefs. The Court below has failed to appreciate the argument of the Petitioner.

5.33. The Petitioner has absolutely no objection in wearing the uniform prescribed by the schools. All that the Petitioner sought was to wear a headscarf/head-covering, in addition to the prescribed uniform which could be of the same or matching color as the school uniform to make it compatible with the religious beliefs. The submission has not been dealt with by the Hon'ble Court below. The Hon'ble Court below has not even recorded this clear, categorical and oft repeated stand of the Petitioner and rendered the judgment as if the Petitioner argued that the prescription of school uniform violated their fundamental rights, which is again reiterated, was not their case.

SACRED PRACTICE OF HIJAB COMPARED WITH  
IMMODESTY/IMMORALITY

5.34. The Hijab is worn by an individual in order to protect her modesty which is inarguably in consonance with the principles of morality and public order as the practice is widely prevalent and accepted in the whole country. The Court below has committed blatant fallacy by comparing sacred hijab with other immoral and immodest practices like smoking or indecently dressing in the school premises.

HIJAB IS A PRACTICE PREVALENT SINCE THE  
INCEPTION OF ISLAM

5.35. The Court below has speciously observed that the Writ Petitioner failed to plead the time frame of wearing hijab in the institution. It is imperative to submit that the same was explicitly pleaded before the Hon'ble Court below. Moreover, it is even more imperative to submit that the "wearing of hijab" is a regular practise that is widely accepted throughout the country. Thus, creating an impediment only in the school premises under the garb of dress code (when it is not violating the dress code) is unconstitutional.

EMANCIPATION OF WOMEN

5.36. The Court below by observing that wearing of the hijab hinders the emancipation of Muslim women have taken upon themselves the burden of emancipating all Muslim

women without providing them a choice to express or profess their conscience taking away their autonomy.

GOVERNMENT ORDER VIOLATES THE RIGHT TO EDUCATION

5.37. The Impugned Judgement violates the Petitioner's right to education envisaged under Article 21 of the Constitution. It is submitted that the right to life entails the right to lead a dignified life and thereby a quality education is an essential part to lead such a dignified life. The embargo placed on the Petitioner leads to the deprivation of such right as it discriminates and bars the Petitioner from stream of general education.

THE HON'BLE COURT'S ORDER WITHOUT HEARING ALL THE STAKEHOLDERS IS OPPOSED TO PRINCIPLES OF NATURAL JUSTICE

5.38. The finding of the Hon'ble Court below to the effect: “*What is made recommendatory to the Holy Quran cannot be metamorphosed into mandatory dicta by Al-Hadith which is treated as supplementary to the Scripture*”, in order to buttress that wearing of Hijab as not Islam specific, is rendered ignoring the sources of Islamic Jurisprudence in the right perspective and without hearing the Islamic scholars or institutions having interest and are major stakeholders.

5.39. The approach of the High Court in shutting out the doors to the interested parties by dismissing various applications filed for intervening on one hand and holding that no maulana/religious head filed any affidavit clarifying the stand on Hijab is mutually destructive and opposed to principles of Natural Justice more particularly, the much-cherished principle of *audialterem partem*.

THE HON'BLE COURT BELOW IGNORED THE VIEW OF OTHER HON'BLE HIGH COURTS WITHOUT REASONING

5.40. The Hon'ble Court below in Part 10 of the Impugned Judgement ignored the direct views of the various High courts which held that Hijab is an essential part of religion is Islamic faith. On distinguishing, the factual matrix and placing over reliance on the dictum laid down in "*ShayaraBano v UOI*[(2017) 9 SCC 1]" which proscribes the pernicious practice of triple talaq which cannot be compared with the innocuous practice of wearing Hijab.

5.41. The Hon'ble High Court *vide* the impugned order has dismissed core fundamental rights as 'derivative rights' (pages 99 and 100 of the impugned judgment) and compares schools with "*courts, war-rooms and defence camps*" to hold that freedom of individuals as a 'necessity' is curtailed to maintain discipline and decorum. The High Court in its quest to uphold the purported sacrosanct nature of the uniform has completely given a death-knell to the fundamental rights of the petitioner under Articles 14, 15, 19, 21, 25 and 29 of the Constitution, which is completely impermissible in our constitutional scheme.

- 5.42. The Hon'ble court below has erroneously raised the issue - "Whether the wearing of Hijab is a part of 'essential religious practice' in Islamic faith protected under Article 25 of the Constitution?", when the primary challenge was proscription of Hijab in educational institutions and the validity of the Notification issued thereof. Therefore, the Court below has overstepped its bounds and has turned a nelson's eye to the effect and ramifications of such issue, now that it is not limited to girls in schools but to all women practising and professing Islamic faith.
- 5.43. The original controversy was only with regard to proscription of Hijab in an educational institution, the court by framing such question has amplified its ambit to all aspects of common society without giving opportunity to the stakeholders against the principles of natural justice.
- 5.44. The Hon'ble court below vide directions during the course of arguments virtually shut its doors against impleadment applications of all stakeholders involved. It is absurd thereafter to observe that pleadings are incomplete and that there is no affidavit of a maulana in support of the Petitioner's argument.

## **6. GROUNDS FOR INTERIM RELIEF**

- 6.1. The Impugned Judgment is ex-facie erroneous and results into miscarriage of justice.
- 6.2. In the interest of brevity, the Petitioner craves leave of this Hon'ble Court to rely upon the submissions made in the main grounds, which may be read as part and parcel of the interim grounds.

- 6.3. The career of Muslim female students is at stake. Wearing of hijab is a practice prevalent since the inception of Islam and has been manifestly accepted in this country. If the students are not allowed to enter the school premises wearing a hijab then grave prejudice would be caused to their respective future and careers.
- 6.4. The Petitioner's right to education under Article 21 of the Constitution of India is violated by restraining them from entering the school premises. It is submitted that the right to life entails the right to lead a dignified life and thereby a quality education is an essential part to lead such a dignified life. Thus, the restriction is highly prejudicial as it jeopardizes her fundamental rights.
- 6.5. Grave and substantial injustice has been caused to the Petitioner and in the instant facts and circumstance, the prima facie case and balance of convenience lies in Petitioner's favor.

## **7. PRAYER**

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

- a) Grant special leave to appeal against the impugned Judgement and final order dated 15.03.2022 in Writ Petition No.3038 of 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru; and
- b) Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

## **8. INTERIM PRAYER**

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

- a) Permit the Petitioner to attend the school wearing a hijab as an interim measure during the pendency of the petition; and
- b) Pass any such other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

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

DRAWN BY:

Shahrukh Mohammed

&

Prateek Yadav

Advocates

FILED BY:



**RANBIR SINGH YADAV**

Advocate for the Petitioner

DRAFTED ON: 20.03.2022

FILED ON: 04.04.2022

PLACE: NEW DELHI

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


**IN THE MATTER OF:-**

Miss Shaheena ...Petitioner  
Versus  
The State of Karnataka & Ors. ...Respondents

**CERTIFICATE**

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

FILED BY:

  
[RANBIR SINGH YADAV]  
Advocate for the petitioner

Dated: 04.04.2022



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

**IN THE MATTER OF:**  
MISS SHAHEENA

...PETITIONERS

VERSUS

STATE OF KARNATAKA & ORS.

...RESPONDENTS

**AFFIDAVIT**

I, Miss Shaheena, Daughter of Shri Abdul Raheem , Aged about 19 Years, R/o Santosh Nagar, Hemmady Post, Kundapur Taluk, Udupi District 576230 Karnataka, Representing the Petitioner, do hereby state on solemn Affirmation as under-

1. That I am the Petitioner herein in the above Special Leave Petition and as such I am conversant with the facts and circumstances of the case and hence competent to swear this affidavit.
2. I say that I have read and understood the contents of the List of Dates at pages B to K and contents of Special Leave Petition as contained in paras 1 to 8 at pages 130 to 151 and applications and state that the averments of facts made therein are true to my knowledge and information derived from the record of the case and those of submissions of law made in grounds, prayer and certificate and applications are true as per the legal advice received and believed by me.
3. That the Annexures P/1 to P/3 attached to the present special leave petition are true copies of their originals.

*Shaheena*  
**DEPONENT**

**VERIFICATION**

I, the deponent above named do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

Verified at *Reddy* on this the *20<sup>th</sup>* day of March, 2022

*Shaheena*  
**DEPONENT**



SIGNED BEFORE ME

NOTARY  
UDUPI

Notarial Register

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Date: *20/03/2022*

ANNEXURE P-1**Proceedings of the Government of Karnataka**

Subject: Regarding n dress code for students of all schools and colleges of the state

Refer: 1) KarnatakaEducationAct 1983  
2) GovernmentCircular: 509 SHJH 2013, Date: 31.01.2014

**Preamble:**

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

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

Any such supervisory committee in schools and colleges (SDM in Government Institutions and Parents Teachers'

Associations and the management in private institutions) should strive to provide a conducive academic environment and enforce a suitable code of conduct in accordance with government regulations. Such a code of conduct would pertain to the particular school or college.

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

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

- 1) In Para 9 of the Hon'ble High Court of Kerala's ruling in W.P. (C) No.35293/2018, date: 04.12.2018, it cites a ruling by the Hon'ble Supreme Court.

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

- 2) In the case of *Fatima Hussain Syed Vs. Bharat Education Society and Ors.* (AIR 2003 Bom 75), in a similar incident regarding the dress code, when a controversy occurred at Kartik High School, Mumbai. The Bombay High Court appraised the matter, and ruled that it was not a violation of Article 25 of the Constitution for the principal to prohibit the wearing of head scarf or head covering in the school.
- 3) Subsequent to the Hon'ble Supreme Court's abovementioned ruling, the Hon'ble Madras High Court, in *V. Kamalamma Vs. Dr. MGR Medical University, Tamil Nadu and Ors* upheld the modified dress code mandated by the university. A similar issue has been considered by the Madras High Court in the *Shri M. Venkatasubbarao Matriculation Higher Secondary School Staff Association Vs. Shri M. Venkatasubbarao Matriculation Higher Secondary School* (2004) 2 MLJ 653 case.

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

BENGALURU: Seeking to end the raging hijab cow in educational institutions in Karnataka, the state government, on Saturday, issued an order making it mandatory for students to wear uniform prescribed by the government and administrations

of private schools and PU colleges claiming that such an act does not violate Article 25 of the Constitution.

“Clothes which disturb equality, integrity and public order should not be allowed, the order said.

This comes in the backdrop of the Karnataka High Court which on February 8 will hear the petitions filed by five girls studying in a government pre-university college in Udupi, questioning hijab restrictions in college.

The education department has formally issued an order asking all government schools and PU colleges to follow the uniform as stipulated by the state government.

‘Students of Pvt. institutions must stick to management’s dress code’

Students of the private institutions should adhere to the dress code decided by the management of the school, the order said.

The order said colleges which are under the department of pre-university of the state government will follow the dress decided by the college development board. And if there, is no such code, then students can wear a dress that will not affect equality, integrity and law and order. The order also cited the rulings of Supreme Court, and various high courts which have held in different cases that asking students not to wear headscarves is not a violation of article 25 of the Constitution.

“The government exercising powers confirmed on it under the Karnataka Education Act, makes it mandatory for students of schools and PU colleges to follow uniform code fixed by the government and in case of private institutions their respective administrations,” the order said.

Government Order Numbers 14 SHH 2022 Bangalore,

Date:05.02.2022

In the wake of the points outlined in the proposal on 05.02.2022, the Karnataka Education Act shall exercise the powers enshrined in Article 2 (2) of the Karnataka Education Act 1983 and shall wear the uniform provided by the Government in all government schools in the State. Private schools should wear uniforms determined by their governing bodies.

Colleges within the Department of Undergraduate Education shall wear uniforms determined by the College Development Committee (CDC) or the Governing Body's Oversight Committee. The governing bodies, if not uniformed, are required to maintain equality and unity and wear clothing that does not disrupt public order.

At the behest of the Governor of

Karnataka and in his name

(Padmini S.N)

Subordinate Secretary to the

Department of Education (Pre-Graduate)

Dated: 05.02.2022

//TRUE COPY//

ANNEXURE P-2

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.NO.3038/2022 (GM-EDU)

Between

Miss. Shaheena &amp; Anr

Petitioners

And

State of Karnataka &amp; Others

Respondents

## SYNOPSIS

Date	Events
2020	Petitioners joined the 5 <sup>th</sup> respondent college and they are perusing their pre university course.
Jan 2022	Respondent No.5 deprived the petitioners from attending the college by restraining them at the entry gate.
Feb-2022	Petitioners gave representation to the 4 <sup>th</sup> respondent-Deputy Commission raising their grievance.
05.02.2022	The respondent no.2 issued the impugned order directing all schools run by the State Government shall wear the uniform provided by the concerned Government school in the State private schools should wear uniforms determined by their governing bodies.
07.02.2022	Hence this writ petition.

Brief Facts of the Case

1. Petitioners are students of 5<sup>th</sup> Respondent PU College pursuing Second Year Pre-university course. They secured admission in the said college and are regularly attending classes without any remark or blemish in their academic programme.
2. It is relevant to state that the Petitioners belongs to the Islamic faith and is ardent followers of the religion including the essential religious practice of wearing the hijab (head scarf/veil).
3. On 04.02.2022 5<sup>th</sup> respondent has instructed the teaching staff of the institution not to permit the students inside the college/classes who wear headscarf, as such the petitioners and their classmates were deprived to attend the classes as long as they continue to wear head scarf. Petitioners and other classmates belonging to Islamic Faith have been forced to stay outside the entry Gate.
4. On 05.02.2022 2<sup>nd</sup> respondent issued impugned order 2<sup>nd</sup> respondent Purported to be by invoking section 133 of the Karnataka Education Act 1983 directing all school run by the State Government shall wear the uniform provided by the concerned Government schools in the State. Private schools should wear uniforms determined by their governing bodies. Petitioner being aggrieved has filed the above noted writ petition.

Bangalore  
Date: 07.02.2022

Advocate for Petitioners  
(Naveed Ahmed))



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P. NO.3038 OF 2022 (GM-EDU)

Between:

1. Miss. Shaheena  
D/o Abdul raheem  
Age about 19 years  
SantoshNagar, Hemmadi Post,  
Kundapur Taluk, Udupi District-576230
2. Miss. ShifaMinaz  
D/o NayazAhammad,  
Aged about 18 years,  
SantoshNagar, Hemmadi, Post,  
Kundapur Taluk, Udupi District-576230.

PETITIONER

AND

1. The State of Karnataka  
VidhanaSoudha  
Dr. Ambedkar Road,  
Bangalore-560 001.  
Represented by  
It's Principal Secretary.
2. The Under Secretary to Government  
Department of Education  
Vikas Soudha, Bangalore-560001.
3. The Directorate  
Department of Pre-University Education  
Bangalore-560 009.
4. The Deputy Commissioner  
Udupi District,  
ShivalliRajatadri, Manipal  
Udupi-576104.
5. The Principal  
Government PU College  
Kundapura, Udupi District-576201

RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 and  
227 OF THE CONSTITUTION OF INDIA

The Petitioner is challenging the impugned order dated 05.02.2022 via order No.EP14 SHH 2022 Bangalore passed by the 2<sup>nd</sup> respondent purported to be by Invoking section 133 of the Karnataka Education Act, 1983 directing all schools run by the State Government shall wear the uniform provided by the concerned Government schools in the State. Private schools should wear uniforms determined by their governing bodies. Copy of the order dated 05.02.2022 is enclosed as ANNEXURE-A.

Petitioners most respectfully submits as follows:

1. Petitioners are students of 5<sup>th</sup> Respondent PU College pursuing Second Year Pre-university course. They secured admission in the said college and are regularly attending classes without any remark or blemish in their academic programme. It is relevant to state that the Petitioners belongs to the Islamic faith and is ardent followers of the religion including the essential religious practice of wearing the hijab (head scarf/veil).
2. It is submitted that, as usual on 03.02.2022, the Petitioners went to college for attending daily classes, to their surprise they were stopped at the entry Gate of the College by the 5<sup>th</sup> Respondent and other staffs of the College. The Petitioners and other

classmates were Insulted, humiliated and were instructed to remove the head Scarf by the Principal and other staff members of the College. Subsequently the petitioners and other Classmates belonging to Islamic faith were denied entry into the premises by the 5<sup>th</sup> Respondent by closing the entry gate of the College. The action of the 5<sup>th</sup> respondent is Inhuman, barbaric, which blatant violation of the fundamental rights of petitioners guaranteed under Article 15, 19(1)(a), 25 and 21 of the Constitution of India.

3. It is submitted that, the 5<sup>th</sup> respondent has instructed staff of the institution not to permit the students inside college/classes who wear headscarf as such the petitioners and their classmates were deprived to attend the classes as long as they continue to wear head scarf, petitioners and other classmates belonging to Islamic Faith have been forced to stay outside the entry gate. The petitioners and other classmates are in a hope of being permitted to enter their classes and continue their education. On refusal by the 5<sup>th</sup> respondent, not permitting the petitioners and other classmates belonging to Islamic faith not to attend classes as long as they continue to wear head scarf, the petitioners along with other classmates have been representation to the 4<sup>th</sup> respondent, the Deputy Commissioner, Udupi District.

4. It is submitted that the Petitioners herein conscientiously believe that the hijab/head scarf is part of their religious identity and essential in Islamic faith. The inhuman "punishment" imposed on the petitioners by the 5<sup>th</sup> Respondent for merely following an essential religious practise is in blatant violation of the fundamental rights of the petitioners guaranteed under Article 15, 19(1)(a), 25 and 21 of the Constitution of India.
5. It is relevant to state that before the passing the impugned order the respondent no.5 and similarly placed colleges in the district headed by the 4- respondent have stopped the students who wear head scarf which use wear regularly since their admission into the respective colleges as It Is their persona, right guaranteed under the Islamic Shariat. Copies of the new articles of the published in various newspapers are enclosed herewith as ANNEXURE-B.
6. It is relevant to State, that the impugned order came to be passed to legalize the action of the college who adopted this illegal means so as to empower them to continue stopping the minority students who wear head scarf to enter the college and to pursue their education, it is one of the means adopted by the colleges subsequently, supported by the State Government to diminish

the image of students belonging to particular community. Copy of the impugned order is enclosed supra as Annexure-A.

7. The action of the respondents in stopping the said students and passing of the impugned order speaks volumes about the intention behind depriving the basic right of education to certain class of citizens belonging to minority. The petitioners being aggrieved with the action of the respondent colleges and also the passing of the impugned order approach this Hon'ble court under Article 226 of the Constitution of India.
8. The Petitioner has no other alternate and efficacious remedy than to approach this Hon'ble court, the petitioners have not filed any other petition before this Hon'ble court or before any other forum. Hence this Petition on the following grounds:

#### GROUNDS

9. That the, impugned order passed by the 2<sup>nd</sup> respondent at Annexure A is a classic case of abuse of power and it is in violation of the right to freedom of expression, guaranteed under Article 19(1)(a) of the Constitution. Article 19(1)(a) of the Constitution specifically guarantees the right to freedom of expression, which takes within its sweep the right to freedom of appearance and apparel as well. In National Legal Services

Authority Vs. Union of India, (2014) 5 SCC 438 it was held that no restriction can be placed on one's appearance subject to restriction made under Article 19(2) of the Constitution. It was held,

“69. Article 19(1) of the Constitution guarantees certain fundamental rights, subject to the power of the State impose restrictions from (sic on) exercise of those rights. The rights conferred by Article 19 are not available to any person who is not a citizen of India. Article 19(1) guarantees those great basic rights which are recognised and guaranteed as the natural rights inherent in the status of the citizen of a free country. Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. The self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.

70. We may, in this connection, refer to a few judgments of the US Supreme Court on the rights of TGs' freedom of expression:

70.1. The Supreme Court of the State of Illinois in *City of Chicago Vs. Wilson* [75 III 2<sup>nd</sup>525 : 389 NE 2<sup>nd</sup> 522 (1978)] Struck down the municipal law prohibiting cross-dressing, and held as follows: "the notion that the State can regulate one's personal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with values of privacy, self-identity, autonomy and personal integrity that... the Constitution was designed to protect".

70.2. In *Doe Vs. Yunits* [2000 WL 33162199 (Mass Super Ct. 2000)], the Supreme Court of Massachusetts, upheld the right of a person to wear school dress that matches her gender identity as part of protected speech and expression and observed as follows: "by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender. In addition, plaintiff's ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff's

expression Is not merely a personal preference but a necessary symbol of her identity".

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

10. The petitioners\* this crucial Juncture of their academic life at the stage of Second year pre university course. They being the followers the Islamic faith since birth and is practicing the essential religious practice of wearing a hijab/head scarf. The petitioner is an ordinary resident of Udupi District and has safely without any let or hindrance continued to practice the wearing of hijab while participating in all aspects of daily life and the 4<sup>th</sup> and 5<sup>th</sup> respondent prevented them from attending to their classes on the ground that they are wearing hijab, which was not permissible in the college premises. It is relevant to State at this stage that previous students since several years without any hinderance have continued to wear Hijab and have been passed out of the institution.
11. It is submitted that the petitioners herein exercising their right to freedom of religion, faith and conscience, enshrined under



Article 25 of the Constitution, by wearing a hijab to their educational institution. This freedom of conscience cannot be subjected to any restrictions which are not in the nature order, morality or health.

12. It is submitted that the right to freedom of apparel and appearances has been specifically recognised as falling under the ambit of the 'right to privacy' in K.S. Puttaswamy (Privacy-93.) v. Union of India, (2017) 10 SCC 1 in the judgment of Justice Chelameswar, It was specifically held.

“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 the right to privacy but as a part of their religious belief. Such a freedom need not necessarily be based on religious beliefs falling under Article 25.”

13. It is submitted that the right of the Petitioner herein to attend an educational institution of her choice while professing her religion has been emphatically recognized by the Hon'ble Supreme Court in Bijoe Emmanuel Vs. State of Kerala (1986) 3 SCC 615. The Hon'ble Supreme Court specifically recognised

that even though the religious beliefs of the Jehovah's Witnesses may "appear strange or even bizarre", they are entitled to protection under Article 25(1) and 19(1)(a) of the Constitution. The Hon'ble Supreme Court held.

“We see that the right to freedom of conscience and freely to profess, practise and propagate religion guaranteed by Art 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (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. Thus while on the one hand, Art. 25(1) itself expressly subjects the right guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Art. 25(1). Therefore, whenever the

Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice or to provide for social welfare and reform. It is the duty and function of the Court so to do. Here again as mentioned in connection With Art. 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental Instruction.

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.”

14. It is submitted that the discrimination against the Petitioners herein is violative of Article 15, for restricting the entry of the Petitioners herein in a government school only on the ground of religion. Article 15 specifically envisages that the State shall not discriminate on grounds of religion. Article 15(2) further envisages that no citizen shall on grounds of religion be subject to any restriction with regard to access of public shops. In *Indian Medical Assn. v. Union of India*, (2011) 7 SCC 179, the Hon'ble Supreme Court specifically held that educational institutions are covered under the ambit of 'shops' in Article 15(2). It was held,

“187. Inasmuch as education, pursuant to *T.M.A. Pai* [(2002) 8 SCC 481], is an occupation under sub-clause (g) of clause (1) of Article 19, and it is a service that is offered for a fee that takes care of all the expenses of the educational institution in rendering that service, plus a reasonable surplus, and is offered to all those amongst the general public, who are otherwise qualified, then such educational institutions would also be subject to the discipline of clause (2) of Article 15. In this regard, the purport of the above exposition of clause (2) of Article 15, when read in the context of egalitarian

jurisprudence inherent in Articles 14, 15, 16 and Article 38, and read with our national aspirations of establishing a society in which equality of status and opportunity, and justice, social, economic and political, would imply that the private sector which offers such facilities ought not to be conducting their affairs in a manner which promotes existing discriminations and disadvantages.”

It is thus submitted that the scope of the anti-discrimination principle under Article 15(2) not only applies to government schools but applies to all public areas including private schools.

15. It is submitted that the Explanation I to Article 25 of the Constitution similarly guarantees the right of Sikh persons to carry the kirpan. The petitioners herein claim a similar right to wear the hijab, which is part of the religion and conscience. It is submitted that the Respondents herein cannot deny this right under any of the grounds of restrictions permissible under Article 25 of the Constitution.
16. It is submitted that there cannot be any prohibition under the Constitution or any laws made thereunder to curb any person from wearing any particular attire in pursuance of the right to belief, faith and conscience, as long as it is in keeping with morality, public order and health.

17. The preamble of the Constitution of India makes a solemn assurance of Liberty of thought, expression, belief, faith and worship to the people. It contains, the ideals and aspirations which the constitution makers intended to be realized by it's enacting provisions. Article 21 and Article 25 of the Constitution is a further protection of the right to personal liberty and the right to freedom of conscience and free profession, practice and propagation of religion as a fundamental right to not just all citizens but to all persons. The fundamental rights guaranteed under Article 21 and 25 are no doubt subject to reasonable restriction and such reasonable restriction are as provided in these provisions. Article 25 which specifically secures to all persons the right to free profession, practice and propagation of religion makes it subject only to public order, morality and health.
18. It is submitted that the right of dignified living under Article 21 of the Constitution has been violated by the Respondents herein. The petitioner believe that it is an essential part of their faith and conscience that they must wear a hijab. Their belief which, in their opinion, is an essential practice of their personal faith and conscience cannot be a ground for the 'State to deny education.

19. It is submitted that it is incumbent on the State to propose “harmony and the spirit of common brotherhood amongst all the people of India transcending linguist and regional or sectional diversities;” under Article 51-A(e) of the Constitution. The duty of both of the citizens and the State is essential to the constitutional guarantee of Fraternity’.
20. The Hon'ble High Court of Kerala in AmnahBint Basheer Vs. Central Board of Secondary Education reported in 2016 (2) KLT 601 while specifically dealing with the right to wear hijab held that the choice of dress based on religious injunctions is a Fundamental Rights protected under Article 25(1) of the Constitution of India, where such prescription of dress is an essential part of the religion third respondent's actions impede the petitioner's right to exercise a choice based on a practise of their religious faith which is essential in nature and thereby these actions are an infringement of the Petitioners' fundamental rights guaranteed under Article 25 (1) of the Constitution of India.
21. The action of the Respondents is in violation of the Petitioners fundamental right to life and personal liberty which

encompasses their right to choice of attire and appearance guaranteed under Article 21 of the Constitution of India.

22. It is also relevant to observe here that the 2021-22 guidelines for pre-University Education issued by the Department of Pre-University Education, Government of Karnataka recognises the right of Individuals to attire of their choice. This is forthcoming from the specific guidelines Issued to all Principals of Government run Pre-University Colleges that Uniforms not being mandatory for students pursuing pre university courses and the imposition of uniform on students is illegal. Further it is notified that strict action will be taken against administrators and Principals of Institutions found imposing uniform on students.

23. It is submitted that the verses of the Holy Quran and the narrations of the Hadiths (the Prophet's way of life) contain the essential religious practices to be followed by persons of the Islamic faith. The Holy Quran In more than one place has spoken as below about the practice of wearing hijab:

“O you Children of Adam! We have bestowed on you raiment to cover your shame as well as to be an adornment to you. But the raiment of righteousness, that



is the best. Such are among the Signs of Allah, that they may receive admonition." (Quran Chapter 7: verse 26)

"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 husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their 'brothers, or their brothers' sons or their sisters' sons, or their women or the servants whom their right hands possess, or male .Servants free of physical needs, or small children who have no Sense of the shame of sex, and that they should not strike their feet in order to draw attention to their hidden ornaments. And O you Believers, turn you all together towards Allah, that you may attain Bliss." (Quran Chapter 24: verse 31)

"O Prophet, tell your wives and your daughters and the women of the believers to draw their cloaks close round them (when they go abroad). That will be better, so that they may be recognized and not annoyed. Allah is ever Forgiving, Merciful." (Quran chapter 33: verse 59)

Further the narrations from authoritative hadiths like those contained in al-Bukhaari stress upon the importance of wearing of the hijab which is to be followed as an essential religious practise.

24. By imposing a ban on the Petitioner from attending classes, the 4<sup>th</sup> Respondent has illegally taken away the Petitioners' right to education and academic progress. It cannot be said that the Petitioners have already lost valuable time and course on account of the Fourth respondent's illegal act.

#### GROUNDS FOR INTERIM PRAYER

That the impugned order is in violation of the Article 14, 15, 16, 19, 21 and 25 i.e. the basic fundamental rights guaranteed under the constitution of India. The impugned order directs all schools run by the State Government to prescribe that the students shall wear the uniform provided by the concerned Government schools in the State. Private schools should wear uniforms determined by their governing bodies. Schools coming under the Pre-University Colleges shall wear uniforms prescribed by the respective College Development Committee (CDC) or the governing-body of such colleges. If such colleges have so far not prescribed the uniforms, it shall be prescribed keeping in mind the equality and unity, which should not violate the public order. The said

impugned order is a case of abuse of power as such same is in violation of Article 14 of the Constitution of India.

PRAYER

Wherefore, it is most respectfully prayed that this Hon'ble Court be pleased to:-

- a. Issue Writ in the nature of Certiorari quashing the impugned order dated 05.02.2022 vide order No. EP14 SHH 2022 Bangalore passed by the 2<sup>nd</sup> respondent vide Annexure-A.
- b. Issue Writ in the nature of Mandamus directing respondent no.5 to permit the Petitioners to attend the college without for removal of their head scarf.
- c. Pass any such other order as this Hon'ble Court deems fit in the facts and circumstances of the case, including the cost of Writ Petition.

INTERIM PRAYER

Pending disposal of the above Writ Petition, this Hon'ble Court be pleased to direct the respondent no.5 permitting the petitioners to attend the college/classes by staying the impugned order dated 05.02.2022 vide order No. EP14 SHH 2022 Bangalore passed by the 2<sup>nd</sup> respondent at Annexure-A.

Bangalore

Date: 07.02.2022

Advocate for Petitioner  
(Naveed Ahmed)

Address for Service:

AHMED ASSOCIATES

No.19/19, 1<sup>st</sup> Floor, 1<sup>st</sup> Cross, Millers' Road,  
Benson Town, Bangalore-560046.

Mobile No.9620245382

Gmail:ahmedsolicitors1@gmail.com

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.NO.3038/2022 (GM-EDU)

Between

Miss. Shaheena&Anr

Petitioners

And

State of Karnataka & Others

Respondents

Verifying Affidavit

I. Miss. Shaneena D/o Abdul Raheem, age about 19 years, R/at Santosh Nagar, Hemmady Post, Kundapur Taluk, Udupi District 576230, now at Bangalore Representing the petitioner No.1 hereby solemnly affirm and state on oath as follows:

1. I state that I am 1<sup>st</sup> petitioner in the above case. I am well conversant with the facts of the case hence I am swearing to this Affidavit on behalf of the petitioners as I am authorized to do so.
2. I state that averments made in paras 1 to 24 of accompanying writ petition are true and correct to the best of my knowledge, information and belief.
3. I state that Annexures enclosed along with this writ petition Annexure A to B are true copies of their originals.

Verified that the contents of the affidavit are true and correct.

Identified by me

DEPONENT

Advocate

Bangalore

Date: 07.02.2022

No.of corrections;



//TRUE COPY//

**ANNEXURE P-3**

Karnataka Government

Office of the Field Instructors of the Public Education

Department of the Government of Karnataka

South Zone – 2 Tulasithota, Bengaluru – 560 053

No: C/S.S.L.C/Hizab/c/2021-22

Date: 24.03.2022

**Reminder**

Sub: Requesting permission to attend the SSLC Examination

wearing a Hijab from 28.03.2022

Reference: 1. Head Masers, All Ameen High School, The

Mavall Education Society and Global Public Scholl,

letter of appeal, Dated: 23.03.2022

2. The Supreme Court Order No: 2347/2022, dated:

15.03.2022

For the above matter, SSLC will be held on 28.03.2022. Request

for permission to attend the exam wearing a Hijab is requested by

the Board of Administration of the Upper School.

Under the judgment of the solid court of reference (2), the test of

wearing the Hijab is not allowed. It has therefore been declared

that a the High court order should be acted upon.

To take necessary action:

1. Head Masters, All Ameen High School, Lal Bagh Main Gate, Bengaluru
2. Head Masters, M.E.S High School, Doddamavalli, Bengaluru
3. The Chiefs, Global Public School, Bapujinagar, Bengaluru

Copy to:

1. For Deputy Director (Administration) Public Education Department, Bengaluru South.
2. For further action to the Chief Superintendent of the respective test centers
3. Office.



//TRUE COPY//

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:**

Miss Shaheena

...Petitioner

Vs.

The State of Karnataka &Ors.

...Respondents

**APPLICATION FOR EXEMPTION FROM  
FILING CERTIFIED COPY OF THE  
IMPUGNED ORDER**

TO,

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

THE HUMBLE APPLICATION ON BEHALF OF  
THE PETITIONER ABOVE-NAMED

**MOST RESPECTFULLY SHEWETH:**

1. The petitioner has filed the present Special Leave Petition against the Impugned Order dated 15th of March 2022 ("Impugned Judgement"), passed by High court of Karnataka at Bengaluru in Writ Petition No.3038 of 2022.
2. The Impugned order was passed on 15<sup>th</sup> of March 2022, Certified Copies of the same are not made available. The Petitioner undertakes to file a copy of the Judgment as and when it is available. Since, the Petitioner is seeking urgent interim relief in filing the accompanying Special Leave Petition and this Application without the Certified copy.

3. It is submitted that in these circumstances, irreparable injury and hardship would be caused to the petitioner in the event this application is not allowed and on the other hand no such prejudice would be caused to the respondent.

**PRAYER**

In the circumstances herein above, it is therefore, most respectfully and humbly prayed that this Hon'ble Court may graciously be pleased to:

- A) Exempt the Petitioner from filing certified copy of the Impugned Order dated 15<sup>th</sup> of March 2022 ("Impugned Judgement"), passed by High court of Karnatakaat Bengaluru in Writ Petition No.3038 of 2022.
- B) Pass any such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:

Shahrukh Mohammed

&

Prateek Yadav

Advocates

FILED BY:



**RANBIR SINGH YADAV**

Advocate for the Petitioner

FILED ON: 04.04.2022

PLACE: NEW DELHI



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:**

Miss Shaheena

...Petitioner

Vs.

The State of Karnataka & Ors.

...Respondents

**AN APPLICATION FOR EXEMPTION FROM FILING  
OFFICIAL TRANSLATION**

TO,

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

THE HUMBLE APPLICATION ON BEHALF OF  
THE PETITIONER ABOVE-NAMED

**MOST RESPECTFULLY SHEWETH:**

1. The petitioner has filed the present Special Leave Petition against the Impugned Order dated 15th of March 2022 ("Impugned Judgment"), passed by High court of Karnataka at Bengaluru in Writ Petition No.3038 of 2022.
2. The averments made in the Special Leave Petition may be treated as part and parcel of this application for the sake of brevity and clarity.
3. It is Submitted that Annexure Nos. P-1 and Annexure Nos. P-3 are in Kannada and that the Petitioner undertakes to file the official translation of the certified copy of Annexure Nos. P-1 and Annexure Nos. P-3 in the event this Hon'ble Court

directs the Petitioner to file the same. However, for the sake of convenience, the translated copy of Annexure Nos. P-1 and Annexure Nos. P-3 with the present SLP is translated by a person whose mother tongue is Kannada and is true and correct as per my personal knowledge.

4. It is submitted that irreparable injury and hardship would be caused to the Applicant in the event this application is not allowed and matter is not heard on merits and on the other hand no such prejudice would be caused to the Appellant.

**PRAYER**

In the circumstances herein above, it is therefore, most respectfully and humbly prayed that this Hon'ble Court may graciously be pleased to:


(a) Exempt the Petitioner from filing official translation of Annexure Nos. P-1 and Annexure Nos. P-3 filed alongwith the present Special Leave petition; and

(b) Pass such other and further orders as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:  
Shahrukh Mohammed  
&  
Prateek Yadav  
Advocates

FILED BY:

  
**RANBIR SINGH YADAV**  
Advocate for the Petitioner

FILED ON: 04.04.2022  
PLACE: NEW DELHI

Matter not listed within 5 days  
Matter listed on .....

SECTION-IVA

IN THE SUPREME COURT OF INDIA

SPECIAL LEAVE PETITION (C) NO. OF 2022

**IN THE MATTER OF:**

Miss Shaheena

...Petitioner

Vs.

The State of Karnataka & Ors.

...Respondents

Index of Paper

S.No.	PARTICULARS	COPIES	COURT FEES
1.	List of Dates	1+3	
2.	Impugned judgment	1+3	
3.	Special Leave Petition with Affidavits	1+3	
4.	Annexures (P-1 to P-3)	1+3	
5.	Application for exemption from filing certified copy of the impugned order		
6.	An application for exemption from filing official translation		
7.	Vakalatnama & Memo of Appearance		
			TOTAL Rs.1930

Filed On: 04.04.2022



(Ranbir Singh Yadav)  
Advocate for the Petitioner  
33, Lawyer's Chamber,  
Supreme Court of India  
New Delhi-110001  
**Code No. 959**  
(M) 9868472079  
Mahesh Kumar Sharma  
I Card No.3348

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

**IN THE MATTER OF:**  
MISS SHAHEENA

...PETITIONERS

VERSUS


STATE OF KARNATAKA & ORS.

...RESPONDENTS

**VAKALATNAMA**

I BELOW MENTIONED in the above W.P./Appeal/Petition Reference do hereby appoint and return RANBIR SINGH YADAV, Advocate, Supreme Court of India, to act and appear for me/us in the above W.P./Appeal/Petition/Reference and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or Order passed therein, including proceedings, taxation and application for review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the W.P./Appeal/Reference and in application for review to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/we agree to ratify all acts done by the aforesaid Advocate in pursuance of the authority.

Dated this the                      day of March, 2022  
Accepted, Identified and Certified, Verified and Satisfied

  
(RANBIR SINGH YADAV)  
Advocate Code-959

  
Shaheena

Petitioner(s)/Appellant(s)


**MEMO OF APPEARANCE**

To  
The Registrar  
Supreme Court of India  
New Delhi  
Sir,

Please enter my appearance on behalf of the  
Petitioner(s)/ Appellant(s)/Interveners/Respondent(s) in the above matter.

Dated :

The address for service of the said Advocate is:

  
**RANBIR SINGH YADAV**  
Advocate  
33, Lawyers Chamber  
Supreme Court of India  
New Delhi-110001  
Ph.: 011-23389926

Email: - 33chamber@gmail.com,