

**IN THE SUPREME COURT OF INDIA**  
(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. 15404 OF 2022

(Against the final Judgment/Order dated 15.03.2022 passed by the High Court of Karnataka at Bangalore in Writ Petition No. 2347 of 2022)

**(PRAYER FOR INTERIM RELIEF)**

**IN THE MATTER OF:**

MUSLIM WOMEN'S STUDY CIRCLE

... PETITIONER

VERSUS

THE STATE OF KARNATAKA & ORS.

...RESPONDENTS

**WITH**  
**I.A. NO. \_\_\_\_\_ OF 2022**  
(APPLICATION FOR PERMISSION TO FILE SLP)

**AND**  
**I.A. NO. \_\_\_\_\_ OF 2022**  
(APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE  
IMPUGNED ORDER)

**PAPERBOOK**

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COUNSEL FOR THE PETITIONER: **PRASHANT BHUSHAN**

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**IN THE SUPREME COURT OF INDIA**  
(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2022

## IN THE MATTER OF:

MUSLIM WOMEN'S STUDY CIRCLE ...PETITIONERS

## VERSUS

THE STATE OF KARNATAKA & ORS. ...RESPONDENTS

## OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The Petition is barred by time and there is a delay of \_\_\_\_\_days in filing the same against the Common Impugned judgement and final order dated 22.08.2019 has been filed.
3. There is a Delay of \_\_\_\_\_ days in re-filing the Petition/(s) and Petition for Condonation of \_\_\_\_\_days in re-filing has been filed.

**BRANCH OFFICER**

New Delhi  
Dated: 30.03.2022

**SECTION: II****PROFORMA FOR FIRST LISTING**

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

<input type="checkbox"/>	Central Act: (Title)	<b>CONSTITUTION</b>
<input type="checkbox"/>	Section	<b>UNDER ARTICLE 14,15, 19,21 &amp; 25</b>
<input type="checkbox"/>	Central Rule : (Title)	<b>-NA-</b>
<input type="checkbox"/>	Rule No(s):	<b>- NA -</b>
<input type="checkbox"/>	State Act: (Title)	<b>- NA -</b>
<input type="checkbox"/>	Section :	<b>- NA -</b>
<input type="checkbox"/>	State Rule : (Title)	<b>- NA -</b>
<input type="checkbox"/>	Rule No(s):	<b>- NA -</b>
<input type="checkbox"/>	Impugned Interim Order: (Date)	<b>- NA -</b>
<input type="checkbox"/>	Impugned Final Order/Decree: (Date)	<b>15.03.2022</b>
<input type="checkbox"/>	High Court : (Name)	<b>HIGH COURT OF KARNATAKA TA BANGLORE</b>
<input type="checkbox"/>	Names of Judges:	<b>HON'BLE CHIEF JUSTICE RITU RAJ AWASTHI HON'BLE JUSTICE KRISHNA DIXIT HON'BLE JUSTICE J.M. KHAZI</b>
<input type="checkbox"/>	Tribunal/ Authority ; (Name)	<b>- NA -</b>
1.	Nature of matter : <input checked="" type="checkbox"/> Civil <input type="checkbox"/> Criminal	
2.	(a) Petitioner/ appellant No.1 :	<b>MUSLIM WOMEN;S STUDY CIRCLE</b>
	(b) e-mail ID:	<b>NA-</b>
	(c) Mobile Phone Number:	<b>-NA-</b>
3.	(a) Respondent No.1:	<b>THE STATE OF KARNATAKA</b>
	(b) e-mail ID:	<b>- NA -</b>
	(c) Mobile Phone Number:	<b>- NA -</b>
4.	(a) Main category classification:	<b>1807</b>
	(b) Sub classification:	<b>OTHER ORDINARY CIVIL MATTER</b>
5.	Not to be listed before:	<b>- NA -</b>
6.	(a) Similar disposed of matter with citation, if any & case details:	<b>NO SIMILAR DISPOSED MATTER</b>

(b) Similar Pending matter with case details:

DIARY NO. 8344 OF 2022

7. **Criminal Matters:**

(a) Whether accused/convict has surrendered: Yes ☐ ☒ -NA-

(b) FIR No. -NA- Date: -NA-

(c) Police Station: -NA-

(d) Sentence Awarded: - NA -

(e) Period of sentence undergone including period of Detention/ Custody Undergone: - NA -

8. Land Acquisition Matters: - NA -

(a) Date of Section 4 notification: - NA -

(b) Date of Section 6 notification: - NA -

© Date of Section 17 notification: - NA -

9. Tax Matters: State the tax effect: - NA -

10. Special Category (first Petitioner/ appellant only): - NA -

☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child

☐ Disabled ☐ Legal Aid case ☐ In custody - NA -

11. Vehicle Number (in case of Motor Accident Claim matters): - NA -

*Prashant Bhushan*

**(PRASHANT BHUSHAN)**

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New Delhi

Dated: 30.03.2022

## **SYNOPSIS**

The Petitioner herein is constrained to file the present Special Leave Petition before this Hon'ble Court against judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022 and other connected petitions (hereinafter referred to as the "impugned order").

It is submitted that the impugned order suffers from the vices of arbitrariness as well as discrimination amongst other perversities, in so far as it results in the obliteration of the values of positive secularism propagated by our Constitution and allows religious symbols of certain religions to be worn while prohibiting others.

### **I. HIGH COURT ERRED IN NOT LOOKING PAST THE SMOKESCREEN CREATED TO TARGET A PARTICULAR COMMUNITY:**

It is submitted that the manner and pattern of incidents that led to the Government Order dated 05.02.2022 and the consequent impugned order ought to be appreciated at the outset. The entire controversy began in December 2021 when a student was told by her college principal that she would not be allowed to attend classes if she wore a *hijab*. Thereafter by the end of the last week of December 2021, the principal of Government Girls PU College informed the Muslim students that the *hijab* was banned in class.

In January, 2022 eight girls began to protest peacefully outside their classroom against the ban on their entry inside the classroom with a *hijab*.

Thereafter the Hindu Janajagruti Vedi, an outfit of the RSS in the Udupi region, threatened that Hindu students would wear saffron

shawls to college if the *hijab* was not banned in classrooms. The matter then snowballed across the State and turned into a communal row.

It was in this background the Respondent No.1, while stating that prohibition of headscarf or a garment covering the head is not in violation of Article 25 of the Constitution of India passed Government order dated 05.02.2022 (hereinafter referred to as the "GO") also in exercise of powers under Section 133(2) of the Karnataka Education Act, inter alia directing that in colleges that fell under the pre-university education department's jurisdiction, uniforms mandated by the College Development Committee (CDC), or the board of management, should be worn.

It is submitted that a bare perusal of the GO clearly establishes that the same was passed with the *malafide* intent of specifically targeting the Muslim girls and interfering with a harmless religious practice. It is further submitted that the passing of the GO gave legal sanction to religious intolerance exhibited by the college authorities. Instead of taking adequate action against such intolerant elements and hecklers who were openly harassing girls wearing the *hijab*, the Respondent No.1, by passing the GO, punished the victims.

The *malafide* approach of the Respondents is also evident from the fact that the GO only prohibits a headscarf or a garment covering the head. If the submission of the Respondents, as made before the Hon'ble High Court, that the GO was passed to promote secular values, is to be believed, then the said

prohibition ought to have been imposed on all religious symbols worn in such institutes. The same would then have had to include prohibition of application of vermilion on the forehead (*tikka*), tying of the *kalaya* so on and so forth, all of which are equally telling of a student's religious identity.

The targeting of the religious practice of a particular religion in the name of "secularism" is completely arbitrary, illegal and discriminatory. The Hon'ble High Court, it is submitted, ought to have taken note of and deprecated the same.

## **II. ARBITRARY AND ILLEGAL INTERFERENCE WITH THE AGENCY OF WOMEN IN THE GUISE OF REFORM:**

It is submitted that forcing a girl to choose education over comfort and faith amounts to imposing an extremely unreasonable condition that violates not only her Right to Education but also is an infringement of her Right to Personal Liberty.

It's crucial to remember that what a girl chooses to wear is a very personal choice that cannot be interfered with in the guise of bringing about "reform". A "reform" that forces a girl to dress in a particular manner is nothing but a tool of oppression. It also shows that according to the self-proclaimed reformers, women lack the intellect that is required to decide what they should and shouldn't wear. This in turn points to the perception of women as inferior beings who need guidance even for basic things such as choice of clothes.



In a statement submitted by Amnesty International to the 55<sup>th</sup> Session of the United Nations Commission on the Status of Women it was stated that

*"Under international human rights law, the exercise of the right to freedom of expression and to manifest one's religion or belief may only be subject to restrictions which meet a stringent three-part test: they must be prescribed by law; address a specific legitimate purpose permitted by international law; and be demonstrably necessary and proportionate for that purpose. The permissible legitimate purposes - ensuring respect for the rights of others or protecting certain public interests (national security or public safety, or public order, health or morals), must be narrowly interpreted and must not be used to impose restrictions on dress which some – even a majority – find objectionable or offensive. Moreover, any restrictions must not be discriminatory or put in jeopardy the right itself or undermine other human rights."*

(Emphasis Supplied)

It may be that a Muslim girl chooses to wear a *hijab* on account of her religious belief but even if the said choice is made simply to avoid lecherous looks from the opposite gender, she cannot be asked to remove the same if doing so causes her distress. Doing so would be an affront to her dignity and modesty.

It's crucial to remember that what a girl chooses to wear is a very personal choice that cannot be interfered with in the guise of bringing about "reform". A "reform" that forces a girl to dress in a

particular manner is nothing but a tool of oppression. It also shows that according to the self-proclaimed reformers, women lack the intellect that is required to decide what they should and shouldn't wear. This in turn points to the perception of women as inferior beings who need guidance even for basic things such as choice of clothes.

### **III. IMPUGNED ORDER VIOLATIVE OF ARTICLES 14 AND 21:**

It is submitted that the impugned order is violative of Article 14 of the Constitution of India in as much as it results in the targeting of a specific community and declares the wearing of *hijab* as an act that violates the discipline and decorum of the institution. The impugned order is perverse in so far as it discriminates not just on the basis of religion but also on the basis of gender.

It is further submitted that the Army, Navy and Air Force – all allow Sikhs to wear turbans with their uniforms. School/college uniforms cannot be equated with the uniforms worn by officers of the Defence forces in terms of the high standards of homogeneity and discipline that the latter have to meet. When the exemption is allowed by the Forces then it is simply incomprehensible that the same is being banned in schools.

It is further pertinent to note that the impugned order is grossly perverse as it treats religious symbols and apparel in an unequal manner. While the Hon'ble High Court deprecates the wearing of

*hijab*, a similar criticism is not bestowed by it upon other religious attire and symbols.

It is further submitted that the Hon'ble High Court grossly erred in equating wearing of *bhagwa* (saffron) shawls with the wearing of *hijab*. It is an undisputed fact that saffron shawls are not worn by Hindus in the manner in which *hijab* is worn by Muslim women. In fact, from the chronology of events it can be seen that saffron shawls were worn by several students as a way of ensuring that the *hijab* was banned and not as a religious practice.

The impugned order is violative of the Article 21 of the Constitution of India as it interferes with the agency of women who wish to wear the *hijab* and curtails their right to a dignified existence.

#### **IV. IMPUGNED ORDER VIOLATIVE OF ARTICLES 15, 19(1)(A) AND 25:**

It is submitted that the Hon'ble High Court gravely erred in suspending the fundamental rights of Muslim students under Articles 14, 15, 19(1)(a), 21 and 25, in an extremely casual and arbitrary manner under the garb of reasonable restrictions. It is a settled position of law that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary. Reliance in this regard is placed on the judgment of this Hon'ble Court in *Shreya Singhal vs Union of India* (2015).

A religious practice that is of an essential nature such as wearing of a turban by Sikhs and wearing of *hijab* by Muslim women ought to not have been brought under the pale of reasonable restrictions.

It is further submitted that the interpretation and application of constitutional and human rights has never been limited by this Hon'ble Court only to the black letter of law. This Hon'ble Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. Reliance in this regard is placed on the judgment of this Hon'ble Court in *M.Nagraj v. Union of India* [(2006) 8 SCC 212, Para 30]; *Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P.) Ltd.* [(1988)4 SCC 592]; *Dinesh Trivedi v. Union of India* [(1997) 4 SCC 306]; *Union of India v. Assn. of Democratic Reforms* [(2002) 5 SCC 294]; and *People's Union of Civil Liberties v. Union of India* [(2003) 4 SCC 399].

In this regard it is further submitted that the Hon'ble High Court failed to examine the GO in accordance with the guidelines laid down by this Hon'ble Court in *Ramlila Maidan Incident, In Re* [(2012) 5 SCC 1] for examining the constitutionality and legality of a restriction. Thus, the Hon'ble High Court erred in not appreciating that the ban on *hijab* imposed under the garb of a reasonable restriction failed to pass the test of "*proximate and direct nexus*" with the object sought to be achieved and was not founded on the *principle of least invasiveness*. On the contrary,

the ban amounts to an invasion into a very private matter not only on the ground of religious practice but also on the ground of interference with the agency of individuals choosing to dress in a particular manner. The ban on *hijab*, it is submitted, is disproportionate to the alleged objective of uniformity and secularism sought to be achieved.

## V. **VIOLATIVE OF JUDGMENT OF THIS HON'BLE COURT:**

It is submitted that the impugned judgment is in clear violation of the law laid down by this Hon'ble Court in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282) wherein this Hon'ble Court held as follows:

"14. We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, **a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper** and to propagate or disseminate his ideas for the education of others.

17. .... What then are matters of religion ? The word "religion " has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case, it has been said " that the term religion has reference to one's views of his relation to his Creator and to the obligations 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." 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 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 or belief. **A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."***

(Emphasis Supplied)

It is submitted that this Hon'ble Court held that religion may prescribe forms and observances that may extend to matters of food and dress. It is submitted that the liberal interpretation given by this Hon'ble Court to the concept of "religion" has completely been lost sight of by the Hon'ble High Court and the

same has resulted in the infringement of the Fundamental Rights of the Muslim students who wish to wear a *hijab*.

In this regard it is further submitted that it is a settled position of law that Fundamental Rights cannot be suspended at the whim and fancy of the State and can only be subjected to *reasonable* restrictions. Thus, enjoyment of Fundamental Rights is the rule and their suspension the exception.

It is further submitted that this Hon'ble Court in *Shirur Mutt* further held that Article 25 of the Constitution of India secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper. This right to exhibit one's religious beliefs through outwards acts, such as wearing a *hijab* or a turban, enjoys the protection of being a Fundamental Right.

The only restrictions, as a bare perusal of Article 25 would indicate, on the freedom guaranteed under Article 25 are that of public order, health and morality. However, it is submitted that the Respondents have miserably failed to show any of the said three conditions of public order, health and morality were being affected by the wearing of *hijab*.

It is submitted that the reasonable restrictions on Fundamental Rights have to be given a restrictive interpretation.

Without prejudice, it is submitted that if the Respondent's case that wearing *hijab* does in fact act towards the detriment of

public order in so far as it displays the religious identity of the persons wearing it, were to be accepted then the logical consequence thereof would be to ban all religious symbols from educational institutions. This, however, it is submitted would again be arbitrary and in gross violation of Article 25 of the Constitution that allows a person to exhibit his or her religious beliefs.

**VI. CONSTITUTIONAL COURTS AND WELFARE STATE DUTY BOUND TO PROTECT AND PRESERVE THE PLURALITY AND DIVERSITY OF THE NATION:**

It is submitted that the Hon'ble High Court has gravely erred in adopting the approach of negative secularism which was frowned upon not only by the makers of the Constitution but also by this Hon'ble Court.

The concept of secularism contemplated under our Constitution is that of positive secularism, which in simple words entails that all religions would be treated with equality and would be embraced by the State.

However, the Hon'ble High Court while giving the reasoning that the ban on *hijab* is in the interest of uniformity, discipline and decorum, reaches an unfortunate extreme of negative secularism that seeks to erase religious identity.

It is a settled position of law that each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practise and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perception of one's own



presumptions of good social order. Reliance in this regard is placed on the judgment of this Hon'ble Court in *State of Karnataka v. Dr.Praveen Bhai Thogadia* [(2004) 4 SCC 684] wherein this Hon'ble Court held as follows:

"6. ...*Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic state. Persons belonging to different religions live throughout the length and breadth of the country. **Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience.** Otherwise, the rule of law will become replaced by individual perceptions of ones own presumptuous good social order. Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foot hold undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.*

7. ...*Communal harmony should not be made to suffer and be made dependent upon will of an individual or a group of individuals, whatever be their religion be it of minority or that of the majority. Persons belonging to different religions*

*must feel assured that they can live in peace with persons belonging to other religions.”*

The State is prohibited from identifying itself with or favouring any particular religion, because the State is enjoined to accord equal treatment to all religious sects or denominations. Reliance in this regard is placed on the judgment of this Hon’ble Court in *SR.Bommai v. Union of India* [(1994) 1 SCC 1].

**VII. BURDEN OF PROOF TO SHOW THAT THE RESTRICTION BEING IMPOSED IS IN PUBLIC INTEREST NOT DISCHARGED BY THE RESPONDENTS:**

It is submitted that Hon’ble Court has time and again held that as soon as the petitioner shows that the impugned law or order constitutes a ‘restriction’ upon his fundamental right, by directly and proximately interfering with its exercise, the burden of proving that the restriction is ‘reasonable’ and in public interest lies upon the State. Reliance in this regard is placed on the judgment of this Hon’ble Court in *Sukhandan Saran Dinesh Kumar (M/s.) v. Union of India* [(1982) 2 SCC 150]; *Vrajlal Manilal & Co. v. State of MP* [(1969) 2 SCC 248]; *Laxmi Khandsari v. State of UP.* [(1981) 2 SCC 600]; and *Deena v. Union of India* [(1983) 4 SCC 645].

In the present case however, the Respondent State has failed to show how the imposition of restriction on wearing of *hijab* is in public interest or the wearing of *hijab* was interfering with public order, health and morality.

It is submitted that the mere inclusion of certain limitations that the exercise of freedom to religion can be subjected to under Article 25 does not exempt the State from the burden of establishing a *direct nexus* between the objective sought to be achieved and the restriction imposed.

It is submitted that before an act is held to be prejudicial to *public order*, it must be shown that it is likely to affect the public at large. As a corollary, it follows that an act that concerns only an individual and does not amount to an activity prejudicial to public peace and tranquillity is not prejudicial to public order.

The mere act of wearing a garment by a certain section of students could not possibly interfere with *public order, morality or health*.

### **LIST OF DATES**

December, 2021	<p>That in the month of December, 2021 six Muslim girls were barred from attending classes by the Government Pre-University College for Girls in Udupi for wearing <i>hijab</i> or headscarf.</p> <p>True copy of article dated 31.12.2021 published in the Coastal Digest titled "<i>Udupi govt PU college accused of communal discrimination; Muslim girls barred from classes for wearing headscarf</i>" has been annexed herewith and marked as <b>Annexure P-1 (Pg. 156 to 157 )</b>.</p>
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01.01.2022	<p>That in addition to barring the entry of <i>hijab</i> clad students of Pre-University College for Girls in Udupi, complaints were made by the students that they were not being allowed to talk in Urdu, Arabic and Beary languages. The girls stood outside the classroom for three days in protest. The students further claimed though their parents approached the principal Rudra Gowda for talks, he refused to hold discussion on the issue.</p> <p>True copy of article dated 01.01.2022 published in the Indian Express titled <i>Karnataka: Hijab-clad students denied entry to classroom in Udupi PU college</i> has been annexed herewith and marked as <b>Annexure P-2 (Pg. 158 to 160 )</b>.</p>
03.01.2022	<p>That Hindu students of Government First Grade College in Koppa, Chikmagalur, wearing saffron scarves staged a protest against the wearing of <i>hijab</i>. They further demanded that they should be allowed to wear saffron scarves if Muslim girl students are allowed to wear <i>hijab</i>.</p> <p>True copy of article dated 04.01.2022 titled "<i>Hijab vs Saffron Scarf Row: College in Ktaka's Chikmagalur to hold parents' meeting</i>" published in Madhyamam has been annexed herewith and marked as <b>Annexure P-3 (Pg. 161 to 164 )</b>.</p>
06.01.2022	<p>That Hindu students in saffron scarves protested outside the Pompei College in Mangaluru.</p> <p>True copy of article dated 06.01.2022 published in the Daiji World titled "<i>Mangaluru: Now, 'Saffron shawl vs Hijab' row at Aikala Pompei College</i>" has been annexed herewith and</p>

	marked as <b>Annexure P-4 (Pg. 165 to _____)</b> .
21.01.2022	<p>That the ban on entry of girls continued and the Principal of Pre-University College for Girls, Mr. Rudra Gowda claimed that the protesting girls were "<i>undisciplined, irregular and arrogant</i>" he further said that "<i>We believe in a common uniform. Students particular about hijab can opt for religious colleges</i>".</p> <p>True copy of article dated 21.01.2022 published in News Laundry titled "<i>Requests fell on deaf ears': Hijab stand-off continues despite classroom ban at Karnataka college</i>" has been annexed herewith and marked as <b>Annexure P-5 (Pg. 166 to 173 )</b>.</p>
21.01.2022	<p>That the Hindu Jagaran Vedike Mangaluru Divisional Secretary Prakash Kukkehalli, in a statement to media, said if girls are allowed to wear hijab then other students will come with saffron shawls to institutions across Dakshina Kannada and Udupi districts.</p> <p>True copy of article dated 21.01.2022 published in the Hindu titled <i>NSUI set to file writ in support of students who want to wear hijab</i> has been annexed herewith and marked as <b>Annexure P-6 (Pg. 174 to 175 )</b>.</p>
03.02.2022	<p>That Kundapur Government P.U. College banned entry of students wearing <i>Hijab</i> after hindu students wore saffron scarves. Videos of girl students pleading with the principle to be allowed to attend classes went viral.</p> <p>True copy of article dated 03.02.2022 published in The New Indian Express titled "<i>Karnataka: Girls wearing hijab</i></p>

	<p><i>denied entry in Kundapur college day after Hindu outfit's protest"</i> has been annexed herewith and marked as <b>Annexure P-7 (Pg. 176 to 178 )</b>.</p>
05.02.2022	<p>That the Respondent No.1 while stating that prohibition of headscarf or a garment covering the head is not in violation of Article 25 of the Constitution of India passed Government order dated 05.02.2022 also in exercise of powers under Section 133(2) of the Karnataka Education Act, inter alia directing that in colleges that fell under the pre-university education department's jurisdiction, uniforms mandated by the College Development Committee (CDC), or the board of management, should be worn.</p> <p>True copy of Government order dated 05.02.2022 has been annexed herewith and marked as <b>Annexure P-8 (Pg. 179 to 181 )</b>.</p>
07.02.2022	<p>That W.P. No. 2880/2022 was filed before Hon'ble High Court challenging the aforementioned Government Order dated 05.02.2022. The said Petition was referred to a larger bench.</p>
10.02.2022	<p>That the Hon'ble High Court passed interim order dated 10.02.2022 inter alia stated that no student shall be permitted to wear religious attire to the classroom. Such attire included <i>hijabs</i>, saffron shawls and scarves.</p> <p>True copy of order dated 10.02.2022 in WP No.2880/2022 has been annexed herewith and marked as <b>Annexure P-9 (Pg. 182 to 188 )</b>.</p>

19.02.2022	<p>That on 19.02.2022 an English teacher at Jain PU College in Karnataka's Tumakuru was asked to remove her <i>hijab</i> before entering the college.</p> <p>True copy of article dated 19.02.2022 published by the Economic Times titled "<i>Teacher quits after she was 'asked' to remove hijab in Karnataka</i>" has been annexed herewith and marked as <b>Annexure P-10 (Pg. 189 to 190 )</b>.</p>
Jan-Feb, 2022	<p>That several institutes began to bar the entry of <i>hijab</i> wearing women. The students were stopped at the gates of and asked to remove their <i>hijab</i> if they wished to enter the premises.</p> <p>The students were also subjected to bullying, harassment and heckling by miscreants wearing saffron shawls and otherwise.</p> <p>True copy of article dated 21.02.2022 published by Article 14 titled "<i>Behind the Hijab: The Karnataka Girls Who will not be Intimidated, Segregated, Told What to Wear by Hindutva Groups</i>" has been annexed herewith and marked as <b>Annexure P-11 (Pg. 191 to 204 )</b>.</p>
15.03.2022	<p>That the Hon'ble High Court passed the impugned judgement <i>inter alia</i> holding as follows:</p> <ol style="list-style-type: none"> <li>1. Wearing of <i>hijab</i> by Muslim women does not form a part of essential religious practice in Islamic faith.</li> <li>2. Prescription of school uniform is only a reasonable restriction constitutionally permissible.</li> </ol>

	3. Government has power to issue Government Order dated 05.02.2022 and no case is made out for its invalidation.
28.03.2022	<p>That an exam invigilator was suspended for wearing <i>hijab</i> to the Karnataka SSLC Exams at the KTSV School in Bengaluru.</p> <p>True copy of article dated 28.03.2022 published by Maktoob Media titled "<i>Muslim invigilator suspended for wearing hijab in Karnataka SSLC exams</i>" has been annexed herewith and marked as <b>Annexure P-12 (Pg. <u>205</u> to _____ )</b>.</p>
30.03.2022	Hence the present Petition.



**IN THE 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 2022**

**BETWEEN:**

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

... PETITIONER

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

**AND:**

- 1 . STATE OF KARNATAKA,  
REPRESENTED BY THE PRINCIPAL SECRETARY,  
DEPARTMENT OF PRIMARY AND  
SECONDARY EDUCATION
- 2 . GOVERNMENT PU COLLEGE FOR GIRLS  
BEHIND SYNDICATE BANK  
NEAR HARSHA STORE  
UDUPI  
KARNATAKA-576101  
REPRESENTED BY ITS PRINCIPAL
- 3 . DISTRICT COMMISSIONER  
UDUPI DISTRICT  
MANIPAL  
AGUMBE - UDUPI HIGHWAY  
ESHWAR NAGAR  
MANIPAL, KARNATAKA-576104.
- 4 . THE DIRECTOR  
KARNATAKA PRE-UNIVERSITY BOARD  
DEPARTMENT OF PRE-UNIVERSITY EDUCATION  
KARNATAKA, 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  
UNAUTHIRIZED CHAIRMAN OF CDMC  
D NO 8-32 AT SHIVALLY VILLAGE PO  
SHIVALLY UDUPI 576102
- 16 . YASHPAL ANAND SURANA  
AGE ABOUT 50 YEARS  
S/O NOT KNOWN  
AUTHORIZED VICE CHAIRMAN OF CDMC  
R/AT AJJARAKADU UDUPI H O UDUPI 576101

... RESPONDENTS

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

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

**IN W.P. NO.2880 OF 2022**

**BETWEEN:**

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

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

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

... PETITIONERS

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

**AND:**

- 1 . THE STATE OF KARNATAKA  
 VIDHANA SOUDHA  
 DR AMBEDKAR ROAD  
 BANGALORE - 560001  
 REPRESENTED BY ITS PRINCIPAL SECRETARY
- 2 . THE UNDER SECRETARY TO GOVERNMENT  
 DEPARTMENT OF EDUCATION  
 VIKAS SOUDHA  
 BANGALORE-560001.
- 3 . THE DIRECTORATE  
 DEPARTMENT OF PRE UNIVERSITY EDUCATION  
 BANGALORE-560009.
- 4 . THE DEPUTY COMMISSIONER  
 UDUPI DISTRICT  
 SHIVALLI RAJATADRI  
 MANIPAL  
 UDUPI-576104.
- 5 . THE PRINCIPAL  
 GOVERNMENT PU COLLEGE  
 KUNDAPURA  
 UDUPI DISTRICT-576201.

... RESPONDENTS

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



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

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

**IN W.P. NO.3038 OF 2022**

**BETWEEN:**

- 1 . MISS SHAHEENA  
 D/O ABDUL RAHEEM  
 AGED ABOUT 19 YEARS  
 SANTOSH NAGAR  
 HEMMADI POST, KUNDAPUR TALUK  
 UDUPI DISTRICT-576230.
- 2 . MISS SHIFA MINAZ  
 D/O NAYAZ AHAMMAD  
 AGED ABOUT 18 YEARS  
 SANTOSH NAGAR  
 HEMMADI POST,  
 KUNDAPUR TALUK  
 UDUPI DISTRICT-576230.

... PETITIONERS

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

**AND:**

- 1 . THE STATE OF KARNATAKA  
 VIDHANA SOUDHA  
 DR AMBEDKAR ROAD  
 BANGALORE-560001  
 REPRESENTED BY ITS PRINCIPAL SECRETARY
- 2 . THE UNDER SECRETARY TO GOVERNMENT  
 DEPARTMENT OF EDUCATION  
 VIKAS SOUDHA

BANGALORE-560001.

- 3 . THE DIRECTORATE  
DEPARTMENT OF PRE UNIVERSITY EDUCATION  
BANGALORE-560009
- 4 . THE DEPUTY COMMISSIONER  
UDUPI DISTRICT  
SHIVALLI RAJATADRI MANIPAL  
UDUPI-576104.
- 5 . THE PRINCIPAL  
GOVERNMENT PU COLLEGE  
KUNDAPURA  
UDUPI DISTRICT-576201.

... RESPONDENTS

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

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

**IN W.P. NO.3424 OF 2022**

**BETWEEN:**

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

... PETITIONER

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

**AND:**

- 1 . THE UNION OF INDIA  
NEW DELHI  
REPRESENTED BY  
THE PRINCIPAL SECRETARY TO  
MINISTRY OF HOME AFFAIRS  
NORTH BLOCK NEW DELHI-110011  
PH NO.01123092989  
01123093031  
Email: ishso@nic.in
  
- 2 . THE UNION OF INDIA  
NEW DELHI  
REPRESENTED BY  
THE PRINCIPAL SECRETARY TO  
MINISTRY OF LAW AND JUSTICE  
4TH FLOOR A-WING SHASHI BAHAR  
NEW DELHI--110011  
PH NO.01123384205  
Email: secylaw-dla@nic.in
  
- 3 . THE STATE OF KARNATAKA  
BY ITS CHIEF SECRETARY  
VIDHANA SOUDHA  
BANGALURU-560001  
Email: cs@karnataka.gov.in

... RESPONDENTS

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

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

**IN W.P. NO.4309 OF 2022****BETWEEN:**

- 1 . MS ASLEENA HANIYA  
D/O LATE MR UBEDULLAH  
AGED ABOUT 18 YEARS  
R/AT NO.1560 13TH MAIN ROAD HAL 3RD STAGE  
KODIHALLI BANGALORE-560008  
STUDYING AT NEW HORIZON COLLEGE  
ADDRESS 3RD A CROSS 2ND A MAIN ROAD  
NGEF LAYOUT, KASTURI NAGAR  
BANGALORE-560043.
  
- 2 . MS ZUNAIRA AMBER T  
AGED ABOUT 16 YEARS  
MINOR REPRESENTED BY HER FATHER  
MR TAJ AHMED  
R/A NO.674 9TH A MAIN 1ST STAGE 1ST CROSS  
CMH ROAD OPPOSITE KFC SIGNAL  
INDIRANAGAR  
BANGALORE-560038  
  
STUDYING AT SRI CHAITANYA TECHNO SCHOOL  
ADDRESS-PLOT NO.84/1 GARDEN HOUSE 5TH MAIN  
SRR KALYAN MANTAPA  
OMBR LAYOUT, BANASWADI  
KASTURI NAGAR  
BENGALURU-560043.

... PETITIONERS

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

**AND:**

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

- 3 . THE DIRECTOR  
KARNATAKA PRE-UNIVERSITY BOARD  
DEPARTMENT OF PRE-UNIVERSITY EDUCATION  
KARNATAKA  
NO.18TH CROSS ROAD SAMPIGE ROAD  
MALESWARAM  
BENGALURU-560012.
- 4 . THE COMMISSIONER  
EDUCATION DEPARTMENT  
GOVT OF KARNATAKA  
N T ROAD  
BANGALORE-560001.
- 5 . DIRECTOR GENERAL OF POLICE  
STATE OF KARNATAKA  
STATE POLICE HEADQUARTERS NO.2  
NRUPATHUNGA ROAD  
BANGALORE-560001.
- 6 . THE PRINCIPAL  
REPRESENTED BY COLLEGE MANAGEMENT  
NEW HORIZON COLLEGE  
ADDRESS 3RD A CROSS 2ND A MAIN ROAD  
NGEF LAYOUT, KASTURI NAGAR  
BANGALORE-560043.
- 7 . THE PRINCIPAL  
REPRESENTED BY SCHOOL MANAGEMENT  
SRI CHAITANYA TECHNO SCHOOL  
ADDRESS PLOT NO.84/1 GARDEN HOUSE  
5TH MAIN SRR KALYAAN MANTAPA  
OMBR LAYOUT, BANASWADI KASTURI NAGAR  
BENGALURU-560043.
- 8 . THE INSPECTOR OF POLICE  
RAMAMURTHYNAGAR POLICE STATION  
KEMPE GOWDA UNDER PASS ROAD  
NGEF LAYOUT  
DOORAVANI NAGAR, BENGALURU  
KARNATAKA-560016.

... RESPONDENTS

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

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

**IN W.P. NO.4338 OF 2022**

**BETWEEN:**

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

... PETITIONER

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

**AND:**

- 1 . UNION OF INDIA  
THROUGH THE MINISTRY OF HOME AFFAIRS,  
NEW DELHI  
REPRESENTED BY ITS SECRETARY
- 2 . STATE OF KARNATAKA  
THROUGH THE HOME MINISTRY  
VIDHANA SOUDHA,  
BENGALURU-560001  
REPRESENTED BY CHIEF SECRETARY
- 3 . THE PRINCIPAL SECRETARY  
DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION,  
VIDHAN SOUDHA,  
BENGALURU-560001
- 4 . THE DIRECTOR  
CENTRAL BUREAU OF INVESTIGATION,  
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY  
BENGALURU,  
KARNATAKA  
REPRESENTED BY DIRECTOR

... RESPONDENTS

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

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE CBI/NIA AND/OR SUCH OTHER INVESTIGATION AGENCY AS THIS HONBLE COURT MAY DEEM FIT AND PROPER TO MAKE A THOROUGH INVESTIGATION WITH REGARD TO THE MASSIVE AGITATION TAKING PLACE ALL OVER THE COUNTRY AND SPIRALLING EFFECT AND IMPACT BEYOND THE GEOGRAPHICAL LIMITS OF INDIA IN THE AFTERMATH OF ISSUANCE OF 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

*College Development Committee or College Supervision Committee; and*

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

(iv) In Writ Petition No.3424/2022 (GM-RES-PIL), filed on 14.02.2022 (when hearing of other cases was half way through), petitioner – Dr.Vinod Kulkarni happens to be a consulting neuro – psychiatrist, advocate & social activist. The 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 MAJESTIC COLONY WELFARE ASSOCIATION*<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 ' <i>essential religious practice</i> ' 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 samabhāva* 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 Leathem C.J in

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

ADELAIDE CO. OF JEHOVAH'S WITNESSES INC. V.  
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.

(v) *In re PRAYAG DAS vs. CIVIL JUDGE*

*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

STATE OF PUNJAB VS. GURDEV SINGH<sup>86</sup>, after referring to

Professor Wade's Administrative Law:

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

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

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<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 *pardah* practice equally applies to wearing of *hijab* there is a lot of scope for the argument that insistence on wearing of *pardah*, 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**

## IN THE HON'BLE SUPREME COURT OF INDIA

## (CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO.\_\_\_\_\_ OF 2022

(Against the final Judgment/Order dated 15.03.2022 passed by the High Court of Karnataka at Bangalore in Writ Petition No. 2347 of 2022)

**(PRAYER FOR INTERIM RELIEF)****IN THE MATTER OF:****BETWEEN:****POSITION OF PARTIES**

Sl No.		<b>BEFORE THE HIGH COURT</b>	<b>IN THIS COURT</b>
1.	MUSLIM WOMEN'S STUDY CIRCLE, THROUGH ITS CONVENOR MS.SANIA MARIAM HAVING IT HEADQUARTERS AT F-66A, GARDEN BEACH ROAD, KOLKATA – 700024	NOT A PARTY	PETITIONER
	<b><u>AND:</u></b>		
1.	STATE OF KARNATAKA THROUGH PRINCIPAL SECRETARY, DEPARTMENT OF PRIMARY & SECONDARY EDUCATION 2 <sup>ND</sup> GATE, 6 <sup>TH</sup> FLOOR, MS BUILDING BENGALURU-560001	RESPONDENT NO.1	CONTESTING RESPONDENT NO.1
2.	GOVERNMENT PU COLLEGE THROUGH ITS PRINCIPAL BEHIND SYNDICATE BANK, NEAR HARSHA STORE UDUPI, KARNATAKA-576101	RESPONDENT NO.2	CONTESTING RESPONDENT NO.2

3.	DISTRICT COMMISSIONER UDUPI, MANIPAL AGUMBE- UDUPI HIGHWAY ESHWAR NAGAR MANIPAL, KARNATAKA-576104	RESPONDENT NO.3	CONTESTING RESPONDENT NO.3
4.	DIRECTOR, KARNATAKA PRE- UNIVERSITY BOARD, DEPARTMENT OF PRE- UNIVERSITY EDUCATION KARNATAKA, 18 <sup>TH</sup> CROSS ROAD, SAMPIGE ROAD, MALLESHWARAM BENGALURU-560012	RESPONDENT NO.4	CONTESTING RESPONDENT NO.4
5.	SMT. RESHAM D/O FARUK, THROUGH NEXT FRIEND R/O NO.9-138, PERAMPALI ROAD, SANTHEKATTE, SANTOSH NAGARA, MANIPAL ROAD KUNJIBETTU POST UDUPI, KARNATAKA-576105	PETITIONER NO.1	PERFORMA RESPONDENT NO.5
6.	SRI MUBARAK, S/O FARUK THROUGH NEXT FRIEND R/O NO.9-138, PERAMPALI ROAD, SANTHEKATTE, SANTOSH NAGARA, MANIPAL ROAD KUNJIBETTU POST UDUPI KARNATAKA-576105	PETITIONER NO.2	PERFORMA RESPONDENT NO.6

TO,

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

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE-NAMED

**MOST RESPECTFULLY SHEWETH:**

1. That the present Special Leave Petition before this Hon'ble Court is filed against judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022 and other connected petitions, inter alia holding as follows:

- a) Wearing of hijab by Muslim women does not form a part of essential religious practice in Islamic faith;
- b) Prescription of school uniform is only a reasonable restriction constitutionally permissible;
- c) Government has power to issue Government Order dated 05.02.2022 and no case is made out for its invalidation.

1A. That the Petitioner, Muslim Women's Study Circle, is an Indian Muslim Women's Collective consisting of a diverse group of Muslim Women including *hijab* wearing Muslim women, cutting across class, caste, ethnicity, age, and educational backgrounds who come

together in the virtual space to understand what it is to be Muslim and to be women in contemporary India.

2. **QUESTIONS OF LAW: -**

In view of the above background, the following substantial questions of law arise for consideration of this Hon'ble Court:

- a. WHETHER the impugned order dated 15.03.2022 is illegal, arbitrary and violative of Articles 14, 15, 19(1)(a), 21 and 25 of the Constitution of India?
- b. WHETHER the Hon'ble High Court failed to appreciate that the GO dated 05.02.2022 is grossly discriminatory and targets particular religious denominations?
- c. WHETHER the Hon'ble High Court failed to appreciate that the imposition of a blanket ban on wearing of *hijab* would amount to a disproportionate restriction and would be in violation of the principle of proportionality as well as the least invasive approach?

- d. WHETHER the impugned order is violative of Article 21 in so far as it takes away the agency of students who wish dress in a certain manner?
- e. WHETHER the impugned order is violative of Article 14 in as much as it results in the targeting of a specific community and declares the wearing of *hijab* as an act that violates the discipline and decorum of the institution?
- f. WHETHER the impugned order is in violation of the principles of interpretation of reasonable restrictions enunciated by this Hon'ble Court in *Shreya Singhal vs Union of India* [(2015) 5 SCC 1]?
- g. WHETHER the impugned order is in violation of the law laid down by this Hon'ble Court in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282)?

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

The Petitioner states that no other petition seeking leave to appeal has been filed by the Petitioner herein against the Impugned and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in W.P. No. 2347/2022.

### **4. DECLARATION INTERMS OF RULE 5:**

The Annexure P/1 to P/12 produced along with the Special Leave Petition is true copies of the pleading/documents which formed part of the records of the case in the of the case in the court below against whose order the leave to appeal is sought for in this petition.

### **5. GROUND:**

**HIGH COURT ERRED IN NOT LOOKING PAST THE  
SMOKESCREEN CREATED TO TARGET A PARTICULAR  
COMMUNITY:**

A. BECAUSE it is submitted that the manner and pattern of incidents that led to the Government Order dated 05.02.2022 and the consequent impugned order ought to be appreciated at the outset. The entire controversy began in December 2021 when a student was told by her college principal that she would not be allowed to attend classes if she wore a *hijab*. Thereafter by the end of the last week of December 2021, the principal of Government Girls PU College informed the Muslim students that the *hijab* was banned in class.

In January, 2022 eight girls began to protest peacefully outside their classroom against the ban on their entry inside the classroom with a *hijab*.

Thereafter the Hindu Janajagruti Vedi, an outfit of the RSS in the Udupi region, threatened that Hindu students would wear saffron shawls to college if the *hijab* was not banned in classrooms. The matter then snowballed across the State and turned into a communal row.

It was in this background the Respondent No.1, while stating that prohibition of headscarf or a garment covering the head is not in violation of Article 25 of the Constitution of India passed Government order dated 05.02.2022 (hereinafter referred to as the "GO") also in exercise of powers under Section 133(2) of the Karnataka Education Act, inter alia directing that in colleges that fell under the pre-university education department's jurisdiction, uniforms mandated by the College Development Committee (CDC), or the board of management, should be worn.



B. BECAUSE it is submitted that a bare perusal of the GO clearly establishes that the same was passed with the *malafide* intent of specifically targeting the Muslim girls and interfering with a harmless religious practice. It is further submitted that the passing of the GO gave legal sanction to religious intolerance exhibited by the college authorities. Instead of taking adequate action against such intolerant elements and hecklers who were openly harassing girls wearing the *hijab*, the Respondent No.1, by passing the GO, punished the victims.

C. BECAUSE the *malafide* approach of the Respondents is also evident from the fact that the GO only prohibits a headscarf or a garment covering the head. If the submission of the Respondents, as made before the Hon'ble High Court, that the GO was passed to promote secular values, is to be believed, then the said prohibition ought to have been imposed on all religious symbols worn in such institutes. The same would then have had to include prohibition of application of vermilion on the forehead (*tikka*), tying of the *kalaya* so on and so forth, all of which are equally telling of a student's religious identity.

The targeting of the religious practice of a particular religion in the name of "secularism" is completely arbitrary, illegal and discriminatory. The Hon'ble High Court, it is submitted, ought to have taken note of and deprecated the same.

**ARBITRARY AND ILLEGAL INTERFERENCE WITH THE  
AGENCY OF WOMEN IN THE GUISE OF REFORM:**

D. BECAUSE it is submitted that forcing a girl to choose education over comfort and faith amounts to imposing an extremely unreasonable condition that violates not only her Right to Education but also is an infringement of her Right to Personal Liberty.

It's crucial to remember that what a girl chooses to wear is a very personal choice that cannot be interfered with in the guise of bringing about "reform". A "reform" that forces a girl to dress in a particular manner is nothing but a tool of oppression. It also shows that according to the self-proclaimed reformers, women lack the intellect that is required to decide what they should and shouldn't wear. This in turn points to the perception of women as inferior beings who need guidance even for basic things such as choice of clothes.

In a statement submitted by Amnesty International to the 55<sup>th</sup> Session of the United Nations Commission on the Status of Women it was stated that

*"Under international human rights law, the exercise of the right to freedom of expression and to manifest one's religion or belief may only be subject to restrictions which meet a stringent three-part test: they must be prescribed by law; address a specific legitimate purpose permitted by international law; and be demonstrably necessary and proportionate for that purpose. The permissible legitimate purposes - ensuring respect for the rights of others or protecting certain public interests (national security or public safety, or public order, health or morals), must be*

*narrowly interpreted and must not be used to impose restrictions on dress which some – even a majority – find objectionable or offensive. Moreover, any restrictions must not be discriminatory or put in jeopardy the right itself or undermine other human rights.”*

(Emphasis Supplied)

It may be that a Muslim girl chooses to wear a *hijab* on account of her religious belief but even if the said choice is made simply to avoid lecherous looks from the opposite gender, she cannot be asked to remove the same if doing so causes her distress. Doing so would be an affront to her dignity and modesty.

**IMPUGNED ORDER VIOLATIVE OF ARTICLES 14 AND 21:**

- E. BECAUSE it is submitted that the impugned order is violative of Article 14 of the Constitution of India in as much as it results in the targeting of a specific community and declares the wearing of *hijab* as an act that violates the discipline and decorum of the institution. The impugned order is perverse in so far as it discriminates not just on the basis of religion but also on the basis of gender.
  
- F. BECAUSE the Army, Navy and Air Force – all allow Sikhs to wear turbans with their uniforms. School/college uniforms cannot be equated with the uniforms worn by officers of the Defence forces in terms of the high standards of homogeneity and discipline that the latter have to meet. When the exemption is allowed by the Forces then it is simply incomprehensible that the same is being banned in schools.

G. BECAUSE the impugned order is grossly perverse as it treats religious symbols and apparel in an unequal manner. While the Hon'ble High Court deprecates the wearing of *hijab*, a similar criticism is not bestowed by it upon other religious attire and symbols.

H. BECAUSE the Hon'ble High Court grossly erred in equating wearing of *bhagwa* (saffron) shawls with the wearing of *hijab*. It is an undisputed fact that saffron shawls are not worn by Hindus in the manner in which *hijab* is worn by Muslim women. In fact, from the chronology of events it can be seen that saffron shawls were worn by several students as a way of ensuring that the *hijab* was banned and not as a religious practice.

I. BECAUSE the impugned order is violative of the Article 21 of the Constitution of India as it interferes with the agency of women who wish to wear the *hijab* and curtails their right to a dignified existence.

**IMPUGNED ORDER VIOLATIVE OF ARTICLES 15, 19(1)(A) AND 25:**

J. BECAUSE the Hon'ble High Court gravely erred in suspending the fundamental rights of Muslim students under Articles 14, 15, 19(1)(a), 21 and 25, in an extremely casual and arbitrary manner under the garb of reasonable restrictions. It is a settled position of law that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted so as to abridge or restrict only what is absolutely necessary. Reliance in this regard

is placed on the judgment of this Hon'ble Court in *Shreya Singhal vs Union of India* (2015).

A religious practice that is of an essential nature such as wearing of a turban by Sikhs and wearing of *hijab* by Muslim women ought to not have been brought under the pale of reasonable restrictions.

K. BECAUSE the interpretation and application of constitutional and human rights has never been limited by this Hon'ble Court only to the black letter of law. This Hon'ble Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part III on the principle that certain unarticulated rights are implicit in the enumerated guarantees. Reliance in this regard is placed on the judgment of this Hon'ble Court in *M.Nagraj v. Union of India* [(2006) 8 SCC 212, Para 30]; *Reliance Petrochemicals Ltd. v. Indian Express Newspapers, Bombay (P.) Ltd.* [(1988)4 SCC 592]; *Dinesh Trivedi v. Union of India* [(1997) 4 SCC 306]; *Union of India v. Assn. of Democratic Reforms* [(2002) 5 SCC 294]; and *People's Union of Civil Liberties v. Union of India* [(2003) 4 SCC 399].

L. BECAUSE the Hon'ble High Court failed to examine the GO in accordance with the guidelines laid down by this Hon'ble Court in *Ramlila Maidan Incident, In Re* [(2012) 5 SCC 1] for examining the constitutionality and legality of a restriction. Thus, the Hon'ble High Court erred in not appreciating that the ban on *hijab* imposed under the garb of a reasonable restriction failed to pass the test of "*proximate and direct nexus*" with the object sought to

be achieved and was not founded on the *principle of least invasiveness*. On the contrary, the ban amounts to an invasion into a very private matter not only on the ground of religious practice but also on the ground of interference with the agency of individuals choosing to dress in a particular manner. The ban on *hijab*, it is submitted, is disproportionate to the alleged objective of uniformity and secularism sought to be achieved.

### **VIOLATIVE OF JUDGMENT OF THIS HON'BLE COURT:**

M. BECAUSE the impugned judgment is in clear violation of the law laid down by this Hon'ble Court in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (AIR 1954 SC 282) wherein this Hon'ble Court held as follows:

"14. We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, **a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper** and to propagate or disseminate his ideas for the education of others.

17. .... What then are matters of religion ? The word "religion " has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case, it has been said " that the term religion has reference to one's views of his relation to his Creator and to the obligations 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." 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 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 or belief. **A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.***

(Emphasis Supplied)

It is submitted that this Hon'ble Court held that religion may prescribe forms and observances that may extend to matters of food and dress. It is submitted that the liberal interpretation given by this Hon'ble Court to the concept of "religion" has

completely been lost sight of by the Hon'ble High Court and the same has resulted in the infringement of the Fundamental Rights of the Muslim students who wish to wear a *hijab*.

In this regard it is further submitted that it is a settled position of law that Fundamental Rights cannot be suspended at the whim and fancy of the State and can only be subjected to *reasonable* restrictions. Thus, enjoyment of Fundamental Rights is the rule and their suspension the exception.

It is further submitted that this Hon'ble Court in *Shirur Mutt* further held that Article 25 of the Constitution of India secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper. This right to exhibit one's religious beliefs through outwards acts, such as wearing a *hijab* or a turban, enjoys the protection of being a Fundamental Right.

The only restrictions, as a bare perusal of Article 25 would indicate, on the freedom guaranteed under Article 25 are that of public order, health and morality. However, it is submitted that the Respondents have miserably failed to show any of the said three conditions of public order, health and morality were being affected by the wearing of *hijab*.

It is submitted that the reasonable restrictions on Fundamental Rights have to be given a restrictive interpretation.



N. BECAUSE without prejudice, it is submitted that if the Respondent's case that wearing *hijab* does in fact act towards the detriment of public order in so far as it displays the religious identity of the persons wearing it, were to be accepted then the logical consequence thereof would be to ban all religious symbols from educational institutions. This, however, it is submitted would again be arbitrary and in gross violation of Article 25 of the Constitution that allows a person to exhibit his or her religious beliefs.

**CONSTITUTIONAL COURTS AND WELFARE STATE DUTY  
BOUND TO PROTECT AND PRESERVE THE PLURALITY  
AND DIVERSITY OF THE NATION:**

O. BECAUSE the Hon'ble High Court has gravely erred in adopting the approach of negative secularism which was frowned upon not only by the makers of the Constitution but also by this Hon'ble Court.

The concept of secularism contemplated under our Constitution is that of positive secularism, which in simple words entails that all religions would be treated with equality and would be embraced by the State.

However, the Hon'ble High Court while giving the reasoning that the ban on *hijab* is in the interest of uniformity, discipline and decorum, reaches an unfortunate extreme of negative secularism that seeks to erase religious identity.

P. BECAUSE it is a settled position of law that each person, whatever be his religion, must get an assurance from the State

that he has the protection of law freely to profess, practise and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perception of one's own presumptions of good social order. Reliance in this regard is placed on the judgment of this Hon'ble Court in *State of Karnataka v. Dr.Praveen Bhai Thogadia* [(2004) 4 SCC 684] wherein this Hon'ble Court held as follows:

"6. ...*Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic state. Persons belonging to different religions live throughout the length and breadth of the country. **Each person whatever be his religion must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience.** Otherwise, the rule of law will become replaced by individual perceptions of ones own presumptuous good social order. Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foot hold undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.*

*7. ...Communal harmony should not be made to suffer and be made dependent upon will of an individual or a group of individuals, whatever be their religion be it of minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions."*

The State is prohibited from identifying itself with or favouring any particular religion, because the State is enjoined to accord equal treatment to all religious sects or denominations. Reliance in this regard is placed on the judgment of this Hon'ble Court in *SR.Bommai v. Union of India* [(1994) 1 SCC 1]

**BURDEN OF PROOF TO SHOW THAT THE RESTRICTION BEING IMPOSED IS IN PUBLIC INTEREST NOT DISCHARGED BY THE RESPONDENTS:**

Q. BECAUSE that this Hon'ble Court has time and again held that as soon as the petitioner shows that the impugned law or order constitutes a 'restriction' upon his fundamental right, by directly and proximately interfering with its exercise, the burden of proving that the restriction is 'reasonable' and in public interest lies upon the State. Reliance in this regard is placed on the judgment of this Hon'ble Court in *Sukhandan Saran Dinesh Kumar (M/s.) v. Union of India* [(1982) 2 SCC 150]; *Vrajlal Manilal & Co. v. State of MP* [(1969) 2 SCC 248]; *Laxmi Khandsari v. State of UP*. [(1981) 2 SCC 600]; and *Deena v. Union of India* [(1983) 4 SCC 645].

In the present case however, the Respondent State has failed to show how the imposition of restriction on wearing of *hijab* is in

public interest or the wearing of *hijab* was interfering with public order, health and morality.

It is submitted that the mere inclusion of certain limitations that the exercise of freedom to religion can be subjected to under Article 25 does not exempt the State from the burden of establishing a *direct nexus* between the objective sought to be achieved and the restriction imposed.

It is submitted that before an act is held to be prejudicial to *public order*, it must be shown that it is likely to affect the public at large. As a corollary, it follows that an act that concerns only an individual and does not amount to an activity prejudicial to public peace and tranquillity is not prejudicial to public order.

The mere act of wearing a garment by a certain section of students could not possibly interfere with *public order, morality or health*.

- R. BECAUSE it has been held by this Hon'ble Court in *National Legal Services Authority v. Union of India* [(2014) 5 SCC 438] that one's personal appearance or choice of dressing is a protected zone within the freedom of expression.
- S. BECAUSE this Hon'ble Court has held in *K.S.Puttuswamy v. Union of India* [(2017)10 SCC 1] that what a person wears and how one dresses is a matter of individual choice protected under *privacy jurisprudence*.
- T. BECAUSE the Hon'ble High Court has put the right to education of Muslim girls on an absolute backburner. In this regard it is

submitted that rate of education of girls in our country is already dismally low on account of various societal and financial conditions. This being the position, the Hon'ble High Court ought to safeguarded the education of the affected students above all else. To compromise on education in the name of promoting uniformity is absolutely arbitrary and against the principles of equity and fair play.

**GROUND FOR INTERIM RELIEF:**

- A. BECAUSE as a result of the impugned order Muslim students who wear *hijab* are not being allowed to attend schools and pre-university colleges even to take exams. As such they stand to lose an academic year that will result in jeopardizing their studies and careers.
- B. BECAUSE the right to education has been given a complete go-bye by the Hon'ble High Court. It is submitted that an immense amount of hard-work is put in by students and they cannot be denied an attempt to take exams and attend classes on whims of the State. Particularly, girl students seeking an education ought to not have been denied the same in view of the already dismally poor rate of girl education that exists in our country.
- C. BECAUSE the impugned order is being used to target a *hijab* wearing Muslim women despite the fact that the same is not applicable to them.
- D. BECAUSE the impugned order is arbitrary and discriminatory in so far as it results in violation of Articles 14, 15, 19, 21 and 25 of the

Constitution of India. It is submitted that the impugned order results in the obliteration of the values of positive secularism propagated by our Constitution and allows religious symbols of certain religions to be worn while prohibiting others.

**7. PRAYER:**

It is therefore, most respectfully prayed that your Lordships may graciously be pleased to:-

- (a) Grant Special Leave to appeal under Article 136 of the Constitution of India against impugned judgment and final order dated 15.03.2022 passed by the Hon'ble the High Court of Karnataka in WP.No.2347/2022; and
- (b) Pass any other order or further orders as it may deem fit and proper in the circumstances of the case.

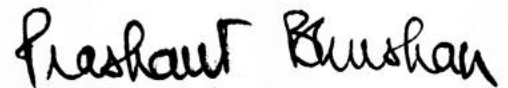
**8. PRAYER FOR INTERIM RELIEF**

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

- (a) Pass *ad interim ex-parte* stay of the operation of the impugned judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022; or
- (b) Pass such other and further orders that Hon'ble Court may deem fit in the facts and circumstances of the instant case.

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

**THROUGH:**

A handwritten signature in black ink, reading "Prashant Bhushan". The signature is written in a cursive, flowing style.

**(PRASHANT BHUSHAN)**

COUNSEL FOR THE PETITIONER

DEAWN BY: RASHMI SINGH, ADV.  
DRAWN & FILED ON: 30.03.2022  
PLACE: NEW DELHI

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

**IN THE MATTER OF:**

MUSLIM WOMEN'S STUDY CIRCLE

... PETITIONER

VERSUS

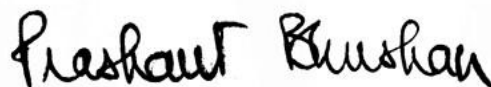
THE STATE OF KARNATAKA & ORS

...RESPONDENTS

**CERTIFICATE**

Certified that the Special Leave Petition is confined mainly to the pleadings before the Hon'ble High Court. A few additional facts, documents and grounds have been taken in the aforementioned Special Leave Petition. It is certified that the copies of the documents/Annexures annexed to the Special Leave Petition are necessary to answer the questions of law, raised in the Petition and/or to make out grounds urged in the Special Leave Petition for the consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the client/petitioners whose affidavit is filed in support of the Special Leave Petition.

THROUGH:



**(PRASHANT BHUSHAN)**  
COUNSEL FOR THE PETITIONER

NEW DELHI  
DATED: 30.03.2022





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

**IN THE MATTER OF:**

MUSLIM WOMEN STUDY CIRCLE

... PETITIONER

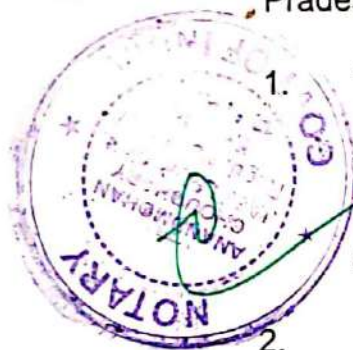
VERSUS

THE STATE OF KARNATAKA & ORS

...RESPONDENTS

**AFFIDAVIT**

I, Sania Mariam, D/o Manzoor Abid Ali, Aged 28 years, Convener of, Muslim Women's Study Circle, having its headquarters at F-66A, Garden Reach Road Kolkata 700024, presently at Jabalpur, Madhya Pradesh do hereby solemnly affirm and states as follows:-



1. That I am the Convenor of the Petitioner in the above Special Leave Petition and I am fully conversant with the facts and circumstances of the case and am authorized to sign the current affidavit on behalf of the Petitioner.
2. I have read and understood the contents of the Special Leave Petition at pages        to        and Synopsis and List of Dates at pages B to       , and I say that the contents thereof are true and correct to the best of my knowledge and the legal submissions are based on the advice received from my counsel which I believe to be true.
3. That I have read and understood the contents of Interlocutory Applications and I say that the contents thereof are true and correct to the best of my knowledge and belief.
4. That the Annexures filed with the Special Leave Petition are true and correct copies of the originals.
5. That I have not filed any other Special Leave Petition in this Hon'ble Court against the impugned judgment and order.

30 MAR 2022

Anand Mohan Choudhary  
Notary  
Jabalpur District  
M.P. India

Sania  
ATTESTED

30 MAR 2022

DEPONENT ~~ATTESTED~~

I, the above named deponent do hereby verify that the contents made in para Nos.1 to 5 of the above affidavit are true and correct to the best of my knowledge. Nothing material has been concealed there from.

Verified by me on this 30th day of March 2022.

DEPONENT

~~ATTESTED~~

Anand Mohan Choudhary  
Notary  
Jabalpur District  
M.P. India

HOME (/) / UDUPI GOVT PU COLLEGE ACCUSED OF COMMUNAL DISCRIMINATION; MUSLIM GIRLS BARRED FROM CLASSES FOR WEARING HEADSCARF

## Udupi govt PU college accused of communal discrimination; Muslim girls barred from classes for wearing headscarf



coastaldigest.com news network

December 31, 2021



Udupi, Dec 31: In what can be termed as an apparent case of communal discrimination, as many as six Muslim girls have been barred from attending classes by the Government Pre-university College for Girls in Udupi for wearing headscarf.

The girls, most of whom are students of second year PUC, have reportedly been helplessly standing out of the classes for last few days with the hope of getting justice.

“Some Muslim students here have been facing communal discrimination by some of the lecturers. But, our demand is only one thing: allow us to enter class with headscarf as there are male lecturers,” said one of the girls.

“We are coming to college every day. But, not even getting attendance,” she added.

“Communal discrimination is not a new development in this college. Our seniors also used to tell us about the harassment faced by them just because covering their heads,” said another girl.

Rudregowda, principal of the college, however downplayed the issue and said that those girls started wearing headscarf all of a sudden. “There are around 60 Muslim girls in this college. A few among them started wearing hijab. We have also spoke to the parents and they have understood the issue,” he said.

However, the students claimed that even though their parents had come to the college, they were ignored by the college. “Our parents had come to meet the principal. They waited for hours, but none of the lecturers spoke to them” said one of the girls.



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# NATO chief claims Russia may use chemical weapons (/news-top-story/nato-chief-claims-russia-may-use-chemical-weapons)



March 13,2022



NATO Secretary-General Jens Stoltenberg said on Sunday that Russia might use chemical weapons following its invasion of Ukraine and that such a move would be a war crime, according to an interview in German newspaper Welt am Sonntag.

"In recent days, we have heard absurd claims about chemical and biological weapons laboratories," Stoltenberg was quoted by Welt am Sonntag as saying, adding that the Kremlin was inventing false pretexts to justify what could not be justified.

"Now that these false claims have been made, we must remain vigilant because it is possible that Russia itself could plan chemical weapons operations under this fabrication of lies. That would be a war crime," Stoltenberg was quoted as saying.

He added that although the Ukrainian people were resisting the Russian invasion with courage, the coming days are likely to bring even greater hardship.

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Tuesday, March 29, 2022

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# Karnataka: Hijab-clad students denied entry to classroom in Udupi PU college

The students also complained that they are not being allowed to talk in Urdu, Arabic and Beary languages.

By: **PTI** | Mangaluru |

January 1, 2022 8:57:14 pm



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The principal also said a parent-teacher meeting will be held to discuss the issue.

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Six Muslim girl students of the government women's PU College in Udupi have alleged that the principal is not allowing them to wear 'hijab' (headscarf) in the classrooms.

The students also complained that they are not being allowed to talk in Urdu, Arabic and Beary languages. The girls stood outside the classroom for three days in protest. The students claimed though their parents approached the principal Rudra Gowda for talks, he refused to hold discussion on the issue.

The girls said they have not been given attendance for the last three days and feared they might face attendance shortage.

College principal Rudra Gowda said the students can wear hijabs in the school premises, but not inside the classrooms. The rule is being followed to ensure uniformity in classrooms, he said.

The principal also said a parent-teacher meeting will be held to discuss the issue.

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Meanwhile, SDPI Udupi unit president Nazeer Ahmed said they will stage a protest if the six students are not allowed attend classes with their hijabs.

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## Hijab vs Saffron Scarf Row: College in Ktaka's Chikmagalur to hold parents' meeting

A group of students in the college have now started wearing saffron scarves and shawls to the college, in retaliation to some students wearing hijab.

POSTED ON 4 JAN 2022 7:09 PM

UPDATED ON 4 JAN 2022 7:40 PM





By  
**Web Desk**

Chikmagalur (Karnataka): After some students staged a protest in the college premises against another group of students for wearing hijab along with the uniform in Balagadi First Grade College in Koppa taluk of Chikmagalur district in Karnataka, the college management on Tuesday decided to hold a meeting with the parents.

Triggering a row, a group of students in the college have now started wearing saffron scarves and shawls to the college, in retaliation to some students wearing hijab. The college had made national headlines three years ago for the same reason.

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they are allowed to wear hijabs, they must also be allowed to sport saffron scarves and shawls, they said.

[Reports say that the](#) college administration has also banned Muslim girl students from wearing hijab in the classroom. However, she can wear the hijab throughout the college campus except in the classroom. The reason behind this decision is being told that the pressure of the students of other groups, who came to the campus wearing saffron scarfs and shawls, demanding the prescribed dress code.

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The protesting students have been assured that the college management would conduct a meeting of parents on January 10 in connection with the issue. No outside forces, leaders or any organisation representatives will be allowed in the meeting.

The students have also been told that a holiday will be declared on January 10 for the meeting and if the parents do not agree to the uniform norms, the students could come to college clad in dresses of their choice.

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Three years ago, when the same issue turned into a controversy, a parents' meeting was held, which a decision was taken hijabs, saffron shawls and scarfs should not be worn to the college.

But since last two months, some girl students have been coming to the college wearing hijab says an IANS report.

The students also raised slogans against the college authorities for not allowing them to wear saffron shawls and scarves.

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Meanwhile, the Principal of the college Ananth Murthy reacted to the [online portal Indian Nation](#) that wearing a hijab will not be considered a violation of the college dress code.

"The issue was discussed during the parents' meeting and we had also advised the students," the portal quoted Principal as saying. The principal also said that the issue would be resolved soon. The police have not registered a case in the matter.

According to the report, police say that the responsibility of solving the case rests with the college.

Chikmagalur district is a stronghold of the BJP. The party's national general secretary and BJP MLA C.T. Ravi hails from this district.

TAGS: [Hijab](#) [Saffron Scarf](#) [Karnataka College](#)

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*Preshant Bhusan*

(TRUE COPY)

## Mangaluru: Now, ‘saffron shawl vs Hijab’ row at Aikala Pompei College

• 📅 Thu, Jan 06 2022 11:39:16 AM

*Daijiworld Media Network – Mangaluru (MS)*

**Mangaluru, Jan 6:** Pompei College at Aikala witnessed Hijab and saffron shawl issue on Wednesday January 5. Hindu students wore saffron shawls opposing wearing of Hijab by Muslim girl students.

The administration of the college came to know of the issue and held a meeting in this connection and the institution was closed as a precaution in the afternoon.

The Hindu students said that they will not remove saffron shawls until Muslim girl students remove the Hijab.



Pompei College, Aikala (file photo)

It may be recalled, similar issues were witnessed at colleges in Udupi and Chikkamagaluru earlier.

## Comments on this article

• Pradeep

📅 Sat, Jan 08 2022

*Prashant Kushan*  
(TRUE COPY)





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ANNEXURE: P5

REPORT

# 'Requests fell on deaf ears': Hijab stand-off continues despite classroom ban at Karnataka college

Students, parents say the admission form, listing out 'neat, full uniform', does not specify any religious symbols.

By Laasya Shekhar 21 Jan, 2022



*The students say the headscarf is part of their right to freedom of religion.*



"The assistant commissioner objected to wearing hijab in educational institutions. We cried, requesting him to let us follow our constitutional right. But our requests fell on deaf ears," said Muskan Zainab, clad in a white and blue uniform and black headscarf.

The 16-year-old is among eight students banned from attending classes since



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students began wearing it in December after being repeatedly denied permission. Students, their parents and alumni have denied that such a dress code exists, and accused the faculty and management of communal attitudes towards the headscarf which they say is part of the right to freedom of religion.

On Wednesday, Muskan hoped that a meeting presided over by the assistant commissioner—including parents, college management and officials of the Karnataka State Minorities Commission—would put an end to the ongoing row. It came after students approached the district DCP and complained to the Department of Pre-University Education and the minorities commission after they were barred from classes.

But the meeting failed to reach a consensus.

According to official sources privy to the details of the meeting, the assistant commissioner asked the students to listen to their teachers and attend classes till the education department takes a decision.

Repeated calls by *NewsLaundry* to assistant commissioner K Raju remained unanswered.

The controversy had made headlines as pictures of the girls in headscarves, forced to sit outside classrooms, were widely circulated on social media last week. After the visuals went viral, Muskan claimed, a non-teaching staffer allegedly forced her and two other students to write a letter of apology, stating that they will not wear the hijab and their allegations against teachers were false.

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*A picture of the students outside the classroom was widely circulated on social media.*

### Is there a dress code?

“Our lecturers said that it (hijab) defies college policy. But when we checked the policy a month ago, we were shocked to see no such mention in the signed agreement. So, we decided to wear hijab from December 28 after repeated appeals to the management turned futile,” said Muskan, who has only taken two days of leave in the academic year.

In the terms and conditions listed on admission forms, the college management mentions that students should wear a “neat, full uniform”. It doesn’t specify religious symbols such as the hijab or the cross.

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ಕಾಲೇಜು

ಹಾಕಿಯರ ಪದವಿ ಪೂರ್ವ ಕಾಲೇಜು, ಉಡುಪಿ ವಿದ್ಯಾಸಂಸ್ಥೆಯಲ್ಲಿರುವ ನಿಯಮಾವಳಿಗಳಾದ:

1. ಕಾಲೇಜು ಅವಧಿಯಲ್ಲಿ ಕಾಲೇಜು ಆವರಣದಿಂದ ಹೊರಗೆ ಹೋಗುವಂತಿಲ್ಲ.
2. ಪೂರ್ವಾನುಮತಿಗಳಿಲ್ಲದೆ ಗೈರು ಹಾಜರಾಗುವಂತಿಲ್ಲ.
3. ಅನಿವಾರ್ಯ ಸಂದರ್ಭದ ಗೈರು ಹಾಜರಾತಿಗೆ ದೂರವಾಣಿ ಮೂಲಕ ಪ್ರಾಂಶುಪಾಲರಿಗೆ ತಿಳಿಸುವಂತಿಲ್ಲ.
4. ಗೈರು ಹಾಜರಾದ ಮರುದಿನ ಗೈರು ಹಾಜರಿ ದಾಖಲೆಯಲ್ಲಿ ತರಗತಿ ಉಪನ್ಯಾಸಕರಿಂದ ಸಹಿ ಮಾಡಿಸಿಕೊಳ್ಳಬೇಕು.
5. ಮೂರು ಮತ್ತು ಅದಕ್ಕಿಂತ ಹೆಚ್ಚು ದಿನ ಗೈರು ಹಾಜರಾದಲ್ಲಿ ಗೈರು ಹಾಜರಿ ದಾಖಲೆಯಲ್ಲಿ ಪ್ರಾಂಶುಪಾಲರಿಂದ ಸಹಿ ಮಾಡಿಸಿಕೊಳ್ಳಬೇಕು.
6. ವಿಶೇಷ ಸಂದರ್ಭದಲ್ಲಿ ಕಾಲೇಜಿನಿಂದ ತಡವಾಗಿ ಮನೆಗೆ ತೆರಳುವಾಗ ಹೆತ್ತವರು/ರಕ್ಷಕರು ಕಾಣಿಸಿಕೊಳ್ಳಬೇಕು.
7. ಕಾಲೇಜಿಗೆ ಮೊಬೈಲ್ ಹಾಗೂ ಯಾವುದೇ ಇಲೆಕ್ಟ್ರಾನಿಕ್ ಗೆಜೆಟ್ಸ್ ತರುವಂತಿಲ್ಲ ಎಂಬ ನಿಷೇಧ.
8. ಕಾಲೇಜು ಅಳವಡಿಸಿಕೊಂಡ ಶಿಸ್ತಿಗೆ ಭಂಗ ತರಬಾರದು.
9. ವಾರದ ಎಲ್ಲಾ ದಿನಗಳಲ್ಲಿ ಸಮವಸ್ತ್ರ ಮತ್ತು ಗುರುತಿನ ಚೀಟಿ ಧರಿಸಿ ಬರುವುದು ಕಡ್ಡಾಯ.
10. ಹೆತ್ತವರ ಸಭೆಗೆ ಹೆತ್ತವರು ಹಾಜರಾಗುವುದು ಕಡ್ಡಾಯ.

ಈ ಮೇಲಿನ ಎಲ್ಲಾ ಅಂಶಗಳ ಬಗ್ಗೆ ನನಗೆ/ನನ್ನ ಹೆತ್ತವರಿಗೆ ಸಂಪೂರ್ಣ ಅರಿವಿರುತ್ತದೆ ಮತ್ತು ಯಾವುದೇ ಶಿಸ್ತು ಭಂಗ/ಮೇಲಿನ ನಿಯಮಗಳ ಉಲ್ಲಂಘನೆಯಾದಲ್ಲಿ ಕಾಲೇಜಿನಿಂದ ವರ್ಗವಣಿ ಮತ್ತು ವೀರಲ್ಯಾಂಟ್ ಮಾಡುವ ಬಗ್ಗೆ ನನಗೆ ಸ್ಪಷ್ಟ ತಿಳುವಳಿಕೆ ಇರುತ್ತದೆ.

ಹೆತ್ತವರ ಸಹಿ:

ಮೂರ್ತಿ ಬಿಳಾಸ:

ವಿದ್ಯಾರ್ಥಿಯ ಸಹಿ:

ಹೆಸರು:

ತರಗತಿ:

ವಿದ್ಯಾರ್ಥಿ ನಂ:

ಗ್ರಾ:

ದಿವಾಸ:

ಪರಿಶೀಲಿಸಲಾಗಿದೆ.

ಸ್ಥಾ:

ದಿವಾಸ:

ಪ್ರಾಂಶುಪಾಲರು

The terms and conditions on the admission form in Kannada do not specify any religious symbols.



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for religious colleges,” he said, adding that there are 100 Muslims among 1,000 students in the college but “only eight of them are staging a protest”.

There are several photographs from the last two years of girls clad in the hijab along with the uniform in the classrooms. The college principal, however, said that these students removed the headscarves in class and only wore them on campus.

“Uniform dress code has always been the practice in the college ever since its inception in 1985. How is it fair to let Muslim students wear a hijab and not allow Hindu students wear a saffron shawl,” asked Udupi BJP MLA Raghupathi Bhat, who is also the chairperson of the college development committee. Students were criticised for following “religion in a college” during a meeting chaired by Bhat in the first week of January.

However, Muskan’s father Abdul Shukur denied the existence of such a “uniform dress code”. Several alumni agreed to the same. “We have seen the alumni of the college wear hijab; why is the management imposing such rules now,” Abdul Shukur asked.

Almas A H, a second-year science student and one of the eight girls, said, “The management forbids us to wear hijab by stating that it is against the college rules. But we have seen our seniors wear hijab too.”

Yashpal Suvarna, vice president of the college committee and national general secretary of the BJP OBC Morcha, said the protesting students were affiliated to the PFI’s students’ wing Campus Front of India. He said if the hijab issue was not resolved then Hindu students would be provoked to wear saffron shawls.

The issue gained momentum as a section of Hindu students turned up in saffron shawls at Government Degree College in Balagadi in Koppa district last week to protest against the decision to wear hijab by Muslim students in the college.



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Campus Front of India.

Similar incidents have been reported in Karnataka over the last few years. In 2017, students affiliated to the ABVP at the government first grade college in Bhatkal threw saffron shawls at women in burkas and headscarves.

In 2016, a college in Dakshina Kannada district banned students from wearing headscarves. In January last year, several students wore saffron shawls at a college in Aikala to object to the wearing of hijab by few Muslim students. In February 2017, students from Sahyadri Science College, Mangalore, wore saffron shawls to protest against hijab.

Masood Manna, state committee member of Campus Front of India, claimed there was a growing “RSS influence” on the campus. “The principal of Udupi college is not concerned about the constitutional values because there are greater forces of RSS working behind him.” He alleged that Muslim students were forced to become members of the Akhil Bharatiya Vidyarthi Parishad in October last year.

Speaking on the condition of anonymity, a student claimed, “It was made mandatory for all the students in commerce and arts departments to be part of the ABVP...the class leaders in commerce and arts departments, affiliated with ABVP took the matter to the principal, whereas the leaders in science department have allowed us not to be part of the ABVP for now.”

A few students alleged that the principal asked class leaders to circulate ABVP membership forms among students.

The principal, however, denied these allegations. “Ninety-nine percent of their allegations are false.”

ABVP’s co-organising secretary in Karnataka, K Basavesh, said the organisation never compels anyone to enrol. “Wearing clothes that reveal religious importance in

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*The students continue to wear the hijab despite being barred from classes.*

## Harassment and complaints

In a [May 2017](#) ruling by the Kerala High Court, it was observed that the right to wear a hijab would be covered by Article 25—it had pronounced similar verdicts in 2015 and 2016.

However, that does not seem to be the case at the college in Udupi where a section of alumni point to “continuous taunts” by fellow students and lecturers over the hijab.

Atiya Fathima, who graduated from the college last year, alleged that her seniors demanded that she remove the headscarf, her classmates refused to share notes with her, and the lecturers were verbally provocative. “We were the victims of continuous



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escape the harassment. “She mocked and laughed as the girl cried.”

### ‘Second skin’

While countries such as Belgium and France brought legislation banning citizens from wearing face veils and headscarves in public places, Article 25 (right to freedom of religion) of the Constitution allows Muslim women to practise their faith.

Without going into the merits of a petition that argued for the hijab for candidates appearing for the All-India pre-medical test exam, the Supreme Court, in an oral observation in 2015, had said, “Faith won’t disappear if you appear for the exam without a scarf.”

However, experts believe the verdicts by the Kerala High Court are more likely to be upheld in other courts of law in the absence of a judgment from the Supreme Court in such a matter.

But why do these students at the college in Udupi still wear the headscarf despite such alleged harassment? “Because it is like a second skin to me and I love wearing it. I feel that I am disobeying Allah if I don’t wear a hijab,” said Atiya, who has been wearing a headscarf since class 5.

For Muskan, being in a public space without the headscarf feels “greatly discomforting”. “The lecturers ask us to wear a full uniform. Isn’t the hijab just an addition to the uniform,” asked Muskan, who continues to attend college in the hope that the management will let her sit in class with the headscarf.

Meanwhile, the college has declared holidays for a week amid a rise in Covid cases. The principal said that six infections have been reported on campus and classes will be held online for a week.

*Prashant Bhusan*  
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KARNATAKA

# NSUI set to file writ in support of students who want to wear hijab

**Special Correspondent**

MANGALURU JANUARY 21, 2022 22:13 IST

UPDATED: JANUARY 21, 2022 22:13 IST

## Government PU College to remain closed for seven days

The Government PU College in Udupi, which is in news following protest by some students demanding that they be allowed to wear hijab in the classroom, will remain closed for seven days following six students and a lecturer reporting positive for COVID-19.

“As per the prevailing COVID norms, we have closed temporarily for period of seven days,” said college principal Rudre Gowda. All the lecturers, other staff members, who are primary contacts, have undergone RTPCR test on Friday. Students will also undergo RTPCR tests, he added.

Meanwhile, Udupi MLA Raghupathi Bhat, who heads the College Development Committee, said a letter has been written to the PU Department asking to clarify whether the institution can continue with uniform, which is in vogue since 1985.

“Though the State Government does not prescribe any uniform in government colleges, the institution has continued with the uniform since 1985. In light of the controversy, we have written asking for clarification on the uniform. Reply from the Government is awaited,” Mr. Bhat told *The Hindu*. He reiterated the stand of the institution in favour of uniform.

On December 31, 2021, six students protested demanding allowing hijab in classroom. They said the college was not allowing them to attend classes for the past 15 days. A meeting of parents and college development committee was held on January 1 where it was decided to continue with the uniform, while asking clarification from the State Government on the issue.

On Thursday, five students protested on the college premises and reiterated their demand for allowing hijab inside the classroom. Terming the action of students as an “act of indiscipline”, Primary and Secondary Education Minister B.C. Nagesh said educational institutions are not the place to practice one’s religion. If the students are adamant in practicing their faith they are open to leave the college and join an institution where hijab is allowed, he said.

A delegation of National Students’ Union of India led by State vice-president Faraq Bayabe on Friday submitted a memorandum to Udupi Deputy Commissioner M. Kurma Rao to allow students to sport hijab in the classroom.

NSUI State secretary Shathabish Shivanna said the NSUI will file a writ petition in the High Court questioning the bar on sporting hijab, which, he said, which goes against fundamental right to religion of those students. “We are supporting the cause of the protesting students,” he said.

Hindu Jagaran Vedike Mangaluru Divisional Secretary Prakash Kukkehalli, in a statement to media, said if girls are allowed to wear hijab then other students will come with saffron shawls to institutions across Dakshina Kannada and Udupi districts. 175



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Printable version | Mar 4, 2022 12:58:28 am | <https://www.thehindu.com/news/national/karnataka/nsui-set-to-file-writ-in-support-of-students-who-want-to-wear-hijab/article38304931.ece>

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Preshant Bhusan

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Home > States > Karnataka

# Karnataka: Girls wearing hijab denied entry in Kundapur college day after Hindu outfit's protest

*The college principal said that he was acting based on the direction of development committee president and Kundapur MLA Halady Srinivas Shetty.*



Published: 03rd February 2022 01:43 PM | Last Updated: 03rd February 2022 01:46 PM

| A+ A A-



Image used for representational purpose (File photo | AFP)

By Express News Service



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UDUPI: A day after more than 100 boys, belonging to an Hindu outfit, arrived<sup>177</sup> at the Government PU College, Kundapur wearing saffron shawl to register their protest against Muslim girls wearing headscarves inside the classrooms, the College authorities shut the door and denied entry to girls whoever came wearing burqa and headscarves as well.

Standing at the gate of the college, College Principal Ramakrishna himself stopped the students and told them not to attend classes if they intended to wear headscarves inside the classrooms.



However students argued that it is the act of the principal to deny education to them as till the boys wore safron shawl and arrived at the college to vitiate the academic atmosphere on Wednesday, they were coming to college and attended classes wearing hijab. Now that just two months are pending for examination, their future has been put to test.

Ramakrishna told the students he was not denying them their right to have their education, but he was acting based on the direction of the college development committee president and Kundapur MLA Halady Srinivas Shetty.

The principal said that Shetty had directed him to not to allow any sort of additional attire other then specified uniform.



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Meanwhile the boys who wore safron shawl on Wednesday were allowed to attend the classes on Thursday as they did not wear the safron shawl after MLA told the students not to wear safron shawl if they wanted to attend classes from Thursday.

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**Proceedings of the Government of Karnataka**

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

Refer - 1) Karnataka Education Act 1983

2) Government Circular : 509 SHH 2013, Date : 31-01-2014

Preamble:-

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

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

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

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

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

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

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

“ 9. The Apex Court in *Asha Renjan and others v/s State of Bihar and others* [(2017) 4 SCC 397] accepted the balance test when competing rights are involved and has taken a view that individual interest must yield to the larger public interest. Thus, conflict to competing rights can be resolved not by negating individual rights but by upholding larger right to remain, to hold such relationship between institution and students.”
- 2) In the case of *Fatima Hussain Syed v/s Bharat Education Society and ors.* (AIR 2003 Bom 75), in a similar incident regarding the dress code, when a controversy occurred at Kartik High School, Mumbai, The Bombay High Court appraised the matter, and ruled that it was not a violation of Article 25 of the Constitution for the principal to prohibit the wearing of head scarf or head covering in the school.
- 3) Subsequent to the Hon'ble Supreme Court's abovementioned ruling, the Hon'ble Madras High Court, in *V. Kamalamma v/s Dr. MGR Medical University, Tamil Nadu and Ors* upheld the modified dress code mandated by the university. A similar issue has been considered by the Madras High Court in the *Shri. M*

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

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

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

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

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

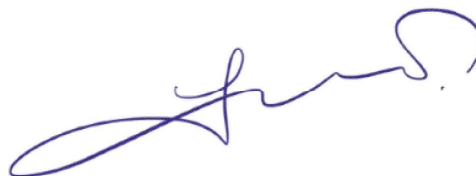
By the Order of the Governor of Karnataka,

And in his name

Padmini SN

Joint Secretary to the Government

Education Department (Pre-University)



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**WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022,  
WP NO. 2880/2022, WP NO.3038/2022  
AND WP NO.3044/2022**

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

[SMT RESHAM AND ANOTHER VS. STATE OF KARNATAKA AND  
OTHERS]

**CJ** & KSDJ & JMKJ:  
10.02.2022  
(VIDEO CONFERENCING)

**ORDER**

1. All these writ petitions essentially seek to lay a challenge to the insistence of certain educational institutions that no girl student shall wear the *hijab* (headscarf) whilst in the classrooms. Some of these petitions call in question the Government Order dated 05.02.2022 issued under sections 7 & 133 of the Karnataka Education Act, 1983. This order directs the College Development Committees all over the State to prescribe 'Student Uniform', presumably in terms of Rule 11 of Karnataka Educational Institutions (Classification, Regulation & Prescription of Curricula, etc.) Rules, 1995.

2. A Single Judge (Krishna S Dixit J) vide order dated 09.02.2022 i.e., yesterday, has referred these cases to Hon'ble the Chief Justice to consider if these matters can be heard by a Larger Bench '*regard being had to enormous public importance of the questions involved*'. Accordingly,

**WP NO. 2347/2022 and connected matters**

this Special Bench comprising of three Judges has immediately been constituted and these cases are taken up for consideration.

3. We have heard the learned Senior Advocates Mr.Sanjay Hegde & Mr. Devadatt Kamat appearing for the petitioners respectively in W.P.No.2146/2022 & W.P.No.2880/2022 for some time. Learned Advocate General appearing for the State also made some submissions.

4. Mr. Sanjay Hegde, learned Sr. Adv. argues that:

The 1983 Act does not have any provision which enables the educational institutions to prescribe any uniform for the students. The 1995 Rules apart from being incompetent are not applicable to Pre-University institutions since they are promulgated basically for Primary & Secondary schools. These Rules do not provide for the imposition of any penalty for violation of the dress code if prescribed by the institutions. Even otherwise the expulsion of the students for violating the dress code would be grossly disproportionate to the alleged infraction of the dress code. All stakeholders should make endeavors to create an atmosphere of peace & tranquility so that the

**WP NO. 2347/2022 and connected matters**

students go back to the schools and prosecute their studies. Nobody should pollute the congenial atmosphere required for pursuing education. All stakeholders should show tolerance & catholicity so that the girl students professing & practicing Islamic faith can attend the classes with *hijab* and the institutions should not insist upon the removal of hijab as a condition for gaining entry to the classrooms.

5. Learned Sr. Advocate Mr. Devadatt Kamat basically assailed the subject Government Order contending that the decisions of Kerala, Madras & Bombay High Courts on which it has been structured have been wrongly construed by the Govt. as hijab being not a part of essential religious practice of Islamic faith and that there is a gross non-application of mind attributable to the Government. He also submits that the State Government has no authority or competence to issue the impugned order mandating the College Development Committees to prescribe student uniform. He submits that dress & attire are a part of speech & expression; right to wear hijab is a matter of privacy of the citizens and that institutions cannot compel them to remove the same.

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6. In response, learned Advocate General shortly contends that no *prima facie* case is made out for the grant of any interim relief. The impugned order *per se* does not prescribe any uniform since what uniform should be prescribed by the institutions is left to them. The agitation should come to an end immediately and peace & tranquility should be restored in the society; there is no difficulty for the reopening of the institutions that are closed for a few days in view of disturbances and untoward incidents. The agitating students should go back to schools. He denies the submissions made on behalf of petitioners. Learned Advocate General also brought to the notice of the Court that there are several counter agitations involving students who want to gain entry to the institutions with saffron and blue shawls and other such symbolic clothes and religious flags. Consequently, the Government has clamped prohibitory orders within the radius of 200 metres of the educational institutions.

7. Mr.Devadatt Kamat, learned Sr. Adv. is continuing with his arguments. Learned advocates appearing for petitioners in other connected writ petitions, learned AG appearing for the State and Mr. Sajjan Poovayya, learned



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Sr. Adv. appearing for some institutions are also to be heard. This apart, there are advocates who want to argue for the impleading applicants. These matters apparently involve questions of enormous public importance and constitutional significance. We are posting all these matters on Monday (14.02.2022) at 2.30 p.m. for further consideration.

8. Firstly, we are pained by the ongoing agitations and closure of educational institutions since the past few days, especially when this Court is seized off this matter and important issues of constitutional significance and of personal law are being seriously debated. It hardly needs to be mentioned that ours is a country of plural cultures, religions & languages. Being a secular State, it does not identify itself with any religion as its own. Every citizen has the right to profess & practise any faith of choice, is true. However, such a right not being absolute is susceptible to reasonable restrictions as provided by the Constitution of India. Whether wearing of *hijab* in the classroom is a part of essential religious practice of Islam in the light of constitutional guarantees, needs a deeper examination.

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Several decisions of Apex Court and other High Courts are being pressed into service.

9. Ours being a civilized society, no person in the name of religion, culture or the like can be permitted to do any act that disturbs public peace & tranquility. Endless agitations and closure of educational institutions indefinitely are not happy things to happen. The hearing of these matters on urgency basis is continuing. Elongation of academic terms would be detrimental to the educational career of students especially when the timelines for admission to higher studies/courses are mandatory. The interest of students would be better served by their returning to the classes than by the continuation of agitations and consequent closure of institutions. The academic year is coming to an end shortly. We hope and trust that all stakeholders and the public at large shall maintain peace & tranquility.

10. In the above circumstances, we request the State Government and all other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (*Bhagwa*),

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scarfs, *hijab*, religious flags or the like within the classroom,  
until further orders.

11. We make it clear that this order is confined to such of the  
institutions wherein the College Development Committees have  
prescribed the student dress code/uniform.

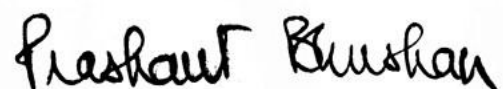
12. List these matters on 14.02.2022 at 2.30 p.m. for  
further consideration.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

AHB  
List No.: 1 Sl Nos.: 1, 2, 3



(TRUE COPY)



"I am not comfortable without the hijab, so I have taken the decision. I have been working at Jain PU College for the last three years. I haven't faced any issues so far. But yesterday, the principal told me that I can't wear a hijab or any religious symbol while teaching. But I have taught for the last three years wearing hijab. This new decision is a hit to my self-respect. That's why I have decided to resign," Chandini told journalists. In her resignation letter, she said that the "right to religion is a constitutional right which nobody could deny. "I condemn your undemocratic act," Chandini's letter said. Schools and colleges in Karnataka have been witnessing a series of protests over hijab restrictions.

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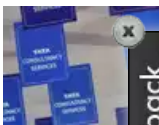
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## ANNEXURE: P11

### article14

#### **Behind The Hijab: The Karnataka Girls Who Will Not Be Intimidated, Segregated, Told What To Wear By Hindutva Groups**

AFRA ABUBACKER

21 Feb 2022 24 min read [Share](#)

While a few colleges across India deliberately and illegally misinterpret a Karnataka high court order in order to keep hijab-wearing Muslim girls out, six girls in the town of Udupi find their peaceful protest to demand their rights snowballing into a nationwide Hindu Vs Muslim debate. After a spate of attacks on Christians, the headscarf—and the educated Muslim girl—has emerged as the next target for Hindu right-wing groups in the state.

**Udupi (Karnataka):** It was in the last week of December 2021 that Muskan Zainab, 17, was told by her college principal that she would not be allowed to attend classes if she wore a hijab.

A little earlier that month, Muskan wore a headscarf in class, and went unnoticed by the teacher. "It was the first period, and the teacher was busy writing on the board," Muskan told **Article 14**.

The Class XI student of the Government Girls Pre University (PU) college in the coastal town of Udupi in south Karnataka said it was almost time for the bell by the time the teacher looked around and saw her.

The next teacher, however, took one look at Muskan and asked her to meet the principal. Outside the principal's office stood seven other girls, all wearing a hijab.

After a whole academic year of virtual classes, when classes resumed in college in [September 2021](#), the management in the Udupi college began to oppose headscarves in classrooms, citing the need for 'uniformity'.

**Muslim students were perplexed—until then, the practice for several years had been to keep their headscarves on, make a request if a teacher objected, and take it off if the teacher refused to allow it.**

"Our seniors used to request teachers, and they were allowed," said Muskan Zainab. "But if the teachers asked them to remove the headscarf, they obeyed."

By the last week of December 2021, however, principal Rudre Gowda communicated to Muslim students of the Government Girls PU College that the hijab was [banned](#) in class.

Eight girls resolved collectively to keep their headscarves on, and protest if they were not allowed. According to Muskan Zainab, the girls took the decision with a view to exercise their rights.

"I am a Muslim girl who wears a hijab. In my previous school until Class X, I used to wear it," she told **Article 14**. About Muslim girls who don't wear the headscarf, she said, "It is up to them. I wear it because I like wearing it and my faith asks me to."

In January, eight girls including Muskan began to protest peacefully outside their classroom upon being refused entry for not taking off their hijabs. Two girls dropped out of the protest a few days later, but as Muskan and five others persisted, the matter snowballed quickly into a Hindu-Muslim row.

Udupi is located in a region that has over decades grown into a [laboratory for Hindutva](#), with a proliferation of right-wing groups.

By the third week of January, as the girls' protest drew wide attention, the Hindu Janajagruti Vedi, one of the many Sangh Parivar outfits in the region, [threatened](#) that Hindu students would wear saffron shawls to college if the hijab was not banned in classrooms.

At one meeting attended by the protesting girls, their parents and the college management, the girls were scolded for speaking Urdu and Beary, the south Karnataka dialect spoken mostly by Muslims, or wishing their Muslim friends with a salaam, one of the girls told Article 14.

The row over the hijab in the southern state of Karnataka is set amid a rising tide of attacks against religious minority groups here, by non-state players tacitly supported by the Bharatiya Janata Party (BJP) government in the state. A new [legislation to ban religious conversions](#), based on the bogey of forced conversions by Christian missionary groups, was enacted in 2021 around the same time that vigilante groups [threatened to disrupt Christmas](#) celebrations and prayers, heckling Christians in [Belagavi](#), [Belur](#) and [Tumakuru](#), among other places.

As protests for and against the hijab spread in southern Karnataka, early in February, the Karnataka high court began to hear at least three petitions filed by advocates Muhammed Tahir, Sanjay Hegde and Devadatt Kamat, and passed an interim order on 10 February banning the headscarf and all forms of religious expression in students' attire.

By then, some students had been made to sit in [separate classrooms](#) for choosing to wear a headscarf; mob opposition to their attire had led government officials to decree that colleges should segregate those with headscarves; more colleges began to refuse entry to hijab-wearing students; the Karnataka home minister [ordered an investigation](#) into whether there was a conspiracy behind the teenage girls' protest; and in Mandya, a solitary girl in a burqa was surrounded and [heckled](#) by dozens of young men waving saffron scarves and chanting 'Jai Shri Ram' as she walked towards the college building.

Though the admission guidelines for 2021-22 issued by the department of pre-university education states that there is [no mandatory](#) uniform for students, in practice, almost all PU colleges have enforced wearing of uniforms.

The high court's interim order of 10 February prohibiting religious clothes was [clarified](#) by state chief minister Basavaraj Bommai and education minister B C Nagesh—it would apply only to pre-university colleges that have a prescribed uniform. But that did not quell the chaos in subsequent days as college managements across the state implemented a [blanket ban](#) on the hijab from 14 February.

**Protestors outside a paramedical college in Belagavi were [detained](#), a lecturer in Tumakuru [resigned](#) after being told she could not teach with her hijab on.**

Schools even in [Madhya Pradesh](#) and [Uttar Pradesh](#) attempted to illegally impose a ban on the hijab.

Amid concerns that the school uniform row was being used by Hindutva groups to throttle Islamic practices, the US Ambassador-at-large for International Religious Freedom [tweeted](#) that the hijab ban violated religious freedom. The [Organization of Islamic Cooperation](#) (OIC), an axis of Islamic countries, expressed its [concern](#), prompting a curt [response](#) from India's ministry of external affairs, calling the organisation's tweeted comment evidence of their "communal mindset" and "nefarious propaganda against India".



The events left the six girls who started the protest in Udupi overwhelmed. The last time they were allowed inside a classroom was in December 2021.

“All I want is to sit and study with my headscarf on,” Muskan said. She didn’t have a problem with other students wearing saffron shawls.

### **How The Protest Became A Hijabs Versus Saffron Scarves Row**

Several rounds of discussions were held between the parents of the protesting girls in Udupi and the college management, chaired by the president of the College Development Committee (CDC). The principal, Udupi district collector and the deputy director for pre-university education in the district were in attendance at these meetings.

The CDC is [presided](#) over by the elected member of the legislative assembly (MLA) of the local constituency, in this case Raghupati Bhat of Udupi constituency. Bhat belongs to the BJP.

The CDC mainly works to recommend school/college infrastructure improvements, fund allocation, etc, also occasionally called in to resolve disputes. However, by a government [order](#) dated 5 February 2022, the CDCs in Karnataka were given the additional responsibility of prescribing a uniform for students. An interim high court [order](#) passed on 10 February also instructed students to follow the CDC’s prescribed dress code.

During the Udupi CDC meetings in the first week of January, Bhat opposed the hijab and said that if hijabs are allowed, [saffron shawls](#) should be permitted too.

Asked why saffron shawls were introduced into the discussion, Bhat told **Article 14** that he was responding to a request from Hindu girls. “When Muslim girls demanded that hijab be allowed inside classrooms, around 70 Hindu girls have given a written request that saffron shawl should also be allowed,” he said. “I spoke about saffron shawl only because they requested it.”

**The Government Girls PU College in Udupi, however, did not witness any student wearing a saffron shawl from December 2021 to 17 February 2022, including on 8 February when Mahatma Gandhi Memorial (MGM) college in the same district witnessed a protest by saffron-wearing boys.**

At a subsequent meeting, Bhat offered the protesting hijab-wearing students the option of attending [classes online](#). One student agreed and quit the protest. Another student dropped out of the protest after several rounds of talks with the college authorities. Now, six girls were protesting, including Muskan Zainab.

The college in Udupi town has 90 Muslim students, the majority of them children of migrant labourers. One of the six girls protesting is from a migrant family.

On 1 January, Yashpal Suvarna, also a BJP leader in Udupi and vice-president of the CDC, said at a meeting that the protesting students were connected to the Campus Front of India (CFI), the students' wing of the [Popular Front Of India](#) (PFI), an Islamic group that various state governments ([here](#) and [here](#)) have sought to ban.

The CFI's state committee responded by saying they had indeed tried to give a representation on the matter to the Udupi college authorities. "We had met the principal on [30 and 31 December](#) to request that hijab-wearing students be allowed to sit in the classrooms," Masood Manna, CFI state committee member, said. The CFI also met the deputy director for pre-university education.

Four days later, Bhat and Suvarna gave calls for Hindu students to sport saffron shawls. On 4 January, students in Chikmagalur's [Balagadi College](#), more than 150 km east of Udupi, wore saffron shawls.

**Shashidhar Hemmadey, a journalist in Kundapura, said it was the failure of the district administration that led to the matter escalating. "It is the failure and narrow-mindedness of the faculty of the college that escalated the situation to such a grievous extent," he said. "Schools have mistreated and humiliated the students."**

The hijab and saffron shawls never should have been connected, U T Khader, member of the Karnataka legislature, who belongs to the Indian National Congress, told **Article 14**. "This has been used to humiliate and throw Muslim girls out of education," said Khader, a former health minister. "This is an utter failure of the district commissioner and deputy director for pre-university." He said Muslim clerics should have been consulted on the hijab.

### **Udupi To Kundapura: More Colleges Turn Away Hijab-Wearing Girls**

On 3 February, in Kundapura, a town nearly 40 km north of Udupi, the Government PU college asked Muslim girls to remove their headscarves if they wanted to enter the campus.

When 28 Muslim girls refused, principal Ramakrishna BG [closed](#) the iron gates to them, apparently on account of the state education minister's [comments](#) that wearing religious clothing in school and pre-university college would amount to indiscipline.

Tehrein Begum, 17, said they tried to reason with the authorities, but without success.

"The principal said he can't allow hijab or saffron shawls (on campus)." she said. "Just because the boys had removed their saffron shawls in front of the gate, how can we remove our headscarves?"

Until 4 pm, the 28 girls sat on the road outside the school, not allowed inside even to use the washroom. "We requested our teachers. But they did not allow us to get inside and use the washrooms," Tehrein said. Instead, she said, the girls were questioned on whether their parents had instructed them to wear the hijab.

The girls used the washroom at the Kundapura government hospital, but on finding that uncomfortable, used the bathroom at a relative's shop located 50 metres away from the school.

Female Muslim students of Kundapura PU college said the school did not try to stop the boys who had been wearing saffron shawls earlier from bullying them.

**"During the lunch break, many boys came and called us beggars sitting on the road," Tehrein said. "They made lewd comments about how many coins they should throw at us."**

The Muslim Okkoota, an Udupi-based umbrella group of Muslim organisations, registered a complaint on 4 February with the Udupi district collector and additional district commissioner (ADC) seeking strict action against the college. The ADC passed an oral order instructing hijab-wearing students to be allowed into campus, but said they should be accommodated in a separate classroom.

No action was taken against the principal, Ramakrishna BG, who refused to comment on the issue.

Meanwhile, from 3 February, other colleges in Kundapura, including R N Shetty College, [Bhandarkar College](#) and B B Hegde College, began to deny entry to hijab-wearing students. Outside classrooms in these colleges, Muslim girl students held peaceful protests against the restrictions on their entry. In Kundapura's BB Hegde College, Muslim boys also came outside the campus in solidarity with the girls.

### **The Role Of The Bharatiya Janata Party**

On 8 January, Karnataka education minister BC Nagesh defended the emergence of Hindu students sporting saffron shawls to college as a "[reaction](#)" to Muskan and her friends' protest in Udupi.

On 7 February, the evening before a final practical exam for students at the Mahatma Gandhi Memorial (MGM) college located on the Manipal-Udupi highway, principal Devidas S Naik announced that students with any kind of religious clothes

would not be allowed inside classrooms. No arrangements were made for hijab-wearing students to take the exam.

**On 8 February, while girls wearing headscarves were made to take these off at the gate if they wanted to enter, more than 50 boys in saffron turbans and shawls jumped the walls of the college and performed a protest dance spinning saffron shawls in the air, jumping and chanting Jai Shri Ram inside the campus. The exam was cancelled.**

The boys denied that any organisation or group had distributed their readymade saffron turbans, but Suvarna, who is the national general secretary of BJP's OBC Morcha, was spotted on campus, according to students. A subsequent investigation by *The News Minute* established the role played by Suvarna and the Hindu Janajagruti Veda in distributing saffron shawls.

On 21 January, about two weeks before the saffron protest in MGM college, Prakash Kukkehalli of the Hindu Janajagruti Veda leader warned that students would wear saffron shawls to college in Udupi and the Dakshina Kannada districts.

Earlier, on 4 February, the Association for Protection of Civil Rights (APCR) filed a complaint with the district commissioner of Udupi, demanding action against Suvarna for calling the students terrorists and allegedly threatening the students of the Udupi college.

Speaking to **Article 14**, Suvarna said the protesting students were at fault. "They have tweeted on Babri Masjid, Shaheen Bagh and Delhi riots. Being a student, how come they know all these?" he asked. He said the students had "retweeted CFI". "They have requested court for adjournment until UP election," he said. "Why should a student be bothered about elections?"

The involvement of politicians polarised the mood in the colleges.

One girl student told **Article 14**: "We are not allowed to wear rudraksha beads with the uniform."

**Several students found the saffron scarf/turban protests distasteful. One of them, a student associated with the National Cadet Corps at the MGM college in Udupi, said it was a "planned protest". He said he was offered a saffron shawl at the college gate that morning, but he declined.**

"I saw my classmate at the saffron protest. I was shocked. He used to borrow my notes before exams," said Yusra, a second year BCom student of MGM college, who gave only her first name. "Now he stops me from getting into college."

Not all college principals responded similarly to the right wing groups' organisation of anti-hijab protests. "In PU College Byndoor, 30 km north of Kundapura, the principal allowed both hijab-wearing and saffron-waving students," said Idrees Hoode, vice-president of the Okkoota. He said the following day, the boys had all but lost interest in wearing the saffron shawl.

### **Discrediting The Girls: Leaked Social Media Photos, Harassment**

Like most other Muslim students of colleges in Udupi and Kundapura, Zarkha Zainab, 17, a student of RN Shetty College, had deleted all her personal photos from various social media accounts towards the end of January. Some who failed to delete these early enough were shamed for their photos without the headscarf.

Zarkha Zainab's friend and classmate Hashmiya\* was one of them. A photograph of her without a hijab was leaked from her Instagram account. Her Instagram settings were 'private', indicating that only those accounts she had permitted could view her posts. Zarkha said Hashmiya's photo was leaked by a childhood friend, a photograph of the teenage girl smiling shyly on 'Traditional Day', a college event.

One post mocking Hashmiya said in Kannada, alongside her photo, "School is a holy place. If hijab is not allowed in school, you make it a problem. So is social media your in-laws' place?"

A second poster called the protesting girls attention seekers. "Height of hypocrisy," read another poster.

By 5 February, Hashmiya's photo and accompanying text were shared dozens of times by WhatsApp users in the college and, soon thereafter, also on social media.

Terrified at this turn of events, more Muslim girls deleted photographs from their social media pages. "Palak\* had a public account," Zarkha said about another friend. "But as soon as we got to know that Hashmiya was attacked, Palak deleted all her personal photos."

**Palak forgot an old Tik Tok video, and a grab from the video was leaked. The 17-year-old was abused online. She "doesn't wear hijab while making Reels on Instagram" and "doesn't wear the hijab while making tik tok videos", one post said, prompting several responses calling the teenage girl a hypocrite.**

"Whether the women students wore a hijab previously or not does not matter. There is no 'time limit' for exercising our fundamental right," said social activist Safoora Zargar. "The larger issue here is the denying the rights of a Muslim woman when she chooses to wear the hijab."

Zargar, along with several other Muslim women activists and journalists, was harassed through Github platforms including [Sulli Deals](#) and Bulli Bai, with their photos from social media profiles used on the apps.

"Also, hatred and online abuse against Muslim women are dangerously rising. And it is spreading out, as women students are being disrobed in public," added Zargar.

After Hashmiya's parents lodged a complaint with the college principal, Neesha\* was summoned for an explanation. That evening, Neesha's parents visited Hashmiya's parents and apologised for their daughter's action.

"Hashmiya did not file a complaint with the police or ask for further punishment from the college authority. She is sad and tired," said Zarkha.

Hashmiya and Palak did not want to talk about the harassment and told Article 14 that Zarkha would speak on their behalf.

Zarkha does doodle art in her free time and has an Instagram page solely for *mehendi* designs. She wants to study interior designing.

### **School Hands Out Minor Girl Students' Personal Details**

As classmates and childhood friends shared photographs of the Muslim girls, including some from private accounts, to discredit their participation in the protests, the Government Girls PU College made public the addresses, Aadhar numbers, contact details and even annual marksheets of the six protesting students.

The college administration shared these details with the CDC president, MLA Raghupati Bhat, and later with members of the media. One television channel highlighted their scores and said they had been uninterested in studies.

Asked why the college had released this information to the media, Bhat told **Article 14** that the college did not directly hand this out. The girls' school records and CCTV footage had been submitted to the court, he said. "Documents in court are public. Media might have accessed it from court."

Bhat also accused the girls of being indisciplined. Asked on what basis he was making this claim, he said, "Those matters cannot be disclosed."

**The girls sought to counter claims that they were disinterested students. "I was appointed once as class leader and given responsibilities. My friend, Almas, has scored 92% in her Class X," Aliya Asadi, 17, said.**

"There are lots of trolls commenting on our marks. But I am not reading them," she continued. "It does not matter to me because I know who I am. I know what I can do."

While Muskan Zainab's Class X result was an overall score of 85%, and Resham scored more than 80%, the others' scores were in the 65%-70% range. For days afterwards, the girls were abused and trolled online.

On 10 February, the parents of one of the affected students went to Udupi town police station to file a complaint against the college authorities for leaking the girls' personal details, but left without filing the complaint, uncomfortable with the prospect of the girls being called to the police station to record their statements.

On 11 February, the Students Islamic Organisation ([SIO](#)) filed a complaint with the offices of the district collector and the additional commissioner.

Principal Rudre Gowda of the Govt Girls PU college refused to comment on the SIO's complaint.

Afwan Hoode, a representative of the SIO, told **Article 14** that the Udupi town police station called two student representatives following SIO's police complaint, but then quizzed them instead on who had told them of the protesting girls' details being shared with the media. Intimidated, the students did not pursue the case. "The school wanted to threaten the girls and has allowed this public harassment," Afwan Hoode said.

**With the girls' personal information being shared widely, TV channel reporters began to call their families. Most of the girls switched off their mobile phones. "One local channel came without taking permission to my friend's house, with the camera on," Aliya said. The girl's mother rolls bidis for a living and requested the crew not to shoot her. "But they were on TV."**

On 9 February, a Republic TV reporter asked Aliya to identify her friends' photos. "My throat has gone sore," Aliya told **Article 14**. "I am tired of saying again and again that a headscarf is a right of a Muslim woman. She might choose to wear or not to wear it. And that it cannot be used to restrict our entry into schools or any public place."

### **Beyond The Hijab: Anger, Shock, Distress For Protesting Girls**

Five years ago, Asadi participated in the karate national championship in Indore, Madhya Pradesh, her hijab tucked firmly inside the collars of her karate costume. That is now a distant memory.

**Aliya Asadi is a state-level gold medalist. "Though I was the only Muslim girl with a hijab at the Indore nationals, I faced no objection in participating with the hijab," Aliya recalled.**

Since December, Aliya and her friends have spoken up at meetings inside the college and later to local, national and international media to explain how the discrimination affected them.

"When we refused to remove our headscarves, the teachers would tell us to go and meet the principal. And from the principal's office, our parents would be called to school, almost daily," said Muskan. "Our parents waited many hours outside the principal's cabin."

However, later in January, principal Rudre Gowda said the six protesting girls had displayed [indiscipline](#), they had irregular attendance and poor grades. The girls responded by saying they were going to college regularly, and that it was teachers who had denied them attendance.

"I am having trouble sleeping," Aliya told **Article 14**, about the impact of this on her daily life. "My parents tell me I scream and cry in my sleep."

On 8 February, as Kundapura's colleges fell silent while pre-university students took their lab final exams, the headscarf-wearing girls were at home, having been denied entry. Outside the gates of most colleges in Kundapura, teams of policemen idled.

Ayesha Imthiaz, 20, a student of Mahatma Gandhi Memorial College in Udupi, said college atmosphere had never been this fractured. She remembered English literature classes in which teachers referred to the "shastras, Mahabharata and Ramayana".

In 2021, she unsuccessfully contested student council elections in the college, her hijab in place. "In 2020-21 our college elected a hijab-wearing girl as general secretary. We also had elected a Muslim girl who didn't wear a hijab in the past," she said.

Yusra, the MGM College BCom student, said college WhatsApp groups have gone silent on the subject of the hijab, "but statuses speak", she said, referring to the WhatsApp status posted by classmates. "Some students don't use a status supporting the hijab or saffron," she said. "But their neutrality only helps the saffron supporters."

In Kundapura, a small town known only for long stretches of serene beaches before the recent incidents, Muslims account for [10.59%](#) of the population.



It's not uncommon to see Muslim women walking on the streets wearing a burqa or a niqab, the face cover. Many said their children were first generation learners to reach pre-university and college.

**Ayesha Nourin, 16, a student of RN Shetty College in Kundapura, had not attended college since 3 February. The student, who loves biology and dreams of becoming a doctor, said she is trying to study by herself at home. "But I am worried," she continued. "I feel I am lagging behind my classmates."**

In Nourin's large joint family, none of her aunts has completed high school.

At her home in Nagoor, 8 km from Kundapura, Nourin's younger sister was drawing, her books filled with sketches of mothers and daughters wearing headscarves and full frocks with stars on the frills, of groups of girls going to school with their arms loosely around one another's shoulders, a school on a hilltop, girls wearing jeans.

There were also pictures of Korean pop band BTS's signature hand symbol for the heart; of Masjid al Aqsa in Jerusalem, one of Islam's holy sites; and the word 'Palestine' written in calligraphy in Arabic.

As per the 2011 census and a 2017 [report](#) of the union ministry of minority affairs, the average percentage of Muslims with a graduate education is 3.61% lower in Karnataka than the national average.

"Though there has been growth in Muslim students graduating, the number of students getting into professional courses is minimal," said Idrees Hoode, vice president of [Mohammadia Educational Trust](#) and a representative of the Muslim Okkoota.

While the overall proportion of people with a technical education is very low in India, only two in every 1,000, the share of Muslims in technical education is only 0.1%. The national monitoring committee for minorities' education [report](#) in 2013 found that a higher percentage of Muslim students end up pursuing undergraduate diplomas and certificate courses.

[Abdur Rahman](#), a former Indian Police Service (IPS) officer who resigned from service to protest the passing of the [Citizenship Amendment Act](#), 2019, said financial constraints often prevent Muslims from attempting to get admission into technical institutes.

"Muslims are also mostly self-employed. Many feel education alone cannot secure them jobs," Rahman told **Article 14**. "They feel most workspaces discriminate against them."

Rahman, author of *Denial And Deprivation*, a book on the condition of Muslims in India, said the compulsory introduction of *surya namaskar* in schools, the *bhojan mantra* before mid-day meals in Madhya Pradesh, the Gita education in Haryana were all measures that have quietly "alienated Muslims from mainstream education".

For now, after the Karnataka HC interim order, hijab-wearing students said they were coping with the daily humiliation of having to remove their headscarves at the college gates.

Zarkha, the student of RN Shetty College in Kundapura, said most of her Muslim friends come to college wearing a burqa. "We change out of the burqa under the stairs because we don't have a ladies room," she said. They fold their burqas, place them in their bags, and go to class in the uniform and a headscarf. "This is what has been going on for years," she says. "Now all of a sudden we are asked to remove the headscarf even to enter the campus."

There are security personnel, police, teachers and journalists at the college gates, said Ayesha Imthiaz. "I can't remove my hijab at the gate." She was also worried about missing classes in her final year, while exams for internal assessment were underway. "I feel like going and trying to talk to teachers, and protesting if not allowed," she said. "But I am also afraid to go near the college wearing a hijab... they could arrest or lathi charge me."

***\* The names of some female students in this story have been changed to keep their identities confidential.***

***(Afra Abubacker is an independent journalist based in Kerala.)***

*Preshant Bhusan*

(TRUE COPY)

ANNEXURE: P12

INDIA SOUTH INDIA

Muslim invigilator suspended for wearing hijab in Karnataka SSLC exams

MAKTOOB STAFF



An exam invigilator, Noor Fahima, has been suspended for wearing hijab to the Karnataka SSLC exams. Noor Fahima was the invigilator at the KTSV School in Bengaluru.

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Students have been banned from wearing hijab in schools after a verdict of the Karnataka High Court, however, till now there were no clear instructions

NEW

This happened on a day when Karnataka Primary and Secondary Education Minister B C Nagesh said the wearing of the hijab would not be allowed during the Class 10 examination of the state board.

“After the High Court order, we’ve not allowed that (hijab). We’ve given clarification that they (students with hijab) can come into the campus wearing the hijab but they cannot put it on in the classroom. The same condition will apply during the exams,” Nagesh told reporters.

Section 144 being imposed in front of schools where the exams are being held. More than 8.76 lakh students are appearing for the exam in over 40,000 halls in 3,440 centers across the state and thousands of Muslim students were denied their right to wear hijab.

The exams started on Monday and end on April 11.

The Supreme Court on Thursday refused an early hearing on pleas challenging the Karnataka High Court verdict on the Karnataka government’s ban on hijabs inside educational institutions.

The Muslim girls had sought early listing of the issue citing upcoming school examinations.

The top court also declined to give any specific date to hear the petitions.

Chief Justice of India N V Ramana said: “This has nothing to do with the exams...don’t sensationalise” while responding to a request that the matter be heard next week as it would otherwise stop the girl students from appearing for their exams.

“One year will go. All these girls are being prevented from entering the school. Lordships may fix some date next week,” appearing for the petitioners, Senior Advocate Devadatt Kamat said.

The Karnataka High Court three weeks before upheld the state government order effectively banning the wearing of hijab by Muslim girl students in educational institutions in Karnataka.

“Hijab is not a part of essential religious practices of Islam and thus, is not protected under Article 25 of the Constitution,” said a three-judge Bench of Chief Justice Ritu Raj Awasthi and Justices Krishna S Dixit and JM Khazi.

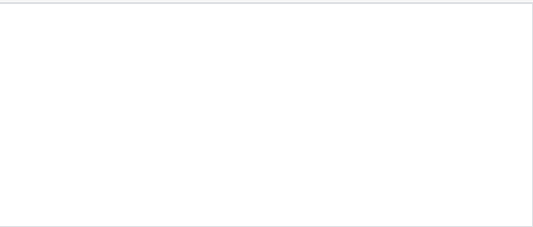
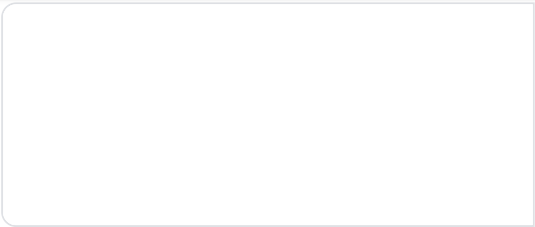
Accordingly, the Court had dismissed the petitions filed by Muslim girl students, challenging the action of government PU colleges in denying their entry for wearing hijab.

Muslim students in Karnataka have been protesting the ban on hijab in educational institutions, saying the Islamophobic move of the Karnataka government violates their religious freedom guaranteed under India’s constitution.

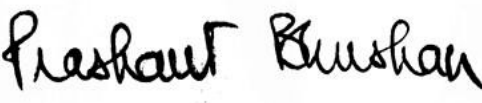
Muslim students, activists, and Opposition leaders across the country alleged that these attacks on Muslim symbols and practices are part of the larger Hindutva agenda of imposing majoritarian values on the country’s 200 million Muslims.

Soon after the verdict, Muslim students in Karnataka who have been fighting against hijab ban, Muslim leaders, human rights defenders, Opposition parties said the verdict is enabling discrimination against Muslim students and it suspends the fundamental rights of hijab wearing students.

TAGS: [Hijab](#), [Hijab ban](#), [invigilator](#), [Karnataka](#)



NEW

  
(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:**

MUSLIM WOMEN'S STUDY CIRCLE ... PETITIONER

VERSUS

THE STATE OF KARNATAKA & ORS ...RESPONDENTS

**APPLICATION FOR PERMISSION TO FILE SPECIAL  
LEAVE PETITION ON BEHALF OF PETITIONER**

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

THE HUMBLE PETITION OF THE PETITIONERS ABOVE  
NAMED;

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner herein is constrained to file the present Special Leave Petition before this Hon'ble Court against judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022 and other connected petitions (hereinafter referred to as the "impugned order"). It is submitted that the impugned order suffers from the vices of arbitrariness as well as discrimination amongst other perversities, in so far as it results in the obliteration of the values of positive secularism propagated by our Constitution and allows religious symbols of certain religions to be worn while prohibiting others.

2. That the impugned order gravely prejudices the right to education of Muslim women students who wish to wear the *hijab* and puts the same on a backburner.
3. That the Petitioner, Muslim Women's Study Circle, is an Indian Muslim Women's Collective. The Petitioner consists of a diverse group of Muslim Women including *hijabi* Muslim women, cutting across class, caste, ethnicity, age, and educational backgrounds who come together in the virtual space to understand what it is to be Muslim and to be women in contemporary India.

It is the submission of the Petitioner that the impugned order violates the fundamental rights of *hijab* wearing Muslim students. It is further submitted that the impugned order is already being used to harass Muslim women who wear the *hijab* despite the fact that the impugned order is not applicable to them. It is thus the apprehension of the Petitioner that the impugned order has the potential of being abused to target women who wear the *hijab* and would have far reaching effects that would affect all women of the Muslim community, specifically those who wish to wear the *hijab*.

The Petitioner, being an organization that is composed of Muslim women is seeking permission to file the present SLP so as to be able to make submissions before this Hon'ble Court and safeguard the interests of the Muslim women.

4. It would be just, fair and in the interest of justice, to allow the Petitioner to challenge the impugned judgment passed by the Hon'ble High Court in the aforesaid facts and circumstances.

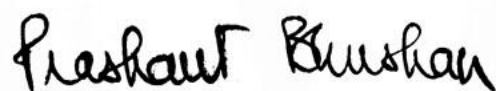
**PRAYERS**

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

- a) Allow the Petitioner to file the present Special Leave Petition against the impugned judgment and order dated 15.03.2022 passed the Hon'ble High Court of Karnataka in WP.No.2347/2022;
- b) Pass any other or further order (s) as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case.

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

**FILED BY:**



**(PRASHANT BHUSHAN)**  
ADVOCATE FOR THE PETITIONER

NEW DELHI  
FILED ON: 30.03.2022

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

**IN THE MATTER OF:**

MUSLIM WOMEN'S STUDY CIRCLE ... PETITIONER

VERSUS

THE STATE OF KARNATAKA & ORS ...RESPONDENTS

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

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

THE HUMBLE PETITION OF THE PETITIONERS ABOVE  
NAMED;

**MOST RESPECTFULLY SHOWETH:**

1. The Petitioner herein is constrained to file the present Special Leave Petition before this Hon'ble Court against judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022 and other connected petitions (hereinafter referred to as the "impugned order"). It is submitted that the impugned order suffers from the vices of arbitrariness as well as discrimination amongst other perversities, in so far as it results in the obliteration of the values of positive secularism propagated by our Constitution and allows religious symbols of certain religions to be worn while prohibiting others.



2. That due to paucity of time the Petitioner herein is seeking exemption from filing of certified copy of the Impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022. It is submitted that a true copy of the Impugned order has been annexed with the aforementioned SLP.
3. That the conduct of the Petitioner is *bona fide* and no prejudice would be caused to the Respondent if certified copy of the impugned judgment and final order is not filed.

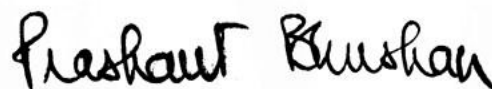
### **PRAYERS**

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

- a) Exempt the Petitioner from filing the certified copy of impugned judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in WP.No.2347/2022;
- b) Pass any other or further order (s) as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case.

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

**FILED BY:**



**(PRASHANT BHUSHAN)**  
ADVOCATE FOR THE PETITIONER

NEW DELHI  
FILED ON:30.03.2022

**SECTION: IV-A (KARNATAKA)****IN THE SUPREME COURT OF INDIA**  
(CIVIL APPELLATE JURISDICTION)

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2022

**IN THE MATTER OF:**

MUSLIM WOMEN'S STUDY CIRCLE

... PETITIONER

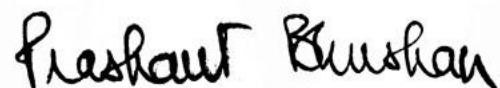
VERSUS

THE STATE OF KARNATAKA &amp; ORS.

..... RESPONDENTS

**FILING INDEX**

<b>S.NO</b>	<b>PARTICULARS</b>	<b>COPIES</b>	<b>C.FEE</b>
1.	SPECIAL LEAVE PETITION WITH AFFIDAVIT	1	1700/-
2.	ANNEXURE P1 TO P12	1	NIL
3.	APPLICATION FOR PERMISSION TO FILE SLP	1	100/-
4.	APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER	1	100/-
3.	VAKALATNAMA	1	10/-

**(PRASHANT BHUSHAN)**

COUNSEL FOR THE PETITIONER

301, NEW LAWYERS CHAMBER

SUPREME COURT OF INDIA

NEW DELHI-110 014

**CODE NO. 2967**

NEW DEHI:

DATED: 30.03.2022

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**DOL RAJ BHANDARI, REGD. CLERK, MOB NO: 9868255076**

**VAKALATNAMA**

(S.C.R.Order IV Rule 18)

**In The Supreme Court of India****ORIGINAL/CRIMINAL/CIVIL/ JURISDICTION**

Civil/Leave/Petition/Appeal/Writ Petition No. ....2022

**IN THE MATTER OF:****MUSLIM WOMEN STUDY CIRCLE**

... PETITIONER

**VERSUS****THE STATE OF KARNATAKA & ORS**

...RESPONDENTS

I, Sania Mariam, D/o Manzoor Abidi, Convenor of Muslim Womens Study Circle, Kolkata the Petitioner

In the above petition/Appeal do hereby appoint and retain **MR. PRASHANT BHUSHAN**, Advocate on Record, of the Supreme Court to act and appear for me/us in the above Petition/Appeal and on my /our behalf to conduct and prosecute (or defend) or withdraw the same and all proceedings that may be taken in respect of any application connected with the same or any degree or order passed there in, including proceeding in taxation and application for review, to file and obtain return of document and to deposit and receive money on may/our behalf in the said petition/appeal Reference and application, Review Petition and to represent me/us and to take all necessary steps on may /our behalf in the above matter, I. We agree to rectify all acts done by the aforesaid advocate on record in pursuance of this authority.

Dated **30th** day of **March** 2022  
*Prashant Bhushan* the client.

(Signed)

*Sania Mariam*

(PRASHANT BHUSHAN)  
 ADVOCATE

To,  
 The Registrar,  
 Supreme Court of India,  
 New Delhi,

**SANIA, MARIAM, CONVENOR**  
**MUSLIM WOMEN'S STUDY CIRCLE**  
MEMO OF APPEARANCE

CLIENT

Sir,

Please enter my appearance on behalf of the Appellant(s)/Petitioner(s)/ Respondent(s) opposite Parties/intervener in the matter mentioned above:

**30th** **March**  
 New Delhi dated this the-----day of-----2022

*Prashant Bhushan*

( PRASHANT BHUSHAN )  
 Advocate for the Petitioner

The address for service of the said Advocate on record is: -

- CHAMBER : 301, NEW LAYWERS CHAMBERS, SUPREME COURT OF INDIA
- OFFICE : C-67, SECTOR-14, NOIDA, U.P.
- RESIDENCE : B-16, SECTOR-14, NOIDA, U.P.
- FAX No. : 011-23070301, 011-23070645

**PRASHANT BHUSHAN**  
ADVOCATE

RESIDENCE OFFICE  
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CHAMBER  
301, NEW LAWYERS CHAMBER  
SUPREME COURT OF INDIA  
NEW DELHI  
PH: 011- 23070301, 23070645. +919811164068  
E-MAIL: prashantbhushan@gmail.com

To  
The Registrar  
Supreme Court of India  
New Delhi

Dated: 04.04.2022

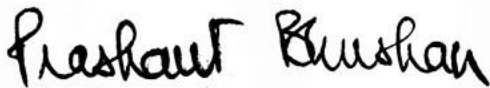
Subject: Curing of defects in *Muslim Women's Study Circle v. State of Karnataka & Ors.*, Diary No.9978/2022.

Sir

The Petitioner has e-filed the aforementioned Special Leave Petition on 30.03.2022.

The Registry has pointed out Defect No. 5 that "6.1 Non-filing of translation of vernacular document(s)". It is clarified that the Annexure A-11 is a news report that consisted of certain pictorial descriptions in the vernacular language. The Petitioner has filed a textual version of the said Article without any vernacular pictures. In view thereof the translation thereof is not being filed.

It is humbly submitted that the instant defect may kindly be removed at my own risk.



**(PRASHANT BHUSHAN)**  
Counsel for the Petitioner