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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
(Order XXII RULE 3(1)(a) OF THE SUPREME COURT RULES, 2013)
SPECIAL LEAVE PETITION (CIVIL) No.____15417_____ OF 2022
[Against the judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP No. 2347 of 2022]

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

WITH

IA NO	**OF 2022**	**APPLICATION SEEKING PERMISSION TO FILE SLP**
IA NO	**OF 2022**	**APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED COPY OF THE JUDGEMENT DATED 15.03.2022 PASSED BY HON'BLE HIGH COURT OF KARNATAKA AT BENGALURU**
IA NO	**OF 2022**	**APPLICATION SEEKING EXEMPTION FROM FILING OFFICIAL TRANSLATION**
IA NO	**OF 2022**	**APPLICATION SEEKING PERMISSION TO PLACE ON RECORD ADDITIONAL DOCUMENTS**

PAPER BOOK

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR THE PETITIONER: TALHA ABDUL RAHMAN

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... PETITIONER

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STATE OF KARNATAKA & ORS.

... RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is within time.
2. The Petition is not barred by time and there is no delay in filing.
3. There is no delay in re-filing the petition.

BRANCH OFFICER

DATED: 15.03.2022

PROFORMA FOR FIRST LISTING

SECTION: IV-A

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

☐	Central Act: (Title)	**CONSTITUTION OF INDIA**
☐	Section	Articles 14, 15, 17, 19, 21 and 25
☐	Central Rule : (Title)	**- NA -**
☐	Rule No(s):	**- NA -**
☐	State Act: (Title)	KARNATAKA EDUCATION ACT 1983
☐	Section :	133
☐	State Rule : (Title)	**-NA-**
☐	Rule No(s):	**-NA-**
☐	Impugned Interim Order: (Date)	**-** **- NA -**
☐	Impugned Final Order/Decree: (Date)	15.03.2022
☐	High Court : (Name)	HIGH COURT OF KARNATAKA AT BENGALURU
☐	Names of Judges:	CJ R.R AWASTHI, HMJ KRISHNA S. DIXIT & HMJ J. M. KHAZI
☐	Tribunal/Authority ; (Name)	**- NA -**

1. Nature of matter : ☐ Civil ☐ Criminal
2. (a) Petitioner/appellant No.1 : SAJEEDA BEGUM
   (b) e-mail ID: NA
   (c) Mobile Phone Number: NA
3. (a) Respondent No.1: STATE OF KARNATAKA & Ors
   (b) e-mail ID: **- NA -**
   (c) Mobile Phone Number: **- NA -**
4. (a) Main category classification: 800
   (b) Sub classification: 816
5. Not to be listed before: **-NA -**
6. Similar/Pending matter: **NIL**
   (a) Similar disposed of matter with citation : **NIL**

(b) Similar pending matter with details **NIL**

7. **Criminal Matters:** NA

(a) Whether accused/convict has surrendered: ☐ ☐ No

(b) FIR No. NA Date: NA

(c) Police Station: NA **-**

(d) Sentence Awarded: **- NA-**

(e) Sentence Undergone: **- NA-**

8. Land Acquisition Matters: **- NA -**

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

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

(c) Date of Section 17 notification: **- NA -**

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

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

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

☐ Legal Aid case ☐ In custody

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

16.03.2022

Talha

TALHA ABDUL RAHMAN
AOR for Petitioner
REGISTRATION No. 2467
officeoftalha@gmail.com

RECORD OF PROCEEDINGS

S.No.	Date of record of Proceedings	Pages
1.		
2.		
3.		
4.		
5.		
6.		
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SYNOPSIS

The instant SLP is being filed against judgment and Order dated 15.03.2022 passed in Writ Petition No. 2347 of 2022 (**"impugned Order"**) and connected matters by the Hon'ble High Court of Karnataka at Bengaluru. The High Court upheld the Government Order dated 05.02.2022 ("**Government Order**") that pre-decided the issue of exclusion of *hijab* from school uniform in its descriptive part, and permitted private persons (i.e. respective College Betterment/Development Committees) to interfere with practice of fundamental freedoms including the right to dress modestly and the right to freedom of religion and conscience, without there being any authority of law. Additionally, the impugned Order, in effect permits respective College Development Committees (CDCs) and School management committees, who previously did not interfere with the practice of fundamental freedoms to do the same in the future and upholds delegation of State power to determine the content of restrictions upon rights under Article 25 upon such private bodies.

In the instant case, on 28.12.2021, certain female students belonging to the Islamic faith and studying in the Government-run Pre-university (PUC) colleges were denied entry to college premises. They were stopped from entering the classroom to receive education on the specious ground that they were wearing a *Hijab* (headscarf). It may be noted that it was never argued that the girls were not wearing the prescribed uniform. In PUC, if no uniform is prescribed then students wear colour dress and may wear hijab, and if its prescribed, they will wear hijab on top of uniform. The Writ Petition from which the instant SLP arises was filed on 31.01.2022 seeking a judgment *in rem* on the right to wear *hijab* while attending the classes. The instant Writ Petition was first listed on

03.02.2022 before the Hon'ble High Court and was directed to be listed on 05.02.2022. However, on 05.02.2022, the State Government had issued a Government Order dated 05.02.2022 under Section 133 of the "Power to Issue Directions" under the Karnataka Education Act, 1983 and after narrating that *hijab* was not to be allowed in schools after incorrectly citing a few precedents, issued the following directions:

> *"In all government schools of the state, students must compulsorily wear the government prescribed uniforms only. Private schools' students must wear uniforms prescribed by the school management committees. Those colleges under the PU Education Department must ensure students wear uniforms prescribed by the respective College Development Committees (CDC) or management committees. If CDC or management committees does not prescribe uniform code, students must wear such clothes that do not disrupt peace and [public] order and that they promote equality and fraternity among all."*

However, till today no directions has been issued by any school or authority that hijab or any other clothing protecting modesty is inconsistent with prescribed uniform. For assistance, the various forms of clothings worn are set out below for ease of explanation:

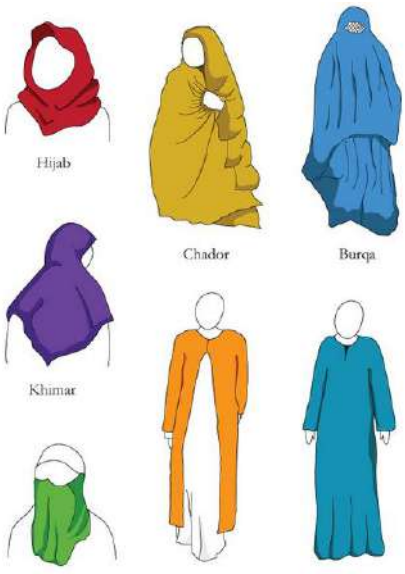

Figure 2 Terminology of veiling
Long description

Source: https://www.open.edu/openlearn/history-the-arts/veiling/content-section-1.3

Note: ***Hijab*** is an Arabic term that is mentioned in the Qur'an, where it refers to a curtain, separating spaces. It is frequently used nowadays as an umbrella term to refer to Muslim clothing in general...

Note: The High Court did not appreciate the arabic terms and the Holy Quran in the broader context.

Vide the impugned Order, the High Court did not consider the impact of the gamut of rights involved in the present case; and specifically, did not consider that Article 25 is subject only to "public order, morality and health and to the other provisions of this Part". The taking away of the right to wear *Hijab* does not fall in any other of the three categories. SEERVAI (VOL.2, pg. 1261) observes that "*Art. 25 secured to every person not only the freedom of religion, belief and conscience, but also the right to express his belief in such outward acts as he thought proper…*" SEERVAI thus connects expression of identity with the freedom of religion and conscience. It may be noted that the emphasis in Article 25 is on "his belief" and therefore, it requires consideration from the point of view of believer's sincere belief, and it is only when the belief is shown to conflict with public order, morality or health that the test of essential religious practice would apply. In the present case, the teenage girls covering themselves modestly while going to receive education pose no threat to public order. In fact, the threat to law and order is manufactured by hecklers who are to be controlled by the State. The impugned Governement Order would affect young girls' minds forever.

The High Court has declined to apply the tests applicable to restrictions on the fundamental right to freedom of speech and expression, and fundamental right of privacy (at pg. 99 of the impugned Order) without reasons, and further erronesouly

observed that the rights of students are comparable to those of prisoners'. The High Court erroneously held that the petitions do not involve the right to the freedom of speech and expression or the right to privacy (pg. 99/sub-para (iv) of the impugned Order). The High Court treats "dress code" or uniform prescribed as as not involving the issue of breach of fundamental right, without appreciationg no such uniform has yet been prescribed that takes away the right to wear hijab, and it was the "*obiter*" or the "description portion" of the impugned Government Order dated 05.02.2022 that was being challenged as constraining the power to prescribe a dress code and taking away the margin of appreciation that college authorities may have.

One one hand, the High Court has declined to consider the impact of the judgment from the South African Supreme Court (pg. 108 of the impugned Order) on the ground that "how foreign jurisdiction treats the case cannot be the sole model readily availing for adoption in our system…" but on the other hand, still considered foreign judgements to import restrictions on fundamental freedoms (pg. 105 of the impugned Order). The High Court committed, *inter alia*, the following fundamental errors in addition to those set out in the grounds:

1. **Academic Question decided in vacuum:** The Hon'ble High Court did not appreciate that the issue of essential religious practice actually did not arise in the case in as much the Ld. Advocate General for the State of Karnataka had conceded in his arguments on 21.02.2022 before the High Court that the *State had not banned hijab* (See **Annexure P-7** at **pg. 260 to 269**_) and also submitted that the descriptive text in the Government Order dated 05.02.2022 was unnecessary. The Ld. Advocate General appearing for the

State of Karnataka, however, argued the issue of "essential religious practice" merely because the Petitioner had argued the same. It is submitted that the constitutional courts ought not to decide academic issues or the pleas that are abandoned during the argument, to the prejudice of the parties who have also been denied the opportunity to respond or argue. ***(RS Nayak v. AR Antulay, (1984) 2 SCC 183)*** **para. 69**; ***Ramdas Athawale v. Union of India, (2010) 4 SCC 1, para. 44)***

2. **Principle of Orality:** The Hon'ble High Court in its order dated 14.02.2022 took notice of the fact that several parties had filed intervention applications and in fact the Petitioner herein had filed impleadment application being I.A. No.8 of 2022. The Hon'ble High Court had recorded that such parties would be heard. However, later despite pressing the application and urging the High Court to hear the applicants-intervenors and applicant-impleading parties, the High Court did not implead them and did not allow them to urge their arguments and submissions. Consequently, the impugned Order suffers from a reasoning deficit and it is respectfully submitted that had the applicants like the Petitioner been heard, the High Court would have fulfilled its obligation of compliance of natural justice in adversarial proceedings which has not been done in the present case. Without prejudice to the rights of the Petitioner herein to argue that its valuable right arising of principle of orality had been violated, the Petitioner herein had filed written submissions before the High Court which have not been considered or adverted to anywhere. A bare stray sentence on page 38 of the impugned Order that arguments of the interveners have been 'adverted to' does not meet the

test of "hearing" a party in adversarial proceedings. This has resulted in irreparable prejudice to the Petitioner herein, who is a hijab wearing lady.

3. **Burden of Proof:** That the Petitioner had duly drawn attention of the High Court (in its written submission as the Petitioner was not permitted to argue orally) that burden of proof is upon the State to establish that there is no violation of Articles 19 and 21. In the Written submissions, the Petitioner had urged that:

> The burden of sustaining the impugned Government Order is upon the State Government and not upon the Petitioner or the Applicant. It is stated that in case, a challenge is based on Articles 19 or Article 21, the burden of proof is upon the State to show that the action complained of falls in one of the exceptions of Article 19 or that the process of deprivation of life and liberty is compliant with the notions of "due process" . The delegated legislation in the present cases is a "suspect legislation" and ought to be treated as such.

Reliance was placed on ***Bachan Singh v. State of Punjab*, (1982) 3 SCC 24, para 35.**

4. In the present case, the Petitioner, as a woman, had insisted and invoked the right to dress modestly, and the right not to be subjected to removal of a piece of clothing that women relate to modesty. The issue of dressing up modestly by wearing a *hijab* being essential religious practice comes only as the last resort, and before that the right to wear *hijab* arises out of Articles 14, 15, 17, 19 and 21 of the Constitution. Notably, in view of concession of the Ld. Advocate General, the issue of essential religious practice did not even survive. The burden of proof when a violation of Article 19 and Article

21 is alleged is upon the State, and not upon the Petitioners before the High Court. It was for the State to demonstrate by cogent material (i.e. pleading and evidence) that the restriction on *hijab* or removal of a piece of clothing of woman that she considers as guarding her modesty was necessary in public interest and justifiable under Articles 19 and 21.

5. **Argument on breach of public order not considered:** That even for Article 25 restriction, the State Government had lead or shown no material on imminent threat to "public order". Despite being argued and urged, the High Court did not consider the distinction between "public order" and "law and order". The impugned Government Order invoked public order to allow private persons to impose a uniform, and no material was placed to establish that the uniform was in anyway inconsistent with hijab of the same colour. The High Court did not appreciate that just as a sikh's headgear cannot be termed as inconsistent with school uniform so long as it of a prescribed or permitted colour. Further, in view of the concession by the Ld. Advocate General that the State has not banned *hijab* and left it to the institutions to make a choice, the entire judgment is only an academic exercise.
6. **Hypertechnical approach in PIL jurisdiction:** In the present case, erroneously, the High Court has treated the instant case to be a typical civil suit and constrained the Petitioner by its alleged deficient pleading on essential religious practice, without even allowing the intervenors or impleading applicants to supplement the same – and now the judgment that has been passed is a judgment *in rem*.

In the present case, the impugned Order suffers, *inter alia*, from the following errors on the point of law:

1. **Impact of concession by Advocate General not considered:** That the High Court did not, in fact, appreciate that the issue of essential religious practice does not arise in the present case. The Government Order does not ban the *hijab*, and therefore, in view of the concession of the Ld. Advocate General which was rather in the nature of clarification of the Government Order, the High Court ought to have only decided the issue on plain aspect of administrative law. Office of the Ld. Advocate General is a responsible Constitutional office and his submissions should not have been treated lightly and also referred to in the impugned Order. In the present case, the impugned Order makes no reference to the same.
2. **Absence of Law:** The High Court further did not appreciate that there is no law banning *hijab*, and in fact, the issue is left open to be decided by the authorities (CDC) which had not yet taken a view on the same. The prayer in the Writ Petition was to prevent the *de facto* ban on *hijab* as the same was without authority of law. *The law is now well settled that any law which may be made under clauses (2) to (6) of Art. 19 to regulate the exercise of the right to the freedoms guaranteed by Art. 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction (**AIR 1987 Supreme Court 748: Bijoe Emmanuel & Ors. v. State of Kerala, Union of India v. Naveen Jindal AIR 2004 SC 1559)***

3. **No legitimate aim:** This Hon'ble Court, in a 9-Judge Bench decision in ***K. S. Puttaswamy v. Union of India (2017) 10 SCC 1,*** emphasized on the need for a statutory law to restrict a fundamental right, while observing as follows:

   "An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them" (***Detailed exposition of test in para 310 and 638)***

4. **Government Order aggrandizes existing educational backwardness amongst Muslims:** In Sachar Committee Report (pg.12), it has been noted that "*Some women who interacted with the Committee informed how in the corporate offices hijab wearing Muslim women were finding it increasingly difficult to find jobs. Muslim women in burqa complain of impolite treatment inthe market, in hospitals, in schools, in accessing public facilities such as publictransport and so on.."* The said report has since become the basis for several governmental interventions to uplift the muslim community. It is respectfully submitted that *vide* the impugned Order, the High Court has failed to appreciate that the impugned Government Order dated 05.02.2022 proliferates discrimination and seeks to compel young muslim girls to choose between their religion and education at an institution regulated under the law. In ***Eddie C. Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707***,

it was held by the U.S. Supreme Court that a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. It is true that the Indiana law does not compel a violation of conscience, but where the State conditions receipt of an important benefit upon conduct prescribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. (at pp 716-718). The High Court in upholding the impugned Order dated 05.02.2022 has compelled the young girls to choose between the religion and education. Further, in ***Joseph Shine v. Union of India*****, (2019) 3 SCC 39,** it has been held that :-

> *"172. The primary enquiry to be undertaken by the Court towards the realisation of substantive equality is to determine whether the provision contributes to the subordination of a disadvantaged group of individuals.."*

Sachar Committee Report does establish that Muslim (women) lag behind in education and a hijab ban does affect that disproportionately.

5. **Non-Application of Effect Test:** It is submitted that when adjudicating a constitutional challenge on fundamental rights grounds, the Hon'ble Court will consider not the *object* or the *form* of the law, but its *effect*. Thus, facially neutral laws will nonetheless be held unconstitutional if they are discriminatory *in effect*, or their *effect* is to violate a fundamental right.That such a restriction on headscarves in classrooms of Pre-universities, has the

effect of singling out *Hijab* observing Muslim girl students as a class and pushes them to chose between their right of religious/ cultural expression under Article 19(1)(a) and the Right to education under Article 21 of the Constitution of India. However, other classes of students do not have to face this disadvantage. That such a rule/resolution/ regulation may seem neutral, and may prohibit headscarves for all irrespective of religion. However, it has the effect of causing disproportionate disadvantage to a particular group (Muslim girl students) who in the social context have been known to wear headscarves as a religious/cultural commitment for a considerable period of time. One can describe the wearing of headscarves as a group characteristic in our social and historical context.

The impugned Government Order is hit by the effects test and is violative of Article 14 of the Constitution of India. It is respectfully submitted that it is trite law that when adjudicating a constitutional challenge on fundamental rights grounds, this Hon'ble Court will consider not the *object* or *form* of the law, but its *effect. Thus, facially neutral laws will nonetheless be held unconstitutional if they are discriminatory in effect, or their effect is to violate a fundamental right. (**State of Bombay v. Bombay Educational Society, AIR 1954 SC 561; Khandige Sham Bhat v. The Agricultural Income Tax Officer, 1963 SCR (3) 809; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, para 428).*** It is stated that the effect of the Hijab ban (seemingly) imposed by the Government Order and now upheld by the Hon'ble High Court is upon women from muslim community alone. The Hon'ble

Delhi High Court in the case of ***Madhu v. Northern Railway, 2018 SCC OnLine Del 6660***, has reiterated the aspect of "indirect discrimination" wherein a seemingly neutral act may have a disproportionate impact on a specific group of individuals. *(Ref: Para 16-30 of the Judgment).*

In ***Griggs v. Duke Power Co.***, the U.S. Supreme Court, whilst recognizing that African Americans received substandard education due to segregated schools, opined that the requirement of an aptitude/intelligence test disproportionately affected African-American candidates. The Court held that, "The Civil Rights Act" proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. Thus when an action has "the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available to other members of society, it would be suspect. (***Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, Para 43)***

6. **Unity in Diversity under the Constitution of India:** It is submitted that diversity is important for classroom and a classroom that cannot allow or show the diversity of India actually fails to educate, and achieve the Constitutional objective. The impugned order does not appreciate that Government Order is also against the doctrine of non-retrogression, in that PUC colleges in question allowed uniform with hijab and did not insist on uniform (including the exclusion of hijab), they cannot now dilute the advances made in including various groups and accommodating their practices.

It is further stated that there is no doubt that education for women should be a top priority for the Government and therefore her dress or head covering should not be a problem for the government, especially because it does not affect academic participation or performance in any way. In the name of uniformity of dress, the diversity of the country should not be lost. "WE, THE PEOPLE" assimilates the diversity of the nation. In the present case, the impugned Govt. Order effectively excludes women from a certain religious group.

7. **Anti-Subordination test has not been applied**: The denial of head scarf / *Hijab* or worse forcing young girls to take off articles of clothing that they connect with modesty and religious values amounts to State-sanctioned indignity and is a violation of a gamut of human rights, and the same subordinates them as a group including the Petitioner who are wears *hijab* out of sincere belief of the mandatory prescription in Islam – for whose violation she believes she would be accountable on the Judgment Day . It is respectfully submitted that the same amounts to humiliation proliferated by the Government, which breaches the principles embodied in Article 17 and Article 22 of the Constitution. The same affects irreparably and damages the psyche of young girls wanting to benefit from the education at colleges. That it is submitted that when either the text or effect of the law is to 'demean' people, it amounts to subordination which is contrary to Article 14 and Article 17 of the Constitution of India. That the effect of the impugned Government Order dated 05.02.2022 is that it results in a violation of the fraternity principle of the Constitution. It makes diversity in the classroom an impossibility under the law, making it a *de facto* prohibition. The Government Order does not allow mingling

of religious-cultural traditions and thrusts upon artificial uniformity which has no connection with the object sought to be achieved.

8. **Misappreciation of the prescriptions of the religion:** The High Court's erroneous reliance on the passages from the Holy Quran is without fully appreciating the nuances of religion and that it is directed towards a believer where even the "desirable" is considered mandatory by the believer. It appears that the High Court has erroneously applied the test of "common sense" by reference to *Ayat 242*, without appreciating that it refers to "common sense" of the believer. It is further submitted that in ***MEC for Education Kwa Zulu Natal and others v. Pillay (CASE: CCT 51/06),*** the South African Constitution Court protected the right of a Hindu girl in South Africa being in minority there to profess her religion on her sincere belief of the religion and culture, and allowed her to wear nose ring. It may be noted that a general undertaking signed by the girl's mother that she will follow the Code of Conduct of the School was not held against her.

The High Court failed to appreciate that the Holy Quran unequivocally requires women to cover their bosoms and yet upheld the ban. In fact, the High Court itself adverts to *ayats* from the Holy Quran at page 63 and also page 65 of the impugned Order. Thereafter, while specifically noting that Islam mandates covering of bosom and requires modesty in dress: covering hair, the High Court has erroneously interpreted that wearing the *hijab* was only recommendatory. It may noted that a *hijab* covers the bosom, and as required falls from the head/hair to the bosom, unlike the pre-Quranic practice which was only to cover head and not bosom (e.g. by a khimar).

9. **Manifestly Arbitrary nature of the Government Order:** The High Court did not appreciate that the actions of the respondents in issuing the impugned Government Order dated 05.02.2022 is manifestly arbitrary as per the formulation in ***Shayara Bano v. Union of India (2017) 9 SCC 1***. In differentiating between the above-said classes, there is no adequate determining principle *vis-a-vis* the object sought to be achieved. In other words, the question of 'how is accommodating the headscarf more detrimental than other forms of religious expression such as bindi/ kumkuma, cross etc. to the concept of uniform', remains unanswered by the State or any of the Respondents. Further, if the object is to erase religious symbols, the State has not adequately answered as to why is one religious symbol being restricted while others are being allowed. Such a net result, is manifestly arbitrary and hence violative of Article 14 of the Constitution. The High Court did not appreciate that impugned Government Order is manifestly arbitrary. The High Court also does not appreciate the ratio of ***Shayara Bano(supra)***.

10. Harm Principle not invoked: The High Court has erred in not appreciating unlike other practices, the practice of wearing *hijab* does not does not cause any harm to anyone. In that sense, wearing of *hijab* also satisfies the *de minimis* principle which the Court has invoked for nose-studs to distinguish the South African judgment. It may be noted that Article 25 specifically notes an explanation in the nature of exception for *kirpan* on account of the *kirpan* otherwise capable of causing harm and falling under the restriction to bear arms. However, no such exception is provided for

turban. It may be noted that the turban itself does not satisfy the harm principle as it does not cause harm. High Court has permitted nose studs as being "ocularly insignificant", which is not the applicable test.

The impugned order also affects the rights under Article 29.

Hence the present SLP.

LIST OF DATES AND EVENTS

Date	Event
	The Petitioner herein is a public-spirited *hijab* wearing individual. She also has substantial experience representing the causes of women, especially those pertaining to women from sections of the religious minority. The Petitioner is also the Founder and President of AASRA Women & Children Welfare Trust. She is a well known social activist and has been working for over three decades for the upliftment and empowerment of women and children. She has been recognized for her work by the government and was awarded the prestigious Kempegowda Award in 2014 and the Kittur Chennamaa Award in 2016.
28.12.2021	A few female students belonging to the Islamic faith and studying in the Government-run Pre-university colleges in Udupi were denied entry to college premises stopping them from entering the classroom on the ground that they were wearing *Hijab* (headscarf).
25.01.2022	In another meeting held by the CDC dated 25.01.2022, it was decided that :- "In respect of the issue concerning Uniforms and wearing of Hijab by the girl students, a high powered committee has to

	be constituted to conduct a study on the topic "Enforcing Uniform /Uniform Code" and submit a report. Later, the said report shall be forwarded to the Government to take appropriate action. Until then, the Girls Government PU College shall maintain status quo within their institution in respect of Uniform/Uniform code as per the government order no EP/14/SHH/2022 dated 25.01.2022" The above said Government order/direction referred to bearing No. EP/14/SHH/2022 dated 25.01.2022 stated that:- "With regard to the above-mentioned subject, while also drawing your attention to the aforementioned reference, it is evident that there is no uniform code fixed for students studying in Pre-University Colleges across the state. But female students studying in Udupi Girls Government PU College, who are now demanding that they be allowed to wear clothes of their choice to the college, at the time of admission to the college, have willingly accepted the uniform code posed by the college. But, creating confusions that were not there for all this while, is not a good sign from an educational point of view. Therefore, there is a necessity to set up the expert committee that will study the various uniform code patterns in force in different states of the country, and also the judgements of the Hon'ble Supreme Court and other High Courts of the states, pertaining to the matter. The government will have to take necessary actions based on the report given by this committee. Until this process completes, I am being directed to inform you to take action

	and see that status quo is followed in the Udupi College pertaining to the uniform issue." NB: The High Court did not call for the Government files.
	It is important to note that no such report by any special committee was submitted by the state in their objections, so it remains unclear as to whether such a committee was set up and if so what was the report of such a committee. However, subsequently, on 31.01.2022, the President of the College Development Committee convened the meeting and explained the above said Government Order, to the students (some of the petitioners) and their parents. Herein, the parents were categorically told that if their children come to college wearing *Hijab*, disciplinary action would be initiated against them. Subsequently, the impugned order dated 05.02.2022 came to be issued. Notably, all of the above material pertains to Government Pre-University College for Girls, Udupi City and not other colleges. That to the best of the knowledge of the Petitioner, no other materials have been provided by the state that restrict the right of wearing headscarves in classrooms.
31.01.2022	A Writ Petition being W.P. No. 2347 of 2022 was filed by one of the students, before the Hon'ble High Court of Karnataka at Bengaluru with the following prayers- a. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No.2 not to interfere with the Petitioner's Fundamental right to practice the essential practices of her religion, including wearing of the hijab to the Respondent No.2 University while attending classes; b. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to permit the Petitioner to wear hijab (headscarf) while attending her classes, as being a part of religion

	c. Issue an appropriate writ, order or direction in the nature of mandamus declaring that the Petitioner's right to wear hijab is a fundamental right guaranteed under Articles 14 and 25 of the Constitution of India and is an essential practice of Islam religion d. Issue such other writ, order or direction .. as this Hon'ble Court may deem fit in the facts and circumstances of the case. A true copy of the Memo of the W.P. No. 2347 of 2022 dated 31.01.2022 is annexed as **Annexure P-1** **(** 151-173 **)**
03.02.2022	The said writ petition was taken up by the Hon'ble Single Judge and Order dated 03.02.2022 was passed to "*Call this matter along with W.P.No.2146/2022 on 08.02.2022*".
05.02.2022	A Government Order dated 05.02.2022 under the Karnataka Education Act was issued by the Respondent-State observing that the *Hijab* is a practice not protected under Article 25 of the Constitution, but in the operative portion it was stated: "*In all government schools of the state, students must compulsorily wear the government prescribed uniforms only. Private schools' students must wear uniforms prescribed by the school management committees. Those colleges under the PU Education Department must ensure students wear uniforms prescribed by the respective College Development Committees (CDC) or management committees. If CDC or management committees does not prescribe uniform code, students must wear such clothes that*

	do not disrupt peace and [public] order and that they promote equality and fraternity among all." A true translated copy of the Government Order dated 05.02.2022 passed by the Respondent-State is annexed herewith as **Annexure P- 2 (___174-175_____).**
07.02.2022	A counter affidavit was filed by the Respondent-State objecting to the contentions of the Petitioner in Writ Petition No.2347 of 2022. A true copy of the common counter statement with affidavit dated 07.02.2022 filed in Writ Petition No.2146/22 connected with Writ Petition No. 2347 /2022 by the Respondent-State is annexed as **Annexure P-3 (__176-215_____).**
09.02.2022	The Hon'ble Single Judge passed an order dated 09.02.2022 stating that the matter before the Court involves the questions of enormous public importance and the batch of these cases may be heard by a larger bench if Hon'ble the Chief Justice so decides. *It is stated that under the Karnataka High Court Rules there is no provision for such a reference.*
10.02.2022	The matter was listed before the larger bench where the Hon'ble High Court after hearing the matter was pleased to pass an interim order dated 10.02.2022 that "*In the above circumstances, we request the State Government and all*

	other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom, until further orders."
11.02.2022	An application being I.A. No.8 of 222 was filed by the Petitioner seeking impleadment as Petitioner in the interest of justice. A true copy of the impleadment application dated 11.02.2022 (I.A. No.8/22) filed by the Petitioner is annexed as **Annexure P-4 (** 216-231 **).**
14.02.2022	The Petitioner's impleadment application (I.A. No. 8/2022) was listed before the Hon'ble High Court on 14.02.2022. The Hon'ble High Court after recording the presence of the counsel of the Petitioner passed an order dated 14.02.2022 noting as under: *"WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022, WP NO.3148/2022 & WP NO.3044/2022 Heard. The arguments of Mr.Devadutt Kamath, learned Senior Advocate on behalf of the petitioners in W.P.No.2880/2022 are continuing. It is informed at the Bar that Mr.Kaleeshwaram Raj, learned Senior Advocate, Mr.Yusuf Muchhala, learned Senior Advocate, Prof.Raviverma Kumar, learned Senior Advocate, Smt.Thulasi K.Raj, learned Advocate and Mr.Aditya Sondhi, learned Senior Advocate who has moved an application for*

	intervention – I.A.No.8/2022 are to be heard on behalf of the petitioners. List on 15.02.2022 at 2.30 p.m." A true copy of the order dated 14.02.2022 passed by the Hon'ble High Court in W.P. No. 2347 of 2022 is annexed as **Annexure P- 5 (__232-235_____).**
21.02.2022	On 21.02.2022, during the course of hearing, the Hon'ble High Court sought clarification from the Ld. Advocate General "*What is your stand? Whether hijab can be permitted in institutions or not?". The Ld Advocate General clarified that "The operative portion of the GO leaves it to the institutions"* The Hon'ble High Court further sought clarification, "*If institutions permit hijab, you have objections?"* The Hon'ble High Court further also sought clarification and posed a question that *"It is argued that they may be permitted to wear the same colour headdress as permitted in uniform prescribed by the college. We want to know the stand of the state? Suppose if they are wearing duppata which is part of uniform, can it be allowed?" .* The Ld. Advocate General replied that "*My answer is that we have not prescribed anything. The Order, it gives complete autonomy to institution to decide uniform. Whether students be allowed to wear dress or apprarel which could be symbol of religion, the stand of the state is.. element of introducing*

	religious dress should not be there in uniform. As a matter of principle, the answer is in preamble of Karnataka Education Act which is to foster secular environment" The Ld. Advocate General further submitted before the Court that "*On a better advise, these could have been avoided. But that stage has passed,*" It is respectfully submitted that despite the submission of the Ld. Advocate General that the State has not prescribed anything, the order gives complete autonomy to an institution to decide uniform. The Hon'ble High Court proceeded to decide the constitutional question if *hijab* is an essential religious practice. It may be noted that the submissions of the Ld. Advocate General clarifying the stand of State have not been recorded by the Hon'ble High Court in its order but it has been reported in media giving live updates of the court proceedings.
25.02.2022	The Hon'ble High Court without giving an opportunity to the Petitioner herein to present her case and assist the Court, reserved the judgement. It is stated that the Petitioner's counsel(s) were present throughout the case before the Hon'ble High Court and in fact the names were duly noted of all counsel who would be heard for

	intervenors/impleaders in the order dated 14.02.2022 passed by the Hon'ble High Court.
04.03.2022	The Petitioner herein, however, also filed her written submissions in which, *inter alia,* she once again sought for hearing in open court so she could assist the court and sought to allow of her applications. A true copy of the Written Submissions dated 04.03.2022 filed by the Petitioner herein in W.P No. 2347 of 2022 is annexed herewith as **Annexure P-6 (**236 to 251**).**
15.03.2022	The Hon'ble High Court *vide* its judgement and Order dated 15.03.2022 dismissed the W.P. No. 2347 of 2022 and other connected matters without giving the opportunity to the Petitioner herein to present her case and assist the Hon'ble Court.
	Hence the present SLP.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

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

AND

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

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

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

IN W.P. NO.2347 OF 2022

BETWEEN:

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

… PETITIONER

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

AND:

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.2146 OF 2022

BETWEEN:

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

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

3 . ALIYA ASSADI
AGED ABOUT 17 YEARS,

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

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

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

... PETITIONERS

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

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

AND:

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

2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012

3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101

4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101

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

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

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

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

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.2880 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.3038 OF 2022

BETWEEN:

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

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

... PETITIONERS

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

AND:

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

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

BANGALORE-560001.

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.3424 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

... RESPONDENTS

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

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

IN W.P. NO.4309 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4338 OF 2022

BETWEEN:

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

… PETITIONER

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

AND:

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

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

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

4 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

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

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

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

ORDER

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

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

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

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

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

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

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

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

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

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

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

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

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

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

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

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

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

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

College Development Committee or *College Supervision Committee; and*

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

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

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

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

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

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

II. BROAD CONTENTIONS OF PETITIONERS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

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

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

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

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

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

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

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

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

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

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

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

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

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

[47] (1985) 2 SCC 556

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

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

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

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

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

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

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

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

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

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

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

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

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

have broadly framed the following questions for consideration:

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

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

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

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

[60] (1959) 1 SCR 996

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

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

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

[61] (1975) Supp. SCC 1

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

VI. CONSTITUTIONAL RIGHT TO RELIGION AND RESTRICTIONS THEREON:

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

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

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

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

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

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

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

[62] (1889) 133 US 333

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

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

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

[63] AIR 1954 MAD 385

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

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

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

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

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

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

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

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

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

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

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

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

[66] 354 US 436 (1957)

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

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

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

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

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

[67] 1971 SCR (2) 446

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

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

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

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

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

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

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

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

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

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Sūra xxiv* (*Nūr*):**

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

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

(xxiv. 27 – 34, and C. 158)

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

(xxiv. 58 – 64, and C. 160).

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

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

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

Sūra xxxiii (Ahzāb)

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

Is *hijab* Islam-specific?

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

[*] *Id*

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

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

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

***Sūra xxiv* (*Nūr*)**

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

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

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

Sūra xxxiii (Ahzāb)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[70] 2004 (1) JKJ 418

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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

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

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

[71] (2016) SCC Online Ker 487

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

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

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

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

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

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

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

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

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

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

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

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[72] 1973 SCC OnLine All 333

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

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

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

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

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

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

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

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

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

[73] (1901) A.C. 495

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

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

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

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

[74] (1909) 33 BOM. 122

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

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

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

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

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

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

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

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

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

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[75] AIR 1957 SC 133

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

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

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

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

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

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

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

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

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

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

[76] (1929) 2 KB 416

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[80] (2020) 10 SCC 274

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

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

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

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

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

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

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

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

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

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

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

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

[83] (1985) 1 SCC 641

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[86] AIR 1992 SC 111

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

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

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

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

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

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

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

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

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

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

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

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

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

[87] AIR 1952 SC 16

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

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

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

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

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

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

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

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

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

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

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

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XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

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

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

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

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

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

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

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

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

[89] AIR 1965 SC 491

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

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

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

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

XIX. THE PUBLIC INTEREST LITIGATIONS:

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

[90] AIR 1986 CAL. 104

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

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

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

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

Costs made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

SJ/CBC

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA
(Order XXII RULE 3(1)(a) OF THE SUPREME COURT RULES, 2013)

SPECIAL LEAVE PETITION (CIVIL) No._____ OF 2022

[[Against the judgment and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP No. 2347 of 2022]

IN THE MATTER OF:

	BEFORE THE HIGH COURT	BEFORE THIS HON'BLE COURT
SAJEEDA BEGUM AGED ABOUT 66 YEARS D/O LATE ABDUL SAMAD # 27, 6TH MAIN VIVIANI ROAD CROSS, NEAR ADAMS FUNCTION HALL, FRAZER TOWN BANGALORE-560005	NOT A PARTY	PETITIONER
VERSUS		
STATE OF KARNATAKA REPRESENTED THROUGH PRINCIPAL SECRETARY DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION, HAVING ITS OFFICE AT 2ND GATE, 6TH FLOOR M.S. BUILDING, FR AMBEDKAR VEEDHI, BENGALURU-560001	RESPONDENT NO.1	RESPONDENT NO.1
GOVERNMENT PU COLLEGE FOR GIRLS REPRESENTED BY ITS PRINCIPAL BEHIND SYNDICATE BANK, NEAR HARSHA STORE, UDUPI, KARNATAKA-576101	RESPONDENT NO.2	RESPONDENT NO.2
DISTRICT COMMISSIONER UDUPI DISTRICT, MANIPAL AGUMBE, UDUPI HIGHWAY ESHWAR NAGAR MANIPAL KARNATAKA- 576104	RESPONDENT NO.3	RESPONDENT NO.3

THE DIRECTOR KARNATAKA PRE- UNIVERSITY BOARD DEPARTMENT OF PRE- UNIVERSITY EDUCATION , 18TH CROSS ROAD SAMPIGE ROAD, MMALESWARAM BENGALURU-560012	RESPONDENT NO.4	RESPONDENT NO.4
RESHAM D/O K FARUK, AGED ABOUT 17 YEARS, THROUGH NEXT FRIEND, SRI MUBARAK, S/O F FARUK, AGED ABOUT 21 YEARS, BOTH RESIDING AT NO.9-138, PERAMPALI ROAD, SANTHEKATTE,SANTHOSH NAGARA, MANIPAL ROAD, KUNJIBETTU POST, UDUPI, KARNATAKA-576105.	PETITIONER	RESPONDENT NO.5

(Respondent No. 1 to 4 are the contesting Respondents)

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

TO,
THE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

The humble petition of the Petitioner above-named:

MOST RESPECTFULLY SHOWETH:

1. The Petitioner above-named respectfully submits this petition seeking special leave to appeal from judgment and Order dated 15.03.2022 passed in W.P. No. 2347 of 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru dismissing the said writ petition.

1A. It may be noted that the Petitioner was an applicant before the Hon'ble High Court who has filed application under Order I Rule 8A, 10 & Section 151 of the CPC seeking impleadment for being the party aggrieved.

2. QUESTIONS OF LAW:

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

A. WHETHER, the High Court was justified in deciding an academic question in view of the concession of Ld Advocate General? Whether the High Court erred in going into the academic question when the learned Advocate General for Karnataka had already conceded that the State had not banned the *hijab*?

B. WHETHER, the High Court erred in not allowing the impleadment applications and even hearing the intervenors despite the order dated 14.02.2022, and erred in referring the matter to a larger bench when the Karnataka High Court rules did not so permit?

C. WHETHER, the High Court was justified in holding that wearing of *hijab* by Muslim women does not form a part of essential religious practice in Islamic faith, especially in light of the judgment of this Hon'ble Court in ***(2019) 11 SCC 1 (especially para 176.6 and 176.12)?***

D. WHETHER, the High Court erred in relying primarily on one single interpretation of the Holy *Quran* without appreciating the context and sub-text of the same, and without applying the test of "honest sincere belief"?

E. WHETHER, the High Court was justified in not considering that prescription of school uniform did not rule out wearing of hijab, and in any event, was not a reasonable restriction constitutionally permissible in view of the rights guaranteed under Articles 19(1), 21, and 25 of the Constitution of India, and whether the High Court was correct in holding such rights under Arts 14, 15, 17, 19 and 21 are not applicable in the present case?

F. WHETHER, the High Court erred in innovating the test of "ocularly insignificant" to exclude certain clothing (including wearing nose-stud) but including certain others, whilst overlooking that the right to dress modestly is mandatory in Islam?

G. WHETHER, the High Court erred in not considering the fact that wearing of *hijab* was in addition to the school uniform and not in lieu of it, and factually that hijab was never objected to in the past by any educational institution or even before the Hon'ble High Court?

H. WHETHER, the High Court erred in not considering whether the Government Order dated 05.02.2022 was manifestly arbitrary and violative of Articles 14, 15, 19, 21, and 25 of the Constitution of India?

I. WHETHER, the High Court was justified in dismissing the writ petitions without considering the effect test, anti-subordination test, harm principle, doctrine of non-retrogression, and misapplied the theory of derivative rights?

J. WHETHER, the High Court did not appreciate that educational institutions such as Kendriya Vidyalaya specifically permit wearing of hijab; and no prejudice is cause to any other students if teenage girls wear hijab?

3. DECLARATION IN TERMS OF RULE 3(2)

The Petitioner states that no other petition seeking special leave to appeal has been filed by the Petitioner against the impugned final judgment and Order before this Hon'ble Court.

4. DECLARATION IN TERMS OF RULE 5

The Annexures P- 1 to P- 6 produced along with Special Leave Petition are true copies of the records of the Courts below and are a part of the record of

the courts below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

Leave to appeal is sought for on the following grounds, which are taken without prejudice to one another:

A. BECAUSE, the Petitioner has been denied even the right to argue or urge her application seeking impleadment as Petitioner, which has resulted in prejudice to the Petitioner and the cause she espouses. While initially, *vide* order dated 14/02/2022, the Hon'ble High Court was gracious and kind to observe :-

> *"WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022, WP NO.3148/2022 & WP NO.3044/2022 Heard. The arguments of Mr.Devadutt Kamath, learned Senior Advocate on behalf of the petitioners in W.P.No.2880/2022 are continuing. It is informed at the Bar that Mr.Kaleeshwaram Raj, learned Senior Advocate, Mr.Yusuf Muchhala, learned Senior Advocate, Prof.Raviverma Kumar, learned Senior Advocate, Smt.Thulasi K.Raj, learned Advocate and Mr.Aditya Sondhi, learned Senior Advocate who has moved an application for intervention -* ***I.A.No.8/2022*** *are to be heard on behalf of the petitioners. List on 15.02.2022 at 2.30 p.m."*

(emphasis supplied)

, but later she was not permitted to urge her case.

It may be noted that, amongst others, the name of the Petitioner's senior counsel was noted in the list of counsel who were to argue the case before the High Court. The High Court erred in not allowing Petitioner's application who claimed to be a necessary and proper party. The Petitioner herein did

not file a separate and independent Writ Petition as the matter was already referred by the Learned Single Judge to the larger bench of the Hon'ble High Court, and having regard to the issue of propriety in pending referred matter where certain counsel for Petitioner had substantially advanced their arguments;

B. BECAUSE, after hearing the Petitioners and the Respondents before the High Court, no opportunity to assist the Hon'ble Court has been granted to the Petitioner herein who sought to be impleaded as being an affected party on the issue of determination of the nature of religious practice of wearing *Hijab* - a kind of covering. It is humbly and respectfully submitted that filing of written submissions is not a substitute for oral arguments. The principle of orality is essential to system of adjudication and the Petiitoner respectfully states that certain points were not argued and even the State of Karnataka did not have an occasion to respond to the said points;

C. BECAUSE, in addition to the Government Order dated 05.02.2022, the actions of various respondent Pre-University colleges restricting the entry of Muslim girl students wearing headscarves into classrooms was challenged on the ground of violation of Article 14, 15 (1), 19(1) (a), 21 and 25 of the Constitution of India, without the authority of law;

D. BECAUSE, the test of public order, morality or health has not been invoked to defend the Government Order dated 05.02.2022, and nor has the same been satisfied in any event; the G.O. dated 05.02.2022 is non-est;

E. BECAUSE, in the objections by the respondent-State dated 07.02.2022, there appears to be only one document that describes the uniform, which is the "***Committee Meeting- 01, Dated 23/06/2018"*** (pg. 68 of objections), holds that:-

> *"It was decided that the blue coloured chudidhar pant, white and blue checks top and shawl to be draped over the shoulder (which is of the same blue as the colour of the pant) which was there for 6 days of the week will be continued this year ….."*

NB: There is no bar on wearing hijabs, and in any event, on facts, no precise uniform was insisted upon.

F. BECAUSE, even though the petitioners before the High Court had argued on *Hijab* being an essential religious practice to contradict the contents of the impugned government order, however, during his submissions, the Ld. Advocate General appearing for the State stated that the contents of the Government Order were ill-advised and he would be defending only the operative portion of the Government Order. Thus, the main argument of essential religious practice was rendered infructuous;

G. BECAUSE, the Government Order is illegal being *ultra vires* the Karnataka Education Act, 1983, as the same has been issued where the powers of the Government have been delegated to the CDC. The same is not permissible by the 1983 Act. Further, while prescription of uniform may be permissible, the Government Order does not prescribe the uniform. A private party cannot be permitted to restrict fundamental freedoms and the Government Order allowing the same is *ultra vires* the Constitution;

H. BECAUSE, the doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise;

I. BECAUSE, the fundamental right to dress inheres in the right to freedom of speech and expression, right to identity, privacy, and the right to life under Article 21 of the Constitution of India;

J. BECAUSE, privacy postulates reservation of a private space for an individual, described as the right to be let alone. In such a right, the autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The individuals have the right to preserve their beliefs, thoughts, expressions, ideals, ideologies, preferences and choices against societal demands of homogeneity. It is humbly submitted that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing, etc. (***National Legal Services Authority v.***

***Union of India*, (2014) 5 SCC 438, para. 71).** The choice to wear Hijab, Scarf, Skull Cap or Turban to cover the head is a matter of choice;

K. BECAUSE, much like expression of one's gender identity, the expression of one's religious identity is also guaranteed under Article 19(1)(a). In ***K. S. Puttaswamy v. Union of India (2017) 10 SCC***, a nine-judge bench of this Hon'ble Court upheld the right to privacy as a fundamental right under Article 21. The concept of privacy was discussed at length, with different judges having different formulations of it, often overlapping. The feature common to all understandings was that it meant 'the right to be left alone' or the freedom from unwanted intrusion by state or private actors. Hon'ble Dr. Justice Chandrachud, writing for three other judges, stated :-

> *'Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. Spatial control denotes the creation of private spaces.* ***Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress.*** *Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.' (***Relevant Paras 248, 298, and 300)**

L. BECAUSE, the burden of sustaining the impugned Government Order was upon the State Government and not upon the Petitioners before the High Court. It is stated that in case a challenge is based on Articles 19 or Article 21, the burden of proof is upon the State to show that the action complained of falls in one of the exceptions of Article 19 or that the process of deprivation of life and liberty is compliant with the notions of "due process" . The delegated legislation in the present cases is a "suspect legislation" and ought to be treated as such. In ***Bachan Singh v. State of Punjab*, (1982) 3 SCC 24, para 35),** this Hon'ble Court has held that:

*"**35**……It is a trite saying that the court has "neither force nor will but merely judgment" and in the exercise of this judgment, it would be a wise rule to adopt to presume the Constitutionality of a statute unless it is shown to be invalid. But even here it is necessary to point out that this rule is not a rigid inexorable rule applicable at all times and in all situations. There may conceivably be cases where having regard to the nature and character of the legislation, the importance of the right affected and the gravity the injury caused by it and the moral and social issues involved in the determination, the court may refuse to proceed on the basis of presumption of Constitutionality and demand from the State justification of the legislation with a view to establishing that it is not arbitrary or discriminatory. There are times when commitment to the values of the Constitution and performance of the constitutional role as guardian of fundamental rights demands dismissal of the usual judicial deference to legislative judgment…."*

M. BECAUSE, given the egregious nature of the Government Order dated 05.02.2022, the burden is upon the State Government and the presumption of Constitutionality is not available. The said Government Order is also covered by "Footnote Four" and Strict Scrutiny test. ***(see Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720, para 85 to 87);***

N. BECAUSE, the Karnataka Education Act or rules thereunder only empower prescription of a uniform, and do not provide for exclusion of *hijab* from the dress;

O. BECAUSE, this Hon'ble Court, in ***K. S. Puttaswamy v. Union of India (2017) 10 SCC 1,*** emphasized on the need for a statutory law to restrict a fundamental right, while observing as follows:

"An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them" (***Detailed exposition of test in para 310 and 638);***

P. BECAUSE, in the present case, the CDC itself does not have any authority to pass resolutions restricting the wearing of headscarves, hence, there exists no valid law in the first place to fulfil the above test;

Q. BECAUSE, the Government Order does not impose a ban on *hijab* which is now imposed by the High Court *vide* the impugned Order. The argument of Petitioners therein before the High Court was that ban was imposed without any law and as on the filing of the Writ Petition, there was nothing that prevented the wearing of a *hijab*;

R. BECAUSE, a ban on *hijab* does not satisfy the "harm principle" to ban something or to soft-criminalize a conduct. To dress, is an essential liberty;

S. BECAUSE, diversity and accommodation of diversity inheres in the Constitutional values which cannot be divorced in executive decision making. India's approach to secularism is to accommodate and not to take the French approach;

T. BECAUSE, other than simply stating the object of uniformity and discipline, no attempt was made by the Respondent-State or any of the respondents to establish its connection with maintaining an ideal academic atmosphere. In fact, the contrary was held by the Calcutta High Court with respect to teachers in ***Swati Purkait v. State of West Bengal, 2010 SCC OnLine Cal 1501: (2010) 4 Cal LT 622:***

> ***"20**- A class room in an institute is not such a workplace or work room that should need a specified dress to get the best out of the workforce. **It is beyond comprehension of a person of reasonable prudence how a specified dress used especially by the women teachers at work will create an ideal academic atmosphere**.";*

U. BECAUSE, *arguendo*, even if it is assumed that uniformity in school uniform and discipline in Pre-university colleges is a legitimate state object, the question then emerges then is that there is no nexus between restricting

headscarves along with the uniform and maintaining the object of school uniform;

V. BECAUSE, prohibiting headscarves entirely (including those which match with the uniform colours) is a disproportionate taking away of the right to decisional autonomy (privacy) *vis-a-vis* the object of maintaining uniformity in school uniform and discipline. In fact, the principle of harmonious construction may be invoked here to only permit headscarves of the colour of the uniform in order to balance the competing interests;

W. BECAUSE, when adjudicating a Constitutional challenge on fundamental rights grounds, this Hon'ble Court will consider not the *object* or the *form* of the law, but its *effect*. Thus, facially neutral laws will nonetheless be held unconstitutional if they are discriminatory *in effect*, or their *effect* is to violate a fundamental right. **[*State of Bombay v. Bombay Education Society, AIR 1954 SC 561, para. 16 (CB); Khandige Sham Bhat v. The Agricultural Income Tax Officer, 1963 SCR (3) 809 (CB), para. 7; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1, para 428). Madhu v. Northern Railway, 2018 SCC OnLine Del 6660];***

X. BECAUSE, the effect of the law is disproportionate. The law, in its impact and also in its implementation, affects women's choices and Muslims disproportionately. Hence the Government Order is violative of Articles 14 and 15 of the Constitution.

Y. BECAUSE, the High Court failed to notice the most crucial and important aspect i.e. Right to Education as a girl child is a fundamental right enshrined in the Constitution. By passing such orders saying "*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*", the High Court has deprived women of access to right to education. Muslims, as a class, is suffering economically as has been found in the Sachar Committee Report for which PM's 15 Point programe had also been formulated;

Z. BECAUSE, where the State conditions receipt of an important benefit upon conduct prescribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his or her behavior and to violate his or her beliefs, a burden upon religion exists - and the same is impermissible ***(Eddie Thomas, Supra)***. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial, and such a discrimination runs foul of the Article 14 guarantee under the Constitution;

AA. BECAUSE, this Hon'ble Court, in ***Nitisha v. Union of India AIR 2021 SC 1797,*** applied the doctrine of indirect discrimination while holding that women army officers being denied Permanent Commission was discriminatory;

BB. BECAUSE, the ban on *hijab*, is an example of rules or laws that appear to be facially neutral they may have a disparate impact on certain groups/ communities of people due to their identities;

CC. BECAUSE, such a restriction on headscarves in classrooms of Pre-university colleges, has the effect of singling out *Hijab* observing Muslim girl students as a class and pushes them to choose between their right of religious/ cultural expression under Article 19(1)(a) and the right to education under Article 21. However, other classes of students do not have to face this disadvantage. That such a rule/resolution/ regulation may seem neutral, and may prohibit headscarves for all irrespective of religion. However, it has the effect of causing disproportionate disadvantage to a particular group (Muslim girl students) who in the social context have been known to wear headscarves as a religious/cultural commitment for a considerable period of time. One can describe the wearing of headscarves, a group characteristic in our social and historical context;

DD. BECAUSE, Article 15(1) holds that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. That the actions of various colleges forcibly preventing students from

entering class for wearing headscarves, is discriminatory on grounds of 'sex' and 'religion';

EE. BECAUSE, the actions of the Respondents are manifestly arbitrary as per the formulation in ***Shayara Bano v. Union of India (2017) 9 SCC 1***. In differentiating between the above-said classes, there is no adequate determining principle *vis-a-vis* the object sought to be achieved. In other words, the question of, how is accommodating the headscarf more detrimental than other forms of religious expression, such as bindi/ kumkuma, cross etc to the concept of uniform, remains unanswered by the state or any of the respondents.

It may be noted that Muslim women have been wearing hijab for ages, and the form of screen used by women has evolved with time, but screen or veil has been used by Muslim women has been going on for eons / time immemorial. It may be noted that Islam began with Prophet Adam; and in the present case, covering of head and hair is specified in Quran which is what the instant case is concerned with.

FF. BECAUSE, secularism does not mean erasure of religious identity;

GG. BECAUSE, any undertaking to comply with the uniform requirements of an institution is hit by doctrine of unconstitutional conditions, and it may also be noted that there is no uniform that bars hijab in the instant case;

HH. BECAUSE, the purpose of the Karnataka Education Act, 1983 is to make good education accessible to all and not to disallow certain group by being overtly discriminatory or insensitive. In the present scenario when right to education is gradually transforming from legal right to a fundamental right and the Government is providing mid-day meals also to encourage attendance, it fails to reason as to why certain groups would be excluded on the basis of mere headscarves;

II. BECAUSE, a headscarf is not an aberration or non-permissible under prescribed uniforms. Its a covering for hair and bosom, and in the absence of any prescription for contrary headgear or similar article, the uniform even where prescribed cannot be read as excluding headgear;

JJ. BECAUSE, by not insisting on the uniforms excluded headscarves in the past, the uniform itself is directory and ceremonial, and not mandatory. The issue

of *Hijab* is a recent one, and previously there had been no objection to the same. The same is thus, covered by acquiescence;

KK. BECAUSE, the denial of head scarf / *Hijab* or worse, forcing young girls to take off articles of clothing that they connect with modesty and religious values, amounts to State sanctioned indignity and is a violation of a gamut of human rights. It amounts to state sponsored humiliation, which breaches the principles embodied in Article 17 and Article 22 of the Constitution. The same affects irreparably and damages the psyche of young girls wanting to benefit from the education at colleges;

LL. BECAUSE, the effect of the impugned Government Order is that it results in violation of the fraternity principle of the Constitution. It makes diversity in the classroom an impossibility under the law, making it a *de facto* prohibition. The Government Order does not allow mingling of religious-cultural traditions and thrusts upon artificial uniformity which has no connection with the object sought to be achieved;

MM. BECAUSE, there is no threat to public order by the girls wearing *Hijab*. The High Court has not considered the cases of ***Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608*** and ***AIR 1989 S.C. 491 (Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad),*** that hold that 'public order' is distinct from 'law and order', and further that the threat to public order should be imminent. In the present case, girls' wearing *Hijab* causes no threat to public order – and in fact, it is not even the case of the State Government that it does. The Government Order is *ultra vires* the Constitution;

NN. BECAUSE, in ***Superintendent, Central Prison v. Ram Manohar Lohia, (1960) 2 SCR 821,*** this Hon'ble Court has further held that there must be rational nexus and immediate connection between 'public order' and the legislation. In the present case, such immediate connection is lacking;

OO. BECAUSE, there is not even a law and order issue. If there is a law and order issue, it is created by the administration of the college and certain other

elements, and that is not a ground to deny exercise of a right - whether legal or fundamental. In any event, the limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one that is far-fetched, hypothetical, or problematic, or too remote in the chain of its relation with the public order;

PP. BECAUSE, the actions of the respondent-State and other respondents of denying entry of students wearing headscarves into classroom to avail education, has a deeply detrimental psychological impact on the young girls. These actions have the effect of suppressing the dreams and aspirations of the young girl students and scar their psyche irreparably;

QQ. BECAUSE, Article 25(2) mandates a dichotomy between religious affairs and secular activities which may be associated with religious practices but the same cannot be so over-reaching as to violate fundamental rights guaranteed by the Constitution;

RR. BECAUSE, the High Court's erroneous reliance on the passages from the Holy Quran is without fully appreciating the nuances of religion and that it is directed towards a believer where even the "desirable" is considered mandatory by the believer;

SS. BECAUSE, the anti-subordination test has not been applied by the High Court. The denial of wearing of *Hijab* or worse forcing young girls to take off articles of clothing that they connect with modesty and religious values, amounts to State-sanctioned indignity and is a violation of a gamut of human rights;

TT. BECAUSE, the impugned Government Order is hit by the effects test and is violative of Article 14 of the Constitution of India;

UU. BECAUSE, such a restriction on headscarves in classrooms of Pre-universities, has the effect of singling out *Hijab* observing Muslim girl students as a class and pushes them to chose between their right of religious/ cultural expression under Article 19(1)(a) and the Right to education under Article 21 of the Constitution of India;

VV. BECAUSE, the impugned Government Order aggrandizes existing educational backwardness amongst Muslims and proliferates discrimination;

WW. BECAUSE, the High Court did not take into account the fact that the Ld. Advocate General for the State of Karnataka had already conceded before the High Court that the State had not banned *hijab.* The said concession has not been recorded in the impugned Order either;

XX. BECAUSE, the High Court has employed a hyper-technical approach in PIL jurisdiction and has treated the instant case to be a typical civil suit;

6. GROUNDS FOR INTERIM RELIEF:

Interim relief is prayed in the following ground:

A. BECAUSE, prima facie case has been shown by the petitioner and balance of convenience is also in her favour as the exercise of the right, i.e. wearing of hijab had been permitted in schools and PUCs much before 28.12.2021, and *status quo ante* had been disturbed by conduct of the schools and private persons relying upon the impugned government order and affirmed by the Hon'ble High Court by the impugned order dated 15.03.2022;

B. BECAUSE, irreparable harm is being caused to the school going students who are now forced to elect between attending to educational needs and between exercise of freedom of wearing a modest clothing as permitted under Articles 15, 19 and 21 of the constitution, and lastly also under Article 25 of the Constitution;

C. BECAUSE, irreparable harm will be caused unless interim relief as prayed for is granted; as it had been reported that exams are

approaching and thousands of women and young girls are likely to be excluded if the exclusion of those wearing hijab is insisted upon.

D. BECAUSE, the practice to prevent students wearing hijab from attending classes is not supported by any law, and being completely illegal the same ought not to be permitted;

E. BECAUSE, uniform even if prescribed, firstly does not exclude Hijab as even a dupatta tied around the head can qualify as hijab, and second, the same has not been insisted upon in the past and it is clearly only directory and not mandatory – or only ceremonial.

F. BECAUSE, even the State Government has reported to have acceded that the restriction on hijab has resulted in girls dropping out of education, which is a serious concern;

7. MAIN PRAYER

In view of the facts and circumstances of the case, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

A. Grant special leave to Appeal against judgement and Order dated 15.03.2022 passed in Writ Petition No. 2347 of 2022 by the High Court of Karnataka at Bengaluru;

B. Pass such further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case in the interest of justice.

8. PRAYER FOR INTERIM RELIEF:

In view of the facts and circumstances of the case, it is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

A. Grant *ad interim* stay of the judgement and Order dated 15.03.2022 passed in Writ Petition No. 2347 of 2022 by the High Court of Karnataka at Bengaluru;

B. Grant *ad interim* stay of the Government Order dated 05.02.2022 issued by Respondent No.1;

C. Such other relief as may be necessary in the interest of justice may be passed;

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

DRAWN BY:
Talha Abdul Rahman
Mohammed Afeef
Basava Prasad Kunale
M. Shaz Khan
Harsh Vardhan Kediya

FILED BY:
TALHA ABDUL RAHMAN
Advocate for the Petitioner

Drawn On: 16.03.2022
Filed On: 16.03.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SLP (CIVIL) No._____ OF 2022

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition (Civil) is confined only to the pleadings before the High Court whose order is challenged and the other documents relied upon in those proceedings. No additional grounds or facts are taken. It is further certified that the copies of the documents/ annexures attached to the Special Leave Petition (Civil) are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instruction given by the petitioner whose affidavit is filed in support of the Special Leave Petition (Civil).

FILED BY:

TALHA ABDUL RAHMAN
ADVOCATE ON RECORD

Drawn On: 16.03.2022
Filed On: 16.03.2022

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

IN THE MATTER OF:

Sajeeda Begum ... Petitioner

Versus

The State of Karnataka & Ors. ... Respondents

AFFIDAVIT

I, Sajeeda Begum, aged about 66 years, D/o Late Shri Abdul Samad, R/o 6th Main, Viviani Road Cross, Near Adams Function Hall, Frazer Town, Bangalore, Karnataka – 560 005, being the Petitioner above-named do hereby solemnly affirm and state on oath as under: -

1. That I am the Petitioner in the accompanying SLP, competent to depose the instant affidavit and I am well conversant with the facts of the case.

2. That I have read and understood the contents of the Synopsis and List of dates (Pages B to Y), Special Leave Petition (Pages 130 to 149 and para 1 to 8), and the I.A.s and the contents of the same are true and correct to my knowledge and based on the records of the case.

3. I further state that all the Annexures to this Special Leave Petition are true copies of their respective originals.

Sajeeda Begum
DEPONENT

VERIFICATION

Verified at Bangalore on this the 16 day of March, 2022 that the contents of paragraph 1 to 3 of the above Affidavit are true and correct to the best of my knowledge and belief and no part thereof is false and nothing material has been withheld therefrom.

No corrections

Sajeeda Begum
DEPONENT

NOTARY Chandrashekaraiah. S Bangalore Urban Rural Karnataka 1008 GOVT. OF INDIA

SWORN TO BEFORE ME
16/3/2022
CHANDRASHEKARAIAH. S
Advocate & Notary
No. 9/7, Kempegowda Nilaya
3rd Cross, Muthurayaswamy Extention
Sunkadakatte, Bangalore - 560091

DOK 2 Page 30
Reg No 3147 Dated 16/3/2022

APPENDIX

KARNATAKA EDUCATION ACT 1983

133. Powers of Government to give directions

(1)The State Government may, subject to other provisions of this Act, by order, direct the Commissioner of Public Instruction or the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Governing Council or the owner, as the case may be, of such institution shall comply with every such direction.

(3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of such officer or authority to comply with such directions.

ANNEXURE P-1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No……/2022

BETWEEN:

Smt. Reshma

Petitioner

AND,

The State of Karnataka & others

Respondents

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Place: Bangalore. Advocate for Petitioner

Date: 31-01-22

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No……/2022

BETWEEN:

Smt. Reshma

…**Petitioner**

AND

The State of Karnataka & others

…Respondents

SYNOPSIS

Date	Event
28/12/2021	The Petitioner herein along with other female students who profess the Islamic faith were denied entry into the Respondent college premises and have been barred from attending the classes held in the Respondent College on the ground that they were wearing a Hijab (headscarf).
28/01/2021	The Petitioner has made representations to the Respondents herein, underling the grievance and requesting to be allowed to wear the Hijab inside the Respondent College premises.

BRIEF FACTS OF THE CASE

The Petitioner is a Student studying in the Respondent, Government-run Pre-University College. On 28/12/2021 the Petitioner herein along with other female students who profess the Islamic faith were denied entry into the college premises and have been barred from attending the classes held in the Respondent College. The Respondent College

has denied entry and access to the Petitioners here and other students, on the ground that they were wearing a Hijab (headscarf). It is the contention of the Respondent College that the Petitioners and the other similarly placed students have violated the dress code of the college by merely wearing a Hijab, and for the reason, they have been denied entry into the rrespondent College premises and are restricted from attending their classes therefore also infringing on the right to education. The Respondent College has not allowed the Petitioner and the other female students from entering the college premises and to attend classes, till date.

The Constitution of India guarantees the Freedom of Conscience and the right to profess, practice and propagate religion, while reserving the State's right to interfere with the religious matter, only if it involves an issue relating to public order, morality and health. The right of women to have the choice of dress based on religious injunctions is a fundamental right protected under Article 25(1), when such prescription of dress is an essential part of the religion.

Taking away the practice of wearing the Hijab from women who profess the Islamic faith, results in a fundamental change is the character of the Islamic religion. For this reason, the practice of wearing the Hijab constitutes as an essential and integral part of Islam. The religious practice of wearing the Hijab is neither entangled in public law nor is there any conflict between the Petitioner's Right to Religious Freedom and the State's duty to regulate public affairs in matters of general nature or secular activities.

The Shariah mandates women wear the headscarf, and therefore, the actions of the Respondent College in banning the headscarf within the premises of the college, is repugnant to protection of the religious freedom as provided under Article 25(1).

Place: Bangalore. Advocate for Petitioner

Date: 31-01-22

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)
W.P.No……/2022

BETWEEN:

1. **Smt. Reshma,**
   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, Peramapai Road,
   Santhekatte, Santhosh Nagara, Manipal Road,
   Kunjibettu Post, Udupi,
   Karnataka- 576105

PETITIONER

AND:

1. **State of Karnataka**
   Represented by the Principal Secretary
   Department of Primary and Secondary Education.

2. **Government PU College for Girls,**
   Behind Syndicate Bank,
   Near Harsha Store, Udupi
   Karnataka – 576101
   Represented by its Principal

3. **District Commissioner,**
   Udupi District, Manipal,
   Agumbe – Udupi Highway,
   Eshwar Nagar, Manipal,
   Karnataka – 576104

4. **The Director,**
   Karnataka Pre- University Board,
   Department of Pre- University Education, Karnataka,
   18th Cross Road, Sampige Road,
   Maleshwarama, Bengaluru – 560012

RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA

The Petitioners above named begs to submit as follows:

1. The Petitioner is a Student studying in the Respondent, Government ren Pre-University College. The Petitioners are aggrieved by the illegal and discriminatory actions taken by the Respondent Pre-University College, which has denied her entry into college on the sole ground of wearing the Hijab (Headscarf). Being aggrieved by this illegal, manifestly arbitrary, discriminatory and exclusionary action of the Respondent University, by singling out the candidate who is Petitioners herein, the above Writ Petition is being preferred.

BRIEF FACTS

2. It is submitted that Petitioner No.1 is a 2nd PUC Student, studying in the Respondent, Government PU College for Girls, Udupi. The Petitioner believes that the outcome of this Writ Petition will save the interest of the student community at large. The ID Card of the Petitioner is produced herein as **ANNEXURE "A".** The Petitioner is represented through her next friend (brother) Sri. Mubarak. The Aadhar cards of the Petitioner and her next friend is herewith marked and produced as **ANNEXURE – A1 & A2** it is submitted that the Respondent is a Pre-University College run by the Government of Karnataka and is situated in the Udupi District, hence would come under the ambit of article 12 of the constitution of India.

3. It is submitted that on 28/12/2021 the Petitioner herein along with other female students who profess the Islamic faith were denied entry into the college premises and have been barred from attending the classes held in the Respondent College. The Respondent College has denied entry and access to the Petitioners herein and other students, on the ground that they were wearing a Hijab (headscarf). It is the contention of the Respondent College that the Petitioners and the other similarly placed students have violated the dress code of the college by merely wearing a Hijab, and for that reason, they have been denied entry into the Respondent College premises and are restricted from attending their classes therefore also infringing on the right to education. The Respondent College has not allowed the Petitioner and the other-other female students from entering the college premises and to attend classes, till date.
4. It is submitted that the rights guaranteed under our constitutional fabric are the dynamic and timeless rights of liberty and equality however actions of the Respondent College, in restriction the Petitioners herein from entering into the College premises and denying the children of the minority sector, right to education would trample over their rights such as those under Articles 14, 19, 21, 24(1), 26(b), 21(A), & 15(1) under the constitution of India and render such action as illegal, manifestly arbitrary, exclusionary unconstitutional and discriminatory.
5. It is submitted that the Freedom to profess, practice and propagate religion is a fundamental right, which is subject to public order, morality and health as enshrined under Article

25(1) of the Constitution of India. It is submitted that the religious practice of wearing the Hijab is neither entangled in public law nor is there any conflict between the Petitioner's Right to Religious Freedom and the State's duty to regulate public affairs in matters of general nature or secular activities.

6. The Constitution of India guarantees the Freedom of Conscience and the right to profess, practice and propagate religion, while reserving the State's right to interfere with the religious matters, only if it involves an issue relating to public order, morality and health. However, with the lack of any such imminent necessity to garner such unsought action, the Respondent College has singled out the petitioner herein along with a handful of female students belonging to the Islamic faith and arbitrarily and indefinitely denied them access/entry to college as well their education. The manner in which the Respondent College has ousted the Petitioner not only creates a stigma amongst her batch mates but among the children of entire college, which in turn will affect the mental health as well as future prospects of the petitioner moving forward.
7. It is imperative to mention that the Constitution guarantees protection to religious practices based on what one's conscience profess. In other words, one can retain identity based on the religion. However, the state ought to refrain from interfering with the practice of religious affairs, which would obliterate one's religious identity especially in the manner done so by the Respondent College, which in doing so has also denied the right to education. The Respondent College without any form of public consultation with the students or the student representative of

the college, prior intimation or hearing, in the guise of being opposed to uniform policy of the Respondent college, have curtailed the right to education on the sole ground of religion is smacked by malafide, discriminatory and politically motivated. By doing so, the state has failed in its duty to realize the right to huma development by denying the petitioner her education in the manner portrayed above.

8. It is submitted that in the case of 'Hindu Religious Endowments, Madras v.Sri. Lakshmindra Thirtha Swamiar of Sri. Shirur Mutt (1954 SCR 1005), the Hon'ble Supreme Court has held that:

> "Freedom of Religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rules and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with the decision in such matters"

9. It is submitted that the protection of essential practice thus means that liberty is beyond the interference by the State and the State has the obligation to respect the essential religious practice. Any interference with the person's right or denominations right thus requires justification of State interest to override such protection. It is clear that no such justification whatsoever has been forthcoming and the Respondent College has remained mute on the above aspect till date. It is imperative to mention that the principles of liberty enshrined in our

constitution ought not to be given a static approach and must yield to the present times of an all-inclusive interpretation of fundamental rights guaranteed in our constitution of India. A mere wearing of a Hijab being an essential part of the Islamic religion cannot be the sole ground to deny education to petitioner thus it is nothing but a draconian manner of exercising state action plagued by malafide.

10. It is summitted that the Hon'ble Supreme Court has also observed that:

> "What constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to be sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use or marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion, within the meaning of Article 26(b)"

11. It is further submitted that in the case of A.S Narayan Deeshitult v. State of A.P (1996 9 SCC 548), the Hon'ble Supreme Court has observed that:

> "The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They also extend to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion."

Thus, by not keeping a check on such unfettered action on the state to deny the petitioner her guaranteed right to education merely on the ground of wearing the hijab, which is an essential religious practice would tantamount to reducing the rule of law to an individual's perception to good social order. This in turn would defeat the constitutional idealisms by retarding and impeding the social integration, promotion of inclusion of pluralism and of abandoning the idea of alienation or unacceptable social norms.

12. It is submitted that in dealing with the question of freedom of religious practices, the Courts must dwell on to find if such practices are essential to maintain the identity of a person to profess his faith in the religion he practices and if not allowed, whether it would result in the wrath of the injunctions of the religious doctrine he professes. One of the salient features of the religious tenets is the moral obligations that one has to carry in formulating his conduct. This moral obligation cannot be allowed to be interpolated by outside ethos. If the religious tenets do not allow a woman to become a priest, the state cannot import secular ethos of gender equality to allow a woman to be appointed as a priest. If it is allowed, the constitutional protection will become void and hollow.

13. It is submitted that in the case of 'Commissioner of Police v. Acharya Jagadishwarananda Acadhuta (AIR 2004sc 2984) the Hon'ble Supreme Court has held that:

> "The test to determine whether a part or practices is essential to the religion is – to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change is the character of that religion or in its behalf, then such part could be treated as an essential or integral part'.

14. It is submitted that the Article 25(1) couches a negative liberty ensuring "free from interference or obstacle" in practicing the essential part of a religion, except in situations as referred in the said Article.

15. It is submitted that in the case of Amnah Bint Basheer & Ors v. Central Board of Secondary Education (CBSE) & Ors (2016 SCC Online Ker 17250) The Hon'ble Court of Kerala has observed that:

> "There are five kinds of rules recognized in Islamic law to classify the nature of the law for its operation which are as follows:
>
> 1. Farz: Strictly obligatory – Five times prayer, Compulsory payment (Zakat), Fasting, wearing of Hijab etc.
> 2. Haram: Those are strictly forbidden. Consumption of liquor, eating pork etc.
> 3. Mandub: Things which are advice to do. These are things which one fails to perform would not cause any

harm to him like additional prayers apart from the five times obligatory prayers.

4. Makruh: Which means advice to refrain from. These sins are a lesser category which is short of forbidden, such as wasting food, water, etc.
5. Jaiz: This is about the things the religion is indifferent. These things are lawful and would not reap any rewards.

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)"

The Copy of the Judgement in Amnah Bint Basheer & Anr v. Central Board of Secondary Education (CBSE) & Ors (2016 SCC Online Ker 17250) is herewith marked and produced as **ANNEXURE-B.**

16. The discussions in the aforementioned case would show that covering the head and wearing a long sleeve dress by women have been treated as an essential part of the Islamic religion. It follows a fortiori, Article 25(1) protects such prescription of the dress code. The only question that now remains is, whether the essential practice as above would offend the public order, morality, and health or is it necessary to regulate such essential practice to give effect to other provisions of Part III of the Constitution.

17. It is submitted that now, in the present circumstances the petitioner herein has been denied her right to education by being

singled out only the ground that she wears a Hijab (Headscarf) fact of therefore, picking her out from a class of persons and subjecting her to unreasonable restrictions. Such action if goes unchecked it will render the constitution and its progressive principle up held by a cantena of judgements as ineffective.

18. The discriminatory actions of the Respondent college and the manner in imposing the same must be taken note of strongly by this Hon'ble Court. It is held by the apex court that the constitutional courts assumes further importance when a class or community whose rights are in question are those who have been object of humiliation, discrimination, separation and violence by not only the state & society at large but also at the hands of their family.

19. It is needless to state that wearing of a Hijab must not be treated in a manner such as cheating in an exam, non-payment of fees etc. which would otherwise render such action of debarring a student from attending classes as justified. Education is imperative for the growth of the society at large and gives hope to our future prospects of this country however, if such actions of exclusionary practice are unchecked, it goes against the constitutional morality.

20. In the case of "Bijoe Emmanuel v. State of Kerala (1986 3 SCC 615), the Hon'ble Supreme Court held as follows:

> "Whenever the Fundamental Right to freedom of conscience and to profess, practice and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health;

whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorized by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice or to provide for social welfare and reform".

21. It is submitted that the dress code of the Respondent College, wherein the Hijab has been banned, is not prescribed by invoking an interest of public order or morals of the society. The public order is one which would affect community or public at large. The morality is pertaining to conscience or moral sense of the prescribed standards in the society. The health denotes well-being of a person. The restrictions placed by the Respondent College in banning the Hijab can be only on any grounds referred as above. In the absence of any of the conditions referred to under Article 25(1), the essential practice cannot be regulated or restrained. It is submitted, a restriction can be imposed under Article 19(2) of the Constitution in the interest of the security of the State as contemplated under Article 25(1) which also states the freedom would be subject to the provisions of Part III of the Constitution.

22. It is submitted that the Petitioner has made representations to Respondent No. 2 & 3 on 28/01/2022, requesting that she be slowed to attend classes in the Respondent College, while wearing her Hijab. The Representations dated 28/01/2022, along with the acknowledgements are herewith marked and produced as **ANNEXURE- C, D, E & F** respectively.

23. It is submitted that the present Writ Petition is not a Public Interest Litigation.

24. It is submitted that the Petitioner has not preferred any other Petition in any other Court for the same Cause of Action.

25. Since the Petitioner has no alternative remedy, she has approached this Hon'ble Court on the following amongst other grounds.

GROUNDS

a. The Constitution of India guarantees the Freedom of Conscience and the right to profess, practice and propagate religion, while reserving the State's right to interfere with the religious matter, only if it involves an issue relating to public order, morality and health.

b. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They also extend to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worships which are integral parts of the religion.

c. The right of women to have the choice of dress based on religious injunction is a fundamental right protected under Article 25(1), when such prescriptions of dress is an essential part of the religion.

d. In the case of Amnah Bint Basheer & Anr. V. Central Board of Secondary Education (CBSE) & Ors (2016 SCC Online Ker 17250) The Hon'ble High Court of Kerala has held that the analysis of the Quranic injunctions and the Hadiths would show that it's a 'Farz' to cover the head and wear the long-

sleeved dress except face part and exposing the body otherwise is forbidden (haram).

e. It is submitted that Islamic embraces and encompasses guidance to the human in all walks of life. The Shariah consist of two things.
    a. The Laws revealed through the Holy Quran.
    b. The laws that are taken from the lifestyle and teaching of the prophet Mohammed. This part is called the Hadiths.

The Holy Quran consist of broad and general prepositions. It is often through Hadiths, Quranic prepositions are interpreted or explained. Therefore, validity of expected conduct of the believer rests on the credibility of reporting of Hadiths as well. It is submitted that the Hadiths have significant role in determine the Shariah law.

f. It is submitted that there is a possibility of reporting Hadiths in different interpretations with respect to the saying and teaching of prophet Mohammed, the Messenger. This is one of the reasons, the different schools of thoughts have come into existence among the Muslims. It is submitted that, as far as the Constitutional Courts are concerned, when called upon to decide the rights premised on the freedom guaranteed under Article 25(1) or 26 is to accommodate such different propositions to honor such freedom. In protecting the religious freedoms, the Constitutional Courts are required to look at the issue from the angel of freedom guaranteed and not take-up on the task of validity of such propositions, as the priests or proponents of such proposition would do. It is

submitted that all such proposition are to be safeguarded, irrespective of the challenge being made for acceptance of such propositions within or outside the religion. The authority to decide what is valid or not valid should be left to the discretion of the persons referred under Article 25(1) or to the denominations as referred under Article 26.

g. It is submitted that in Chapter 24 known as 'The Light' in verse 31 in Holy Quran, the command is as follows:

> "And tell the believing women to lower their gaze and be modest, and to display of their adornment only that which is apparent, and to draw their veils over their bosoms, and not reveal their adornment save to their own husbands or fathers or husbands fathers, or their sons or their husbands sons or their brothers sons or sisters sons, or their women, or their slaves, or male attendants who lack vigor, or children who know naught of women's nakedness. And let them not stamp their feet so as to reveal what they hide of their adornment. And turn unto Allah together, O believers, so that ye may succeed."

h. It is submitted that in the original text in Arabic, the veil is referred as a 'Khumur'. In the Islamic digest of Aqeedah and Fiqh by Mahmoud Rida Murad 'Khumur' is mentioned as follows"

> "Khumur, or head cover, is the cloth which covers all of the hair on the head, while the work, juyoob (pl. of jaib) means not only the bosom, as commonly thought, but it includes the next too."

It is submitted that the prescription of the dress code a above is essential and hence must be protected under Article 25 of the Constitution of India.

i. Taking away the practice of wearing the Hijab from women who profess the Islamic faith, results in a fundamental change is the character of the Islamic religion. For this reason, the practice of wearing the Hijab constitutes as an essential and integral part of Islam.

j. Any interreference with the person's right or denominations right requires justification of State interest to override such protection.

k. The religious practice of wearing the Hijab is neither entangled in public law nor is there any conflict between the Petitioner's Right to Religious Freedom and the State's duty to regulate public affairs in matters of general nature or secular activities.

l. The dress code of the Respondent College, wherein the Hijab has been banned, is not prescribed by invoking an interest of public order or morals of the society.

m. The Shariah mandates women to wear the headscarf, and therefore, the actions of the Respondent College in banning the headscarf within the premises of the college, is repugnant to protection of the religious freedom as provided under Article 25(1).

n. The Respondent College in denying entry into the College premises and restricting the Petitioners from attending classes , on the ground that they were wearing a Hijab (headscarf), has acted in an illegal, unconstitutional and

discriminatory manner as their actions are violative of Articles 25(1), 26(b), 21(A). & 15(1).

o. The exclusionary practice of singling out the petitioner herein solely on the basis of wearing a hijab at thereby denying the petitioner her right to attend classes is against the constitutional morality. That such an act cannot take the shelter under section 19(2) as there lacks any public interest such action.

GROUNDS FOR INTERIM RELIEF

The 2nd Respondent has denied petitioner her right to attend classes on the sole reason that she is wearing a hijab in spite of several representations to the Respondent No.2. The petitioner believe that it has a very good case on merits and prima-facie the impugned acts are unsustainable in law. That during the pendency of the writ petition, if the impugned action were to continue to operate, it would lead not only to multiplicity of proceedings, but also harassment to the petitioner. In such an event, irreparable loss and injury would be caused to the petitioners, which cannot be set-right at a later stage. The balance of convenience also heavily weighs in favor of the grant of interim relief as prayed for in this writ petition. It is therefore just and proper to grant the interim relief as prayed for in this writ petition.

PRAYER

Wherefore, the petitioners humbly pray that this Hon'ble Court may please to call for records and;

i. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No.2 not to interfere with the

Petitioner's fundamental right to practice the essential practices of her religion, including wearing of hijab to the 2nf Respondent University while attending classes;

ii. Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to permit the Petitioner to wear hijab (head scarf) while attending her classes, as being a part of essential practice of her religion;

iii. Issue an appropriate writ, order or direction in the nature of mandamus declaring that the Petitioner's right to wear hijab is a fundamental righty guaranteed under Article 14 and 25 of the Constitution of India and is an essential practice of Islamic religion;

iv. Issue such other writ, order or direction as this Hon'ble Court may deem fir in the facts and circumstances of the case.

Interim Prayer

Pending disposal of the above writ petition, this Hon'ble Court may be pleased to direct the Respondent No.2 not to prevent the Petitioner from attending classes wearing hijab to secure the ends of justice.

Place: Bangalore. Advocate for Petitioner

Date: 31-01-22

ADDRESS FOR SERVICE

ShathabishShivanna,
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ANNEXURE P-2

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

Proposal :-

As mentioned in the abovementioned item 1), the Karnataka Education Act 1983 passed by the government of Karnataka (1-1995) ? 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 ? 133 of the above law, the government has the authority to issue directions to schools and colleges in this regard.

The abovementioned circular in item (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 abide by government directions, 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 committtees.

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 of 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 clause 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

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rights can be resolve 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) After the 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, after consulting 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 ? 133 sub-clause 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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ANNEXURE P-3

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

W.P.NO.2146/2022 (EDN-RES)
C/W
W.P.No.2347/2022

BETWEEN:

Ayesha Hazeema Almas ... PETITIONER

AND:

The Chief Secretary,
Dept. of Primary and Higher Education
and others ... RESPONDENTS

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STATEMENT OF OBJECTIONS FILED ON BEHALF OF RESPONDENTS - STATE

Under Rule 21 of the Karnataka High Court Writ Proceeding Rules, the Respondents - State above named humbly submits as follows:

1. Writ Petition No.2146 of 2022 has been filed by three Second Year P.U. students and two First Year P.U. students of Government P.U. College for Girls, Udupi City, Udupi seeking following prayers:-

(i) Writ of mandamus to initiate enquiry against Respondent No.5 - College and Principal for violation of guidelines of Pre University Department for the academic year 2021-22 at Annexure-J;

(ii) conduct enquiry against the Respondent Nos. 6 to 14 for their hostile approach towards the Petitioners;

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(iii) Writ of Quo-warranto against the Respondent Nos. 15 and 16 under which authority and law they are interfering in the administration of Respondent No.5 – School/College;

(iv) Declaration status-quo referred in Letter dated 25.01.2022 at Annexure-H is with the consonance to the department guidelines for the academic year 2021-22 at Annexure-J and along with other reliefs.

2. Writ Petition No.2347 of 2022 has been filed by the second Petitioner in W.P.No.2146 of 2022 claiming to be a student of second year P.U of Government P.U. College for Girls, Udupi City, Udupi seeking following prayers:-

(i) Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent No.2 not to interfere with the Petitioner's fundamental right to practice the essential practice of her religion, including wearing of hijab to the 2nd Respondent University while attending classes;

(ii) Issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to permit the Petitioner to wear hijab (head scarf) while attending her classes, as being a part of essential practice of her religion;

(iii) Issue an appropriate writ, order or direction in the nature of mandamus declaring that the Petitioners right to wear hijab is a fundamental right guaranteed under the constitution guaranteed under Article 14 and 25 of the Constitution of India and is an essential practice of Islam religion;

Rudresh S N.

3. At the outset it is submitted that these Writ Petitions are neither maintainable on facts nor on law and hence, the same are liable to be dismissed.

4. The second petitioner has preferred the above writ petitions suppressing the filing of the other petition with identical interim and main relief and espousing the same cause of action and therefore both Petitioner are liable to be dismissed on the ground alone of suppression of material facts with exemplary costs.

5. In absence of a settled law on the disputed question of facts and without proper declaration of fact, writ petition for adjudicating question of law involving said disputed facts cannot be maintained. When the matter involves disputed question of facts without any finding/declaration by the competent authority or the court cannot be interfered by this Hon'ble Court in writ petition preferred under Article 226 and 227 of the Constitution of India.

6. There is no sufficient pleading and any sufficient material placed on record in support of the main prayers/interim prayer sought in the writ petition and there both the Petitions are liable to rejected on this ground alone.

7. The reliefs sought in the Writ Petition cannot be granted and the Petitioners have not given any representation to the Principal – Respondent No. 5 or College Development Committee. The Respondent – P.U. College being an institution governed under the Karnataka Education Act, 1983 is under the

Laduvini S.N.

administration of the Respondent No. 5 – College Development Committee under the chairmanship of local M.L.A. and other office bearers. The Karnataka Education Act is a comprehensive legislation and a complete code, which regulates the Educational Institutions in Karnataka. Section 6 & 7 reads as follows:

> 6. Educational institutions to be in accordance with this Act. - No educational institution shall be established or maintained otherwise than in accordance with the provisions of this Act or the rules made thereunder.
>
> 7. Government to prescribe curricula, etc.- (1) Subject to such rules as may be prescribed, the State Government may, in respect of educational institutions, by order specify,-
>
> (a) the curricula, syllabi and text books for any course of instruction;
>
> (b) the duration of such course;
>
> (c) the medium of instruction;
>
> (d) the scheme of examinations and evaluation;
>
> (e) the number of working days and working hours in an academic year;
>
> (f) the rates at which tuition and other fees, building fund or other amount, by whatever name called, may be charged from students or on behalf of students;
>
> (g) the staff pattern (teaching and non-teaching) and the educational and other qualifications for different posts;

Padmini S.N

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

(i) such other matters as are considered necessary.

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

(a) moral and ethical education;

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

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

(d) innovative, creative and research activities;

(e) promotion of national integration;

(f) promotion of civic sense; and

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

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

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

Sadasivi S. N.

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

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

(v) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women;

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

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

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

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

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

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

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

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

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

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

(iv) promotion of values including moral values; and

(v) development of good attitudes towards further learning.

(b) The main objective of education at the secondary level shall be to impart such general education as may be prescribed so as to make the pupil fit either for

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higher academic studies or for job-oriented vocational courses.

The general education so imparted shall, among others, include,-

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

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

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

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

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

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

(5) In every recognised educational institution,- (a) the course of instruction shall conform to the curricula and other conditions under sub-section (1); and (b) no part of the working hours prescribed shall be utilised for any purpose other than instruction in accordance with the curricula.

Section 133 reads as follows:

133. Powers of Government to give directions.-

(1) The State Government may, subject to other provisions of this Act, by order, direct the Commissioner of Public Instruction or the Director or any other officer not below the rank of the District Educational Officer to make an enquiry or to take appropriate proceeding under this Act in respect of any matter specified in the said order and the Director or the other officer, as the case may be, shall report to the State Government in due course the result of the enquiry made or the proceeding taken by him.

(2) The State Government may give such directions to any educational institution or tutorial institution as in its opinion are necessary or expedient for carrying out the purposes of this Act or to give effect to any of the provisions contained therein or of any rules or orders made thereunder and the Governing Council or the owner, as the case may be, of such institution shall comply with every such direction.

(3) The State Government may also give such directions to the officers or authorities under its control as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of such officer or authority to comply with such directions.

The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 has

been formulated by the Government of Karnataka in exercise of powers conferred by Sub-Section (1) of Section 145 of Karnataka Education Act, 1983, which prescribes Rules for the Educational Institutions in Karnataka. Rules 11 to 15 read as follows:

"11. Provision of Uniform, Clothing, Text Books etc.,

(1) Every recognised educational institution may specify its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.

(2) When an educational institution intends to change the uniform as specified in sub-rule (1) above, it shall issue notice to parents in this regard at least one year in advance.

(3) Purchase of uniform clothing and text books from the school or from a shop etc., suggested by school authorities and stitching of uniform clothing with the tailors suggested by the school authorities, shall be at the option of the student or his parent. The school authorities shall make no compulsion in this regard.

12. Parent Teacher Committee.-

(1) It shall be the duty of the head of every recognised educational institution, to constitute a Parent Teacher Committee within thirty days of the commencement of each academic year;

(2) Till a Committee is constituted, under sub-rule (1) the committee constituted in the preceding academic year shall continue to function;

(3) The parent Teacher Committee for each educational institution shall consist of the following:-

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(a) Three representatives of the parents of the students who have studied upto SSLC or above of whom one shall be a woman and they shall be selected from among the willing parents.

(b) The head of the institution;

(c) Three class teachers in the institution selected by rotation;

(d) the Secretary of the Governing Council of the Educational Institution;

(4) Whereas, the members of the Parent teacher committee specified by clauses (b) and (d) of sub-rule (3) shall be ex-officio, the members selected under clause (a) and (b) of sub-rule (3) shall hold office, for the period till the next committee is constituted under sub-rule (i).

(5) The functions of the Parent-Teacher Committee shall be as follows:-

(a) to redress the grievances of the students and their parents, if any;

(b) to devise such action programmes as could be conducive for a healthy student-teacher, parent-teacher, teacher-management, parent-management relations.

(c) any other activity conducive to the welfare of the students;

(6) The Secretary of the Governing Council shall be the Chairman of the Parent-Teacher Committee.

(7) The Head of the Institution shall be the Member Secretary of the Parent-Teacher

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Committee. He shall call for all the meetings of the committee, draw up proceedings of the Board and give effect to the decisions of the committee under the orders of the Chairman of the committee; All the proceedings of the committee shall be authenticated by the Chairman. The correspondence and other secretarial activities shall be carried on by the Member-Secretary.

(8) Every decision of the Parent-Teacher Committee shall be taken by an ordinary majority of the elected members present and voting. In case of equality of votes, the Chairman shall have a casting vote.

(9) The Parent-Teacher Committee shall meet at least once in three months in the premises of the educational institution. If the Chairman is unable to attend such quarterly meeting, he shall authorise some other member to chair such meeting.

(10) Meeting notice shall be despatched to the members of the parent Teacher Committee at least ten days in advance. The quorum for the meeting shall be one-third of the total members of whom atleast one shall be a parent member.

(11) The first meeting of every monthly constituted parent-Teacher Committee shall be held on the day of its constitution. An order constituting the committee shall be issued by the Head of the Institution.

(12) Meetings of the Parent-Teacher Committee shall be held during working hours of the school with in the premises of the Institution.

15. Violation of Rules regarding admission fees, or any provisions in the Act or Rules by the Institution.-

1 [(1)]1 Any parent who is aggrieved by,-

(a) violation of any of the provisions of these rules with respect to admissions by the institutions;

(b) violation of any of provisions of these rules with respect to collection of fees; may file a petition in writing to the District Level Education Regulating Authority constituted under 1 [rule 16]

2 [(2) "The District Regulating Authority may also suo-moto or on complaint made by any person interested orally or otherwise make an enquiry to satisfy themselves as to the correctness of the complaint and may pass as if may consider fit, after giving an opportunity to the party adversely affected by it an opportunity of making representation.

8. It is clear from the above provisions that the Education Act and Rules made thereunder empowers the Educational Institutions with discretionary power to specify its own set of uniform for their students. By virtue of the powers mentioned above in Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995, the Respondent No. 5 – P.U. College has made it compulsory to have its own uniform for the students.

9. The institutions have been following the uniform dress code from several years and some of the resolutions and

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photograpghs of the students wearing uniforms is produced to that effect is produced herewith and marked as **ANNEXURE - R1** series which has been an undisputed fact.

10. Petitioners herein and their parents are fully aware of the uniform system adopted in the college at the time of admission. By taking admission to the institution, they have submitted themselves to the uniform and educational system being imparted. Furthermore, the Petitioners have voluntarily given their undertaking that they will abide by the dress code along with the discipline of the institution. The Petitioner, while invoking the equitable writ jurisdiction ought to have disclosed this aspect before this Hon'ble Court. Having not approached the court with clean hands, they are not entitled to any equitable relief. The Petitioner are now estopped from contending otherwise. The undertaking given by the Petitioners are produced and marked as **ANNEXURE-R2** series.

11. It is submitted that the institution has received such voluntary undertaking from all students at the time of admission and as such students cannot claim any exception or exemption from the prescribed dress code. It is pertinent to note that the Petitioners herein were following the dress code and they did not ask any exemption until December 2021. It is only at the end of the academic year 2021-22, when just two months were left for the completion of academic year, that this issue was unnecessarily raised. The Petitioners did not raise any claim at the time of admission prior to December 2021. Since the Petitioners have given their consent or undertaking to follow the

uniform system of the dress code, they are estopped from claiming such exemption at a later stage after completion of major portion of 70-75% of the academic year.

12. It is submitted that Respondent No. 5 – Institution has followed the Karnataka Education Act, 1983 and The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 referred above and directed the students to follow the uniform dress code in the college campus and class rooms. The long-standing practice of this uniform system is a settled fact, accepted and admitted by the College Development Committee under the Chairmanship of local M.L.A. and other office bearers have discussed the subject on 31.01.2022 in the presence of some of the Petitioners and their parents. The request of the Petitioners was discussed at length and after analyzing the law, public order, and notions of secularism, equality and conflicting interest, it was decided that the existing uniform system shall continue. The students including the Petitioners cannot be allowed to wear hijab inside the premises of the Institution and if they violate the dress code and wear Hijab, such act shall amount to violation of code of conduct of the Institution and be considered as a subject matter of disciplinary action. It was made clear that strict action shall be taken against such indiscipline and thus students were requested to follow the discipline and uniform dress code prescribed by the college. Copy of the resolution dated 25.01.2022 and 31.01.2022 is produced and marked as **ANNEXURE - R3 & R4** respectively.

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13. It is submitted that the State Government in exercise of its power of superintendence and control over the institution under the Karnataka Education Act issued directions on 25.01.2022 that the Government is examining larger issues of dress code and uniform system up to P.U. level and there are conflicting views and interest in the subject and in view of the sensitivity involved in the matter a high level committee is being formed to examine and report back with the recommendations to the Government. In the meanwhile, it was also directed that the Respondent No. 5 – College shall continue with the existing uniform dress code till a comprehensive policy or decision is taken on the subject. The said direction of the Government taken on 25.01.2022, and of the above proceedings of College Development Committee on 31.01.2022, has been specifically communicated to the students through instructions dated 01.02.2022 by Registered Post. Copy of the directions dated 25.01.2022 and 01.02.2022 is produced herewith and marked as **ANNEXURE – R5 & R6** respectively.

14. It is submitted that both the institution and the Respondent – Department are receiving various requests and complaints regarding the issue of Uniform. On the basis of the claim made by the Petitioners, certain other students are also taking their own dress code or pattern as per their religious beliefs. Since the issue involved is very sensitive and only an expert committee can decide such matters, the institution and its administration shall be in a better position to decide such issue. In **M. Venkata Subba Rao v. M. Venkata Subba Rao reported in 2004 (2) CTC 1**, the court upheld this contention.

The relevant extract of the judgement is produced herewith for ready reference:

> *"15. In regard to the arguments as to the power of a matriculation school to impose fine, reliance was placed on Regulation 21 relating to imposition of minor punishments. It is true that under Regulation 21, there is no provision for imposition of fine for any irregularity or breach of code of conduct on the part of the teachers. In fact, the code of conduct for teachers and other persons employed in a matriculation school is detailed under Appendix-VII of the Regulations. Imposition of dress code is not one of the code of conduct enumerated thereunder. However, we have traced the power of the management to enforce dress code, by issuance of directions in order to maintain uniform discipline, to clause 6 of Annexure VIII of the Regulations. When the management of the school is empowered to issue directions to the teachers to be followed, the necessary corollary would be that, for non compliance of such directions, the management is entitled to take action. We find that fine is one of the modes of imposition of penalty on the students for violation of the disciplinary regulations. Of course, the learned counsel for appellant is right in contending that in the event the directions are not followed, the management may be at liberty to take disciplinary action. In view of the fact that the overall control of the school shall vest with the management as per Regulation 3 coupled with the power under clause 6 of Annexure VIII of the Regulations, we do not find any irregularity in imposing fine on the*

teachers for violation of the directions issued in respect of the dress code. For the said reason, we are unable to accept the challenge to the impugned order imposing fine for non-compliance of the directions issued by way of circulars in regard to the dress code.

16. 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."

Sadhini S.M.

It is also a settled law that when there are personal interests and larger interests involved, the issue of personal interest must yield to larger interest as decided in the case of **Asha Ranjan and Others v. State of Bihar reported 2017 (4) SCC 397. In Fathima Thasneem v. State of Kerala reported in 2018 SCC Online Kerala 5267,** the court emphasized on the State's duty to impart education. The relevant extract of the judgement is produced herewith for ready reference:

> *"6. Imparting education is a State function. Therefore private educational institutions discharge public function. Assuming that it is not a public function in regard to the prescription of dress code, the Fundamental Rights can be claimed as against the private actors horizontally. Horizontal application of the Fundamental Rights has been accepted by the Apex Court in various judgments. {See judgments of the Hon'ble Supreme Court in I.M.A. v. Union of India [(2011) 7 SCC 179], R.Rajagopal v. State of Tamil Nadu [(1994) 6 SCC 632], PUDR v. Union of India [(1982) 3 SCC 235]}.*
>
> *7. Fundamental Rights are either in nature of the absolute right or relative right. Absolute rights are non-negotiable. Relative rights are always subject to the restriction imposed by the Constitution. The religious rights are relative rights (see Art 25 of the Constitution). In the absence of any restriction placed by the State, the Court need not examine the matter in the light of restriction under the Constitution. The Court will, therefore, have to examine the matter*

Lakshmi S N.

on a totally different angle on the conflict between Fundamental Rights available to both. The Court has to examine the prioritization of competing Fundamental Rights in a larger legal principle on which legal system function in the absence of any Constitutional guidance in this regard. The Constitution itself envisage a Society where rights are balanced to subserve the larger interest of the Society.

8. In every human relationship, there evolves an interest. In the competing rights, if not resolved through the legislation, it is a matter for judicial adjudication. The Court, therefore, has to balance those rights to uphold the interest of the dominant rather than the subservient interest. The dominant interest represents the larger interest and the subservient interest represents only individual interest. If the dominant interest is not allowed to prevail, subservient interest would march over the dominant interest resulting in chaos. The dominant interest, in this case, is the management of the institution. If the management is not given free hand to administer and manage the institution that would denude their fundamental right. The Constitutional right is not intended to protect one right by annihilating the rights of others. The Constitution, in fact, intends to assimilate those plural interests within its scheme without any conflict or in priority. However, when there is a priority of interest, individual interest must yield to the larger interest. That is the essence of liberty."

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student acquiring a distinctive, identifiable feature which is not conducive for the development of the child and academic environment. It is necessary that educational institutions must have secular image which strengthen the continuation of national integration. Prescribing dress code will not be a hurdle or in any manner be violative of any rights as alleged by the Petitioners. On the other hand, they will be treated equally and there will not be any special identity being attributed to them or groupism they are subjected to by virtue of their appearance due to dress code. It is pertinent to note in similar case, the Madras High Court, division bench in **Jane Sathya v. Meenakshi Sundaram Engineering College reported in 2012 SCC Online Mad 2607** has taken the following view, relevant extracts are produced hereunder for ready reference:

> *"16. But, in the present case, she had opted to join the educational institution which had not imparted religious beliefs contrary to the faith of students. The petitioner was well informed about the working schedule of the college. Therefore, any student who joined the college is bound to attend the working schedule of the college. Such prescription of the working schedule by the college prescribing time table for the academic purpose cannot be said to be intruding into any religious faith of an individual as the individual has freedom to join any college of his / her choice. The regulations made do not offend any one's religious faith, it can never be said that religious right of such person is affected.*

Aadhimi S.N.

17.In the present case, as rightly contended by the college that the time table was informed to the students and parents on the first day of entering the academic year. If it was not suitable to any one, they should have left the campus in which event the college could have admitted another person before the cut-off date prescribed for admission. It is not the case of the petitioner that she continued her studies and insisted for her religious faith to be observed. On the other hand, she had voluntarily taken her transfer certificate and after which seeking for the refund of the fees. As rightly contended by the respondent college, the refund of fee has been stipulated in the circular issued by the AICTE and that the case of the petitioner did not come within the norms fixed by the AICTE. Therefore, the petitioner's writ petition is liable to be rejected on this short ground. Even otherwise, by the prescription of an uniform time table for all students, it can never be said that religious faith of any individual has been affected. Even in respect of educational institutions run by minorities protected under Article 30(1) of the Constitution, the Supreme Court has not precluded the State from imposing regulations and those institutions were directed to follow the general laws of land.

18.The Supreme Court in Ahmedabad St. Xavier's College Society v. State of Gujarat reported in (1974) 1 SCC 717 had an occasion to consider the scope of regulatory power of the State in respect of minority institution receiving aid and in paragraphs 172 and 173 it was observed as follows :

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"172. In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, of course be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minoritties but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right. Justice Holmes said in Hudson Country Water Co. v. McCarter: All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached. No right, however absolute, can be free from regulation.

Sabrimi & M.

The Privy Council said in Commonwealth of Australia v. Bank of New South Wales that regulation of freedom of trade and commerce is compatible with their absolute freedom; that Section 92 of the Australian Commonwealth Act is violated only when an Act restricts commerce directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote. Likewise, the fact that trade and commerce are absolutely free under Article 301 of the Constitution is compatible with their regulation which will not amount to restriction.

173.The application of the term abridge may not be difficult in many cases but the problem arises acutely in certain types of situations. The important ones are where a law is not a direct restriction of the right but is designed to accomplish another objective and the impact upon the right is secondary or indirect. Measures which are directed at other forms of activities but which have a secondary or indirect or incidental effect upon the right do not generally abridge a right unless the content of the right is regulated. As we have already said, such measures would include various types of taxes, economic regulations, laws regulating the wages, measures to promote health and to preserve hygiene and other laws of general application. By hypothesis, the law, taken by itself, is a legitimate one, aimed directly at the control of some other activity. The question is about its secondary impact upon the admitted area of administration of educational institutions. This is especially a problem of determining

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when the regulation in issue has an effect which constitutes an abridgment of the constitutional right within the meaning of Article 13(2). In other words, in every case, the Court must undertake to define and give content to the word abridge in Article 13(2). The question to be asked and answered is whether the particular measure is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgment. So, even if an educational institution established by a religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgment. If an educational institution established by a religious minority seeks no recognition, affiliation or aid, the state may have no right to prescribe the curriculum, syllabi or the qualification of the teachers." Fathema Hussain Sayed a Minor v. Bharat Education Society and others reported in AIR 2003 Bombay 75.

16. It is submitted that secularism is held to be the basic feature of the Constitution. Hence, while discharging constitutional obligation of imparting education, the State has to

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prescribe a secular uniform/dress code for the students. Prescribing a uniform also flows from the fundamental duty caste on the State under Article 14 and Article 46 of the Constitution. Given the diversirty of our nation and society, there are many religions and denominations. Every religion and caste will have their own belief, faith and practice, way of life. When exceptions, exemptions are given to certain people, community, or religion, others will also demand their claim, there will be chaos and confusion and conflicting interest which may lead to a law and order situation. Many of the countries abroad have adopted this view point and have strictly implemented following of a uniform dress code in educational institutions and have been banned in some of the countries more have been banned Hijab in public places. Such decisions are warmly welcomed across the world and the courts of such countries have upheld these decisions.

17. It is submitted that the guidelines produced at Annexure-J for the academic year 2022 is not in conformity with Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 and as such the Petitioner cannot rely upon the same and seek for its implementation by way of this writ petition. It is only illustrative in nature and the rule has got overriding effect and it is binding on the institutions and citizens. Since the rule allows the institutions to adopt their own uniform and guidelines, Annexure-J lacks importance and the institution is justified in its discretion with the noble object of maintaining secularism and equality in the institution.

18. It is submitted that Petitioners have also questioned the jurisdiction and powers of the Respondent – College Development Committee, more particularly, the Respondent Nos. 15 and 16 in this context. It is relevant to refer the Circular dated 31.01.2014 issued by the Government of Karnataka directing P.U. colleges to establish College Development Committee by prescribing the modalities. The said committee is formed for the overall betterment and taking care of the administration of the students and also safeguards the interest of the students. As per the requirement of the circulars issued from time to time, the 15th Respondent being the local M.L.A. as a Chairman constituted College Development Committee. The Development Committee for the academic year 2021-22 was formed on 24.08.2021 and the said committee has been effectively functioning. The Committee has convened several meetings and taken several decisions for the welfare and wellbeing of the institution and students at large. Such being the case, the allegations made in the Writ Petitions against the members of the Development Committee and their powers to take decisions in respect of the affairs of the institution cannot be found at fault by the Petitioners, the Committee was formed and is functioning in accordance with law and Petitioners cannot question its validity. The Petitioners have not challenged the educational Act, Rules made thereunder, or the resolution of the Development Committee, directions given by the Government and as such, they are not entitled for any relief as prayed for. Without challenging the powers of the Government or institution, they cannot question the action taken by Principal or the

Committee. Copy of the Circular and formation of College Development Committee dated 24.08.2021 is produced and marked as **ANNEXURE- R7.**

19. It is pertinent to note that, the Government of Karnataka exercising its power u/s 7(1)(i), 7(2)(g)(V) R/w Section 133 of the Karnataka Education Act, 1983 and Rule 11 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 has issued Government Order dated: 04.02.2022 regarding uniform policy for the Educational institution in the state. The said notification has been issued having regard to the conflicting views, demands by various educational institutions and students at large. After raising of the issue involved in these writ petitions, the students of various institutions of state of Karnataka have started insisting of clothes to be worn of their choice and they are seeking for relaxation and exemption from following uniform dress code prescribed by various institution governed under the Act. In order to resolve the controversy the Government thought it appropriate to prescribe uniform dress code by virtue of order dated: 04.02.2022. Copy of the order dated: 04.02.2022 is produced and marked as **ANNEXURE-R8**.

20. In order to maintain public order to provide equal treatment to all students and to avoid unnecessary controversy in the college and campus of educational institution in the state, to maintain secularism among the students the above clarification has been issued making the prescription of uniform dress code clear to all the students.

Kadwini S N.

21. The Petitioners do not have any enforceable right, special privilege to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. The Petitioners under the guise of demand for wearing hijab (head scarf) or any other dress code other than the one prescribed by the college administration have unnecessarily knocked the doors of this Hon'ble Court.

22. The education being the matter of academic in nature and policy of uniform dress code and curricula etc., have been prescribed by the Government or the expert bodies with noble intention of maintaining principles of secularism, equality and brotherhood, dignity, decorum and discipline in the educational institution cannot be treated as violation of any fundamental right of the citizen. The fundamental right guaranteed to the Citizen are subject to exception of public order, morality and other fundamental rights. Since, the Constitution has not exempted nor has provided any special privilege or exception to the Petitioners they cannot insist for the same.

It is further contended that the Petitioner's fundamental right to practice the essential practice of her religion, including wearing of hijab to the 2nd Respondent University while attending classes is being violated. It is submitted that the Petitioner has no enforceable right to invoke jurisdiction under Article 226 of the Constitution of India. In **Shayaro Bano v. Union of India reported in 2017 (9) SCC 1**, the court laid down that there are numerous religious groups who practise diverse forms of worship or practise religions, rituals, rites etc. It would therefore,

Aduvini S.N.

be difficult to devise a definition of religion which would be regarded as applicable to all religions or matters of religious practices.

In **M. Ismail Faruqui (Dr.) v. Union of India reported in (1994) 6 SCC 360**, the Constitution Bench held that the protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25 of the Constitution.

Therefore, it is submitted that some practices may merely be facets of a religion and not an essential religious practise. It is submitted that insofar as the Muslim women are concerned, reference is made to burqa or hijab worn by women, whereby women veil themselves, from the gaze of strangers. It is contended that wearing a hijab is not an essential religious practise as interpreted in **Ajmal Khan v. The Election Commission reported in 2006-4-L.W.102**. The relevant extracts are produced herewith for ease of reference:

> *"11. In the light of the decisions enunciated in the aforesaid judgment, it is necessary to examine whether the Gosha or Purdah is an essential ingredient or part of the Muslim religion. The famed Koran translator Mohammad Marmaduke Pickthall, whose official translation of Koran was cited before us said in his 1925 lecture "The Relation of the Sexes" that there is no text in the Koran, no saying of our Prophet, which*

Padmini B.N.

can possibly be held to justify the practice of depriving women of the natural benefits which Allah has decreed for all mankind (i.e. Sunshine and fresh air and healthy movement).... The true Islamic tradition enjoins the veiling of the hair and neck, and modest conduct that is all. This is borne out by the following Hadith: Ayesha (R) reported that Asmaa the daughter of Abu Bakr (R) came to the messenger of Allah (S) while wearing thin clothing. He approached her and said : 'O Asmaa! When a girl reaches the menstrual age, it is not proper that anything should remain exposed except this and this. He pointed to the face and hands." (Abu Dawood). He further observed that veiling of the face by women was not originally an Islamic customs. It was prevalent in many cities of the East before the coming of Islam, but not in the cities of Arabia. The purdah system, as it now exists in India, was quite undreamt of by the Muslims in the early centuries, who had adopted the face-veil and some other fashions for their women when they entered the cities of Syria, Mesopotamia, Persia and Egypt. It was once a concession to the prevailing custom and was a protection to their women from misunderstanding by peoples accustomed to associate unveiled faces with loose character. Later on it was adopted even in the cities of Arabia as a mark of (tamaddun) a word generally translated as 'civilization' but which in Arabic still retains a stronger flavour of its root meaning 'townsmanship' that is carried by the English word. It has never been a universal custom for Muslim women, the great majority of whom have never used

it, since the majority of the Muslim women in the world are peasants who work with their husbands and brothers in the fields. For them the face-veil would be an absurd encumbrance. Thus the Purdah system is neither of Islamic nor Arabian origin. It is of Zoroastrian Persian, and Christian Byzantine origin. It has nothing to do with the religion of Islam, and, for practical reasons, it has never been adopted by the great majority of Muslim women.... The Purdah system is not a part of the Islamic law. It is a custom of that Court introduced after the Khilafat had degenerated from the true Islamic standard and, under Persian and Byzantine influences, had become mere Oriental despotism. It comes from the source of weakness to Islam not from the source of strength."

"13. The Canadian writers Syed Mumtaz Ali and Rabia Mills in their essay Social Degradation of Women a Crime and a Libel on Islam explain:

" One must realize and appreciate the fact that the commandment in the Qur'an in Chapter 33, verse 53, with respect to the Hijab, applies only to the "Mothers of the believers" (the wives of the Holy Prophet, p.b.u.h.) whereas the wording of the Qur'an in Chapter 33 verse 55, applies to all Muslim women in general. No screen or Hijab (Purdah) is mentioned in this verse it prescribes only a veil to cover the bosom and modesty in dress. Hence the unlawfulness of the practice of the Indian-style system of Purdah (full face veiling). Under this system, the Hijab is not only imposed upon all Muslim women, but it is also

Kashmiri SN.

quite often forced upon them in an obligatory and mandatory fashion. Even the literal reading/translation of this Quranic verse does not support the assertion that the Hijab is recommended for all Muslim women. The Hijab/screen was a special feature of honour for the Prophet's p.b.u.h. wives and it was introduced only about five or six years before his death."

14. In the English translation of Koran by Muhammad Asad in Note 37 states "We may safely assume that the meaning of illa ma zahara minha is much wider, and that the deliberate vagueness of this phrase is meant to allow for all the time-bound changes that are necessary for man's moral and social growth.". In the Article "The Question of Hijab: Suppression or Liberation" published by The Institute of Islamic Information and Education (III&E) and reproduced in electronic form by Islamic Academy for Scientific Research the author states that the question of Hijab (Purdah) for Muslim women has been a controversy for centuries and will probably continue for many more. Some learned people do not consider the subject open to discussion and consider that covering the face is required,while a majority are of the opinion that it is not required. A middle line position is taken by some who claim that the instructions are vague and open to individual discretion depending on the situation. The wives of the Prophet (s) were required to cover their faces so that men would not think of them in sexual terms since they were the "Mothers of the Believers" but this requirement was not extended to other women."

Pradeep Bal.

16. Even assuming that the Purdah or Gosha is an essential ingredient of the Muslim religion, Article 25 itself makes it clear that this right is subject to public order, morality or health and also to the other provisions of Part III of the Constitution. In T.M.A.Pai Foundation v. State of Karnataka, AIR 2003 SC 355, 11 Judges Bench observed as follows: -

" 82. Article 25 gives to all persons the freedom of conscience and the right to freely profess, practice and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the Constitution. This would mean that the right given to a person under Article 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health. The general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his religion to profess, practice and propagate religion. For example, a person cannot propagate his religion in such a manner as to denigrate another religion or bring about dissatisfaction amongst people.

83. Article 25(2) gives specific power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which

may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practice and propagate religion conferred on the persons under Article 25(1). Article 25(2) covers only a limited area associated with religious practice, in respect of which a law can be made. A careful reading of Article 25(2)(a) indicates that it does not prevent the State from making any law in relation to the religious practice as such. The limited jurisdiction granted by Article 25(2) relates to the making of a law in relation to economic, financial, political or other secular activities associated with the religious practice."

18. In view of the foregoing discussion, we have no hesitation in holding that the direction of the Commission is not violative of Article 25 of the Constitution. We also do not find any substance in the complaint of violation of right to privacy. In R.Rajagopal v. State of T.N., (1994) 6 SCC 632, the Supreme Court held that the right to privacy is not enumerated as a fundamental right in our Constitution, but has been inferred from Article 21. In that case, reliance was placed on Kharak Singh v. State of U.P., (AIR 1963 SC 1295) and other decisions of English and American Courts, and thereafter, the Court held that the petitioners have a right to publish what they alleged to be a life story/autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorisation. But if they go beyond that and publish his life story, they may be invading his right to privacy for the consequences in accordance with law.

Sadhvini S.N.

For this purpose, the Court held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. Position may, however, be different, if a person voluntarily thrust himself into controversy or voluntarily invites or raises a controversy. The preamble of our Constitution proclaims that we are a democratic republic. The democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee a growth of healthy democracy in our country. The decision of the Election Commission of putting the photographs in the electoral roll was taken with a view to improving the fidelity of the electoral rolls and to check impersonation and eradicate bogus voting. Hence, the argument of the learned counsel that the decision violates the right to privacy is required to be rejected.

23. The identifiable feature by virtue of wearing a cloth or dress code other than uniform is not conducive to the development of the institution as also the child or student. Absolutely there is no restriction to wear the dress of their choice anywhere outside the classroom or college campus. No one has been treated differently inside the classroom or campus; discipline and decorum shall be maintained in the educational institution in order to safeguard the interest of the students and

the institutions. In **Mohammed Zubair Corporal v. Union of India and Others reported in (2017) 2 Supreme Court Cases 115**, the court discussed the relevance of uniform and its importance of distinguishable feature. The relevant extract of the judgement is produced herewith for ready reference:

> *"18. We see no reason to take a view of the matter at variance with the judgment under appeal. The Appellant has been unable to establish that his case falls within the ambit of Regulation 425(b). In the circumstances, the Commanding Officer was acting within his jurisdiction in the interest of maintaining discipline of the Air Force. The Appellant having been enrolled as a member of the Air Force was necessarily required to abide by the discipline of the Force. Regulations and policies in regard to personal appearance are not intended to discriminate against religious beliefs nor do they have the effect of doing so. Their object and purpose is to ensure uniformity, cohesiveness, discipline and order which are indispensable to the Air Force, as indeed to every armed force of the Union."*

24. The educational institution is not a place to profess, preach any particular religion or caste and on the contrary students have to maintain uniform and for this noble object the students are required to wear uniform and cloth as prescribed by the institution or concerned authority. Allowing any student to wear cloth other than prescribed uniform cloth or pattern will amount to preferential treatment, resulting in violation of Article

14 of the Constitution of India of other students by unfollowing the uniform dress code. Petitions are liable to be rejected on this ground alone.

25. All other averments, which are not specifically traversed herein and inconsistent with the above, are hereby denied as false and baseless.

26. The Respondent reserves liberty to file additional statement of objections and grounds at the later stage as advised.

WHEREFORE, It is respectfully prayed that this Hon'ble Court may be pleased to REJECT the interim prayer and DISMISS the afore-mentioned Writ Petitions, accordingly, in the interests of Justice and Equity.

Bengaluru,
Dated:

(B.V. KRISHNA)
ADDL. GOVT. ADVOCATE
&
ADVOCATE FOR RESPONDENTS -STATE

Laxmi S.N.

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

WRIT PETITION No. 2146 of 2022 (Edn)

BETWEEN: Ayesha Hazeema Alwas Clw 2347/22 PETITIONER/S

AND

State of Karnataka & ors RESPONDENTS

AFFIDAVIT

VERIFYING THE STATEMENT OF OBJECTIONS

I, Padmini S.N w/o s/o M.R. Prakash Age 52 Years do hereby solemnly affirm and state as follows:

1. I am working as Under Secretary to Govt., Dept of Primary & Secondary Education (PU) M.S. Bldg, Bangalore I have read the Petition and Affidavit filed by the Petitioner and I have acquainted myself with the facts of the case from the available records. I am authorised to swear to this Affidavit.

2. The Statements made in paragraphs 1 to 26 of the Statement of Objections accompanying this Affidavit are based on the information. I gathered from the available records and I belief them to be true.

3. I state the ANNEXURES R1 to R8 produced along with the objections statement are true copies of the originals.

Padmini S.N
DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that all the facts stated in the affidavit are all true to my knowledge and that no part thereof is false and nothing material is concealed there from.

Padmini S.N.
DEPONENT

Bengaluru

Date: 07.02.2022

IDENTIFIED BY ME:

ASSISTANT
Advocate General Offices
Bengaluru

NOTARY
C.VENKATAPATHY
BANGALORE
BYATARAYANAPURA
PERIOD EXP.
20-SEP 2025
GOVT. OF INDIA

SWORN TO BEFORE ME

C.VENKATAPATHY
ADVOCATE & NOTARY
002, Cresent Hights Apartment
1st Cross, Snehanagar, Amruthahalli
Sahakara Nagar (Post)
Bengaluru - 560092

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ANNEXURE P-4

IN THE HIGH COURT OF KARNATAKA

AT BENGALURU

I.A No. 8 / 2022

IN

W.P. No. 2347/2022 (GM-RES)

BETWEEN:

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

2. SRI MUBARAK
S/O F FARUK ,
AGED ABOUT 21 YEARS
RESIDING AT NO.9-138,
PERAMPALI ROAD,
SANTHEKATTE SANTHOSH NAGARA MANIPAL ROAD,
KUNJIBETTU POST,
UDUPI, KARNATAKA-576105
....PETITIONERS

AND

1. **STATE OF KARNATAKA**
REPRESENTED BY THE PRINCIPAL SECRETARY

//True typed Copy //

DEPARTMENT OF PRIMARY AND
SECONDARY EDUCATION,
2ND GATE, 6TH FLOUR,
M.S.BUILDING, DR.AMBEDKAR VEEDHI,
BENGALURU-560001

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

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,
18TH CROSS ROAD SAMPIGE ROAD,
MALESWARAM BENGALURU-560012.
...RESPONDENTS

IMPLEADING APPLICANT/PROPOSED PETITIONER:

SAJEEDA BEGUM,
AGED ABOUT 66 YEARS.
D/O LATE ABDUL SAMAD
27, 6TH MAIN, VIVIANI ROAD CROSS,
NEAR ADAMS FUNCTION HALL,
FRAZER TOWN BANGALORE - 560 005

APPLICATION UNDER ORDER I RULES 8A, 10 & SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 READ WITH ARTICLE 226 AND 227 OF CONSTITUTION OF INDIA

The Impleadment Applicants submit as follows:

1. That the present petition and connected Petitions have been filed challenging the Government Order dated 05.02.2022 issued by the Respondent State holding that the Hijab is practice not protected under Article 25 of the constitution and actions of various respondent Pre-University colleges restricting the entry of Hijab wearing students inside the colleges and that such restriction is in violation of Article 14 and 25 of the Constitution of India.

2. That the Applicant herein is a public spirited individual with substantial experience representing the causes of women especially those pertaining to women from sections of religious minority. The applicant seeks permission of this honorable Court to assist in adjudication of the instant petition by placing certain arguments and reasons that have not been taken up by the Petitioners. The Applicant is filing the present application as she is directly affected by restrictions on wearing Hijab as she herself wears Hijab and restrictions on dress have a cascading effect on rights of women and their dignity. The Applicant is a necessary proper party that deserves to be heard on the issue raised in the instant writ petition, as the same raises substantial issues of constitutional significance.

3. That on 09.02.2022, this Hon'ble Court after hearing this petition along with connected petitions for sometime was of a considered opinion that the subject-matter of the petitions

had enormous public importance of the questions involved, andthat the batch of these cases may be heard by a Larger Bench, if Hon'ble the Chief Justice so decides in discretion. Subsequently, the Hon'ble Court constituted the above-said larger bench and proceeded to hear the petitions on 10.02.2022.

4. That the Applicantherself being a Hijab wearing woman is interested in the substantial question of law in the main petition and therefore it is necessary in the public interest to allow Applicant to present her pleadings in relation to the question of law before this Hon'ble Court.

The credentials of the Applicant

The Applicant, a Hijab wearing woman herself, is the Founder and President of AASRA Women & Children Welfare Trust. She is a well known social activist, and has been working for over three decades for the upliftment and empowerment of women and children. She has been recognized for her work by the government and was awarded the prestigious Kempegowda Award in 2014 and the Kittur Chennamaa Award in 2016.

Summary of Arguments to be urged by the Applicant:

5. That for convenience and assistance of the Hon'ble Court, the issue addressed are mentioned in seriatim, which the Applicant seeks to present before the Hon'ble Court:

I. The burden of sustaining the impugned Government Order is upon the State Government and not upon the Petitioner or the Applicant.

It is stated that in case, challenge is based on Articles 19 or Article 21, the burden of proof is upon the State

to show that the action complained of falls in one of the exceptions of Article 19 or that the process of deprivation of life and liberty is compliant with the notions of "due process" **(*Bachan Singh v. State of Punjab*, (1982) 3 SCC 24 : 1982 SCC (Cri) 535 at page 71)**

The presumption of validity thus does not arise in the present case. The position with respect of Articles 19 and 21 would also be applicable to challenges based on Article 25 of the Constitution. Therefore, in the present case, the burden of justifying the legislation is completely upon the State and not upon the Petitioner.

II. The Impugned Government Order is bad in law

5.1. In the absence of a statutory law, a ban on Hijab under Article 19(2) or Article 25 cannot be imposed. There is no law on banning of Hijab in educational institutions. In any event, the State Government does not have the power under Section 133(2) of the Karnataka Education Act **("the Act")** to decree or enforce wearing of a uniform as regulation of dress is not a purpose of the Act. In fact, the Government Order to the extent it forces removal of headscarf or Hijab, violates the objective of inclusive education and maintenance of communal harmony. Regard may be had to Section 15(b) of the Act that excuses non-attendance on the approved school on the ground that the approved school's "religious instruction" is one which is not approved by the parents of the child. Section 39 of the Act permits withdrawal of recognition granted to the education institution if the education institution denies admission to any citizen on ground

of religion, race, caste , language or any of them, and further if the education institution indirectly encourages propaganda or practice wounding the religious feelings of any class of citizens or religious beliefs. It is respectfully submitted requirement for triggering the provisions of the said section are much lower and in the present case the violation occurs at the moment educational institution or for the state government refuses to accommodate any class of citizens on the basis of their religious belief regarding the desirability on necessity of wearing a head cover. It is further respectfully submitted that, wearing of head scarf by Muslim women is also an a expression of assertion of their identity within Article 19(1)(a), and any law infringing on the said right would have to passed the test under clause 2 of article 19 of the Constitution. In the present case, the impugned Government Order does not satisfy the same.

5.2. The Government Order violates doctrine of proportionality and does not even satisfy even the first step of rational nexus with the object sought to be achieved. Wearing of Hijab itself is not a threat to morality or public order. Innocuous practice of religion like wearing clothes etc. ought not to be examined vis-a-vis Article 25 of the Constitution.

5.3. That the impugned Government Order cannot be sustained on the ground of law and order situation, in as much as it is the duty of the State to protect the rights of citizens, and not to disregard the same when the individual wishes to exercise the same. Infact, the impugned order does not refer either to the phrase 'law and order' or 'public order', and confines its sustainability only and only the provisions of Section

133(2) of the Karnataka Education Act, 1982 which pertains to power to issue directions. It is submitted that "*Orders are not like old wine becoming better as they grow older*" as held by the Hon'ble Supreme Court in M.S. Gill v. Election Commissioner, **AIR1978 SC 851.** In ***OPTO Circuits (India) Ltd. v. Axis Bank*, (2021) 6 SCC 707, it has been held that:**

> *The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court.*

5.4. The issue of 'public order' is not relevant. It is submitted that "*Every breach of the peace does not lead to public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large.*" ***(Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608).*** **In AIR 1989 S.C. 491 (*Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad*), it is held as follows:**

> *"In order that an activity may be said to affect adversely the maintenance of public order, there must be materials to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must*

be said to have a direct bearing on the question of maintenance of public order".

5.5. In ***Superintendent, Central Prison v. Ram Manohar Lohia, (1960) 2 SCR 821***, the Hon'ble Supreme Court has further held that there must be rational nexus and immediate connection between 'public order' and the legislation. In the present case, such immediate connection is lacking.

5.6. **Right to Dress inheres in the right to freedom of speech and expression, right to identity and the rights to life under Article 21 of the Constitution of India:** It is most respectfully stated that the right to dress modestly is a part of a woman's inherent right to wear appropriate clothing as per her choice and freedom, and the State or any authority under it has no legitimate power or right to compel removal by operation of law that are otherwise modest and expression of identity. Even with a uniform dress, just as gender as an expression of identity is protected and men & women are allowed to dress differently, similarly, persons of different religions may also be allowed to dress differently. The Hon'ble Calcutta High Court in ***Swati Purkait v. State of West Bengal, 2010 SCC OnLine Cal 1501***, , examining the validity of dress code for female staff in educational institutions has held that "*A class room in an institute is not such a work place or work room that should need a specified dress to get best out of the work force. It is beyond comprehension of a person of reasonable prudence how a specified dress used*

especially by the women teachers at work will create an ideal academic atmosphere".

It is submitted that the secular character requires State to accommodate differences and not to impose homogeneity. The Constitution of India does not permit imposition of homogeneity, more so at the cost of violation of legal and constitutional rights.

5.7. **Right to Autonomy of Dressing:** The it is stated that the Government Order does not appreciate that the context of the issue was only and only in relation to headscarf and not the dress in totality. Therefore, the Government Order that seeks to impose a dress code is a colorable exercise of power, as the power vested has been used for oblique purpose. *In**AmnahBint Basheer v. Central Board of Secondary Education, [2016 (2) KLT 601]*** **the Hon'ble Kerala High Court** had taken a view that right of woman to have the choice of dress based on religious injunctions is a Fundamental Right protected under Article 25(1) of the Constitution of India, when such prescription of dress is an essential part of the religion.Hence, it is the Fundamental Right of the muslim women to choose the dress of their own choice. This was upheld in **2016 SCC OnLine Ker 487.** Thus, the right to wear a headscarf in addition to being an expression of choice of dress and identity under Article 19, the same is also a protected right under Article 14.

5.8. **The right to access to education:** The applicant herein respectfully submits that implementation of dress code is hit by the principle of non-regression in as much schools and colleges, drawing support from. statutory power, have become liberal in allowing

students to come to its premises to learn. In fact, the State Policy has gone so far as to provide mid-may meals to students so that there is an additional incentive to come to school. In the present case, the State is infringing upon religious beliefs of muslim girls and is compelling them to choose between education and their beliefs. This amounts to denial of access to education.

5.9. **The Impugned Government Order is hit by the principle of anti-subordination:**

The impugned Government Order contributes to the subordination of a disadvantaged group of individuals. The impugned Government Order 'subordinates' women. It has been held by Hon'ble Supreme Court in ***Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala*, (2019) 11 SCC 1 held that at 192:**

> **300.** Human dignity postulates an equality between persons. The equality of all human beings entails being free from the restrictive and dehumanising effect of stereotypes and being equally entitled to the protection of law. Our Constitution has willed that dignity, liberty and equality serve as a guiding light for individuals, the State and this Court. Though our Constitution protects religious freedom and consequent rights and practices essential to religion, this Court will be guided by the pursuit to uphold the values of the Constitution, based in dignity, liberty and equality. In a constitutional order of priorities, these are

> values on which the edifice of the Constitution stands. They infuse our constitutional order with a vision for the future—of a just, equal and dignified society. Intrinsic to these values is the anti-exclusion principle. Exclusion is destructive of dignity. To exclude a woman from the might of worship is fundamentally at odds with constitutional values.

It is stated that women, whether wearing Hijab or any other protective head gear or modest clothes cannot be excluded from education. It is submitted that the Fundamental human freedoms in Part III are not disjunctive or isolated. They exist together.

5.10. **The impugned Government Order is violative of the right to privacy:**

Privacy postulates reservation of a private space for an individual, described as right to be let alone. In such right, the autonomy of the individual is associated over mattes which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The individuals have right to preserve their beliefs, thoughts, expressions, ideals, ideologies, preferences and choices against societal demands of homogeneity. It is humbly submitted that the freedom of expression guaranteed under Article 19(1)(*a*) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing, etc (***National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para. 71)**

In*K. S. Puttaswamy v. Union of India* (2017) 10 SCC, anine judge bench of the Hon'ble Apex Court upheld the Right to privacy as a Fundamental right. The concept of privacy was discussed at length, with different judges having different formulations of it, often overlapping. The feature common to all understandings was that it meant 'the right to be left alone' or the freedom from unwanted intrusion by state or private actors. Justice Chandrachud writing for three other judges, stated :-

'Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. Spatial control denotes the creation of private spaces. ***Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress.*** *Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.' (para 142)*

If the state has to limit this right, it has to fulfill the three pronged test set out in puttaswamy-I, first, that there must be a law in existence to justify an encroachment on privacy, second, therequirement of a need, in terms of a legitimate state aim and finally, the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.

5.11. **The impugned Government Order violates the right of dignity:**

In ***National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para. 106**, it has been held that democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognise the right of a human being to choose his sex/gender identity which is integral to his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity.

5.12. **The impugned Government Order is hit by Article 15 of the Constitution of India:** Article 15(1) holds that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. That the actions of various colleges forcibly preventing students from entering class for wearing headscarves, is discriminatory on grounds of 'sex' and ' 'religion'.

5.13. It is submitted that the impugned Government Order is a suspect order in law and deserves to be scrutinized as such.

5.14. **It is submitted that the Government Order violates Article 17's progressive interpretation**, and violates India's obligation under International Law, especially those relating to rights of women and minorities.

5.15. **The impugned Government Order is hit by the effects test and is violative of Article 14 of the**

Constitution of India. It is respectfully submitted that it is trite law that when adjudicating a constitutional challenge on fundamental rights grounds, this Hon'ble Court will consider not the *object* or *form* of the law, but its *effect. Thus, facially neutral laws will nonetheless be held unconstitutional if they are discriminatory in effect, or their effect is to violate a fundamental right. (**State of Bombay v Bombay Educational Society, AIR 1954 SC 561; Khandige Sham Bhat v The Agricultural Income Tax Officer, 1963 SCR (3) 809; Navtej Singh Johar v Union of India, (2018) 10 SCC 1, para 428).*** It is stated that the effect of the Hijab ban imposed by the Government Order is upon women from muslim community alone. The Hon'ble Delhi High Court in the case of **Madhu v. Northern Railway,** 2018 SCC OnLine Del 6660 has reiterated the aspect of "indirect discrimination" wherein a seemingly neutral act may have a disproportionate impact on a specific group of individuals. (Ref: Para 16-30 of the Judgment)

5.16. Jurisprudence across national frontiers support the principle that facially neutral action by the state may have a disproportionate impact upon a particular class. In Griggs v. Duke Power Co., the US Supreme Court, whilst recognizing that African Americans received substandard education due to segregated schools, opined that the requirement of an aptitude/intelligence test disproportionately affected African-American candidates.

The Court held that, "The Civil Rights Act" proscribes

not only overt discrimination but also practices that are
fair in form, but discriminatory in operation. Thus when an action has "the effect of imposing burdens,
obligations, or disadvantages on such individual or group
not imposed upon others, or which withholds or limits access to opportunities, benefits and advantages available
to other members of society, it would be suspect. (***Navtej Singh Johar v Union of India, (2018) 10 SCC 1, Para 43)***

5.17. In ***S Rangarajn v. P. Jagjivan Ram (1989) 2 SCC 574***, para 51 as well as in ***Indian Young Lawyers Association & Others v. State of Kerala, (2019) 11 SCC 1 (Sabrimala), para 104-105,*** the court has cautioned that law & order or threat of protests, demonstration etc cannot be the reason for abridgment of fundamental right and it is the duty of the State to protect the exercise of fundamental rights

6. The Applicant herself fears Hijab and feels subordinated on account of the "Hijab ban" imposed in educational institutions. Thus, the Applicant being in a similar place as the Petitioners, having found that the Petitioners have approached this Hon'ble Court also seek to be impleaded in the instant petition to have their rights protected. The Applicants are ready to pay the court fees as prescribed.

7. That the Applicant herself being a Hijab wearing woman is interested in the substantial question of law in the main

petition and therefore it is necessary in the public interest to allow Applicant to present her pleadingsin relation tothe question of law before this Hon'ble Court.

8. It is submitted that if the instant application is not allowed the Applicants would be put to great risk and harm. Per contra, no harm would be suffered by the respondents.

9. Hence, it is prayed that this Hon'ble Court may be pleased to implead as the following party to be impleaded as Petitioner in the interest of justice and equity:

Sajeeda Begum, aged: 66 years.
D/o Late Abdul Samad
27, 6th Main, Viviani Road Cross,
Near Adams Function Hall,
Frazer Town Bangalore - 560 005

Place: Bengaluru

Date: 11.02.2022

Advocate
for the Intervening Applicants

Talha Abdul Rahman, Mohammad Afeef &

Basawa Prasad

// true typed copy//

Daily Orders for Case WP 2347/2022

Sl. No	Judge(s) Name	Date of Order	Daily Order
1	KRISHNA S.DIXIT	03/02/2022	Call this matter along with W.P.No.2146/2022 on 08.02.2022.
2	KRISHNA S.DIXIT	08/02/2022	Heard in part. Learned Advocate General passionately submits that lot of galata is happening within the campus and without, in several institutions in the region even when the Court is busy hearing this matter of seminal importance, and that should be halted. In support of his submission he reads out 3rd un-numbered paragraph in the judgment of Apex Court in KISAN MAHAPANCHAYAT & ANR. Vs. UNION OF INDIA, W.P. (Civil) No.854/2021 which runs as under: "After hearing learned counsel for the concerned parties and the Attorney General for India, we deem it appropriate to examine the central issue as to whether the right to protest is an absolute right and, more so, the writ petition having already invoked the legal remedy before the Constitutional Court by filing writ petition, can be permitted to urge much less asset that they can still resort to protest in respect of the same subject matter which is already sub-judice before the Court". Learned advocates appearing for the petitioners lead by learned Sr. Adv. Mr. Devdutt Kamath are broadly in agreement with the submission of learned Advocate General. However, Mr. Kamath is not sure as to whether the Court can pass a blanket order banning agitations of the kind when the agitators are not eo nomine parties to the proceedings. Having heard the learned counsel for the parties and pending further hearing of the matter, which hopefully would be accomplished before long, this Court requests the student community in particular, and the public at large to maintain peace & tranquility, so that the case is decided swiftly undisturbed by what has been going on. This Court has full faith in the wisdom & virtue of our young students, and hopes that the ongoing agitation would stop at once. It also hastens to add that the authorities shall take all precautionary steps to ensure that no untoward incidents would take place and that no students or members of public are hurt, nor public/private property is damaged. Call these matters along with W.P.No.2880/2022 (GM-RES) on 09.02.2022 at 2.30 p.m. for further hearing.
3	KRISHNA S.DIXIT	09/02/2022	All these matters essentially relate to proscription of hijab (headscarf) while prescribing the uniform for students who profess Islamic faith. Rule 11 of the extant Rules promulgated under the Karnataka Education Act, 1983 authorizes the management of institutions to prescribe uniform, subject to certain conditions. The recent Government Order dated 05.02.2022 which arguably facilitates enforcement of this rule is also put in challenge. Whether wearing of hijab is a part of essential religious practice in Islam, is the jugular vein of all these matters. In support of an affirmative claim, petitioners rely upon three decisions of three neighbouring High Courts, (i.e., Bombay, Madras & Kerala) which the respondent-State also seeks to bank upon, and several decisions of the Apex Court. The said question along with other needs to be answered in the light of constitutional guarantees availing to the religious minorities. This Court after hearing the matter for sometime is of a considered opinion that regard being had to enormous public importance of the questions involved, the batch of these cases may be heard by a Larger Bench, if Hon'ble the Chief Justice so decides in discretion. Learned Advocates appearing for the petitioners made short submissions for the grant of interim relief at the hands of this Court. Learned Advocate General and other advocates appearing for the respondents & impleading applicants opposed the same. The contentions are not recorded nor any opinion is expressed since the papers are being placed before Hon'ble the Chief Justice. In the above circumstances, the Registry is directed to place the papers immediately at the hands of Hon'ble the Chief Justice for consideration. This Court places on record its deep appreciation for the cordiality amongst the advocates appearing for the parties and other members of the Bar who had jam packed the Court Hall during the hearing of these matters.
4	CHIEF JUSTICE AND KRISHNA S DIXIT AND	10/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022 AND WP NO.3044/2022 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

Sl. No	Judge(s) Name	Date of Order	Daily Order
	J.M.KHAZI		College Development Committees all over the State to prescribe 'Student Uniform', presumably in terms of Rule 11 of Karnataka Educational Institutions (Classification, Regulation & Prescription of Curricula, etc.) Rules, 1995. 2. A Single Judge (Krishna S Dixit J) vide order dated 09.02.2022 i.e., yesterday, has referred these cases to Hon'ble the Chief Justice to consider if these matters can be heard by a Larger Bench 'regard being had to enormous public importance of the questions involved'. Accordingly, this Special Bench comprising of three Judges has immediately been constituted and these cases are taken up for consideration. 3. We have heard the learned Senior Advocates Mr.Sanjay Hegde & Mr. Devadatt Kamat appearing for the petitioners respectively in W.P.No.2146/2022 & W.P.No.2880/2022 for some time. Learned Advocate General appearing for the State also made some submissions. 4. Mr. Sanjay Hegde, learned Sr. Adv. argues that: The 1983 Act does not have any provision which enables the educational institutions to prescribe any uniform for the students. The 1995 Rules apart from being incompetent are not applicable to Pre-University institutions since they are promulgated basically for Primary & Secondary schools. These Rules do not provide for the imposition of any penalty for violation of the dress code if prescribed by the institutions. Even otherwise the expulsion of the students for violating the dress code would be grossly disproportionate to the alleged infraction of the dress code. All stakeholders should make endeavors to create an atmosphere of peace & tranquility so that the students go back to the schools and prosecute their studies. Nobody should pollute the congenial atmosphere required for pursuing education. All stakeholders should show tolerance & catholicity so that the girl students professing & practicing Islamic faith can attend the classes with hijab and the institutions should not insist upon the removal of hijab as a condition for gaining entry to the classrooms. 5. Learned Sr. Advocate Mr. Devadatt Kamat basically assailed the subject Government Order contending that the decisions of Kerala, Madras & Bombay High Courts on which it has been structured have been wrongly construed by the Govt. as hijab being not a part of essential religious practice of Islamic faith and that there is a gross non-application of mind attributable to the Government. He also submits that the State Government has no authority or competence to issue the impugned order mandating the College Development Committees to prescribe student uniform. He submits that dress & attire are a part of speech & expression; right to wear hijab is a matter of privacy of the citizens and that institutions cannot compel them to remove the same. 6. In response, learned Advocate General shortly contends that no prima facie case is made out for the grant of any interim relief. The impugned order per se does not prescribe any uniform since what uniform should be prescribed by the institutions is left to them. The agitation should come to an end immediately and peace & tranquility should be restored in the society; there is no difficulty for the reopening of the institutions that are closed for a few days in view of disturbances and untoward incidents. The agitating students should go back to schools. He denies the submissions made on behalf of petitioners. Learned Advocate General also brought to the notice of the Court that there are several counter agitations involving students who want to gain entry to the institutions with saffron and blue shawls and other such symbolic clothes and religious flags. Consequently, the Government has clamped prohibitory orders within the radius of 200 metres of the educational institutions. 7. Mr.Devadatt Kamat, learned Sr. Adv. is continuing with his arguments. Learned advocates appearing for petitioners in other connected writ petitions, learned AG appearing for the State and Mr. Sajjan Poovayya, learned Sr. Adv. appearing for some institutions are also to be heard. This apart, there are advocates who want to argue for the impleading applicants. These matters apparently involve questions of enormous public importance and constitutional significance. We are posting all these matters on Monday (14.02.2022) at 2.30 p.m. for further consideration. 8. Firstly, we are pained by the ongoing agitations and closure of educational institutions since the past few days, especially when this Court is seized off this matter and important issues of constitutional significance and of personal law are being seriously debated. It hardly needs to be mentioned that ours is a country of plural cultures, religions & languages. Being a secular State, it does not identify itself with any religion as its own. Every citizen has the right to profess & practise any faith of choice, is true. However, such a right not being absolute is susceptible to reasonable restrictions as provided by the Constitution of

Sl. No	Judge(s) Name	Date of Order	Daily Order
			India. Whether wearing of hijab in the classroom is a part of essential religious practice of Islam in the light of constitutional guarantees, needs a deeper examination. Several decisions of Apex Court and other High Courts are being pressed into service. 9. Ours being a civilized society, no person in the name of religion, culture or the like can be permitted to do any act that disturbs public peace & tranquility. Endless agitations and closure of educational institutions indefinitely are not happy things to happen. The hearing of these matters on urgency basis is continuing. Elongation of academic terms would be detrimental to the educational career of students especially when the timelines for admission to higher studies/ courses are mandatory. The interest of students would be better served by their returning to the classes than by the continuation of agitations and consequent closure of institutions. The academic year is coming to an end shortly. We hope and trust that all stakeholders and the public at large shall maintain peace & tranquility. 10. In the above circumstances, we request the State Government and all other stakeholders to reopen the educational institutions and allow the students to return to the classes at the earliest. Pending consideration of all these petitions, we restrain all the students regardless of their religion or faith from wearing saffron shawls (Bhagwa), scarfs, hijab, religious flags or the like within the classroom, until further orders. 11. We make it clear that this order is confined to such of the institutions wherein the College Development Committees have prescribed the student dress code/uniform. 12. List these matters on 14.02.2022 at 2.30 p.m. for further consideration.
5	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	14/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022, WP NO.3148/2022 & WP NO.3044/2022 Heard. The arguments of Mr.Devadutt Kamath, learned Senior Advocate on behalf of the petitioners in W.P.No.2880/2022 are continuing. It is informed at the Bar that Mr.Kaleeshwaram Raj, learned Senior Advocate, Mr.Yusuf Muchhala, learned Senior Advocate, Prof.Raviverma Kumar, learned Senior Advocate, Smt.Thulasi K.Raj, learned Advocate and Mr.Aditya Sondhi, learned Senior Advocate who has moved an application for intervention - I.A.No.8/2022 are to be heard on behalf of the petitioners. List on 15.02.2022 at 2.30 p.m.
6	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	15/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO. 3038/2022, WP NO. 3044/2022, WP NO. 3148/2022 & WP NO.3424/2022 The arguments on behalf of the petitioners in W.P.No.2146/2022 have been concluded. The arguments on behalf of the petitioners in W.P.No.2880/2022 have also been made by Mr.Devadutt Kamat, learned Senior Advocate. He has completed his arguments. Prof. Ravivarma Kumar, learned Senior Advocate is arguing on behalf of the petitioner in W.P.No.2347/2022. He is continuing with his arguments. The affidavit dated 15.02.2022 filed on behalf of the petitioners in W.P.No.2146/2022 which is sworn by Mr.Mohammed Tahir, learned advocate, is rejected. Put up tomorrow (16.02.2022) at 2.30 p.m. ORDER ON MEMO IN W.P.NO.2146/2022 The memo dated 02.02.2022 stands allowed and W.P.No.2146/2022 in respect of petitioner No.2 stands dismissed as withdrawn.
7	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	16/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO. 3038/2022, WP NO. 3044/2022, WP NO. 3148/2022, WP NO.3424/2022 & WP NO.3586/2022 We have heard Prof. Ravivarma Kumar, learned Senior Advocate in W.P.No.2347/2022 for the petitioner. Mr.Yusuf Muchhala, learned Senior Advocate has argued in W.P.No.3038/2022 for the petitioners. In W.P.No.2146/2022, learned Advocate General appearing for the respondents informs that he has received the copy of I.A.No.5/2022. He intends to file objections to the application. He prays for and is allowed two days' time to file the objections. ORDER ON I.A.NO.1/2022 IN W.P.NO.2347/2022 Mr.R.Kothwal, learned advocate makes a statement at the Bar that he does not want to press I.A.No.1/2022. I.A.No.1/2022 is dismissed as not pressed. Put up tomorrow (17.02.2022) at 2.30 p.m.
8	CHIEF JUSTICE AND KRISHNA S DIXIT AND	17/02/2022	Learned counsel for the petitioner in W.P.No.3044/2022 prays for a day's time to make good the office objections. Time granted. The arguments on behalf of the petitioners in W.P.No.3424/2022 have been concluded. Put up all these petitions tomorrow (18.02.2022) at 2.30 p.m.

Sl. No	Judge(s) Name	Date of Order	Daily Order
	J.M.KHAZI		
9	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	18/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO. 3038/2022, WP NO.3424/2022 & WP NO.3821/2022 & WP NO.3853/2022 Learned counsel for the petitioner in W.P.No.3821/2022 prays for a day's time to make good the office objections. Time granted. Adjourned on the request of learned counsel for the petitioner in W.P No.3853/2022 to enable him to file the Bye-Laws as well as the Resolution of the petitioner-Society and also to produce the authorization letter on behalf of its President to file the instant writ petition. Learned Advocate General appearing on behalf of the respondents has placed his arguments before the Court. The arguments of learned Advocate General are continuing. Put up on Monday (21.02.2022) at 2.30 pm.
10	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	21/02/2022	The learned Advocate General has placed his arguments. He is continuing with his arguments. Put up tomorrow (22.02.2022) at 2.30 pm.
11	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	22/02/2022	ORDER IN WP 2347/2022 Connected Cases: RP NO.239/2022, WP NO. 2146/2022, WP NO. 2880/2022, WP NO. 3038/2022, WP NO.3424/2022, WP NO.3821/2022, WP NO.3942/2022, WP NO.4307/2022, WP NO.4309/2022 & WP 4310/2022 Learned Advocate General appearing for the respondents has concluded his arguments. Mr.R.Venkataramani, learned Senior Advocate appearing for respondent Nos.12 and 13 in W.P.No.2146/20222 has also made his submissions. Mr.S.S.Naganand, learned Senior Advocate appearing for respondent Nos.5 to 7 in W.P.No.2146/2022 is making his submissions. Put up tomorrow (23.02.2022) at 2.30 p.m.
12	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	24/02/2022	Mr.Gurukrishna Kumar, learned Senior Advocate appearing for respondent No.8 in W.P.No.2146/2022 has concluded his arguments. Mr.A.M.Dar, learned Senior Advocate appearing for the petitioners in W.P.No.4309/2022 has also concluded his arguments. Mr.Devadutt Kamath, learned Senior Advocate appearing for the petitioners in W.P.No.2880/2022 has concluded his rejoinder submissions. ORDER IN W.P.NO.4338/2022 Learned counsel for the petitioner prays for and is allowed a day's time to make good the office objections. Put up tomorrow (25.02.2022) at 2.30 p.m.
13	CHIEF JUSTICE AND KRISHNA S DIXIT AND J.M.KHAZI	25/02/2022	WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO. 3038/2022, WP NO.3424/2022, WP NO.4309/2022 & WP NO.4338/2022 Heard. Prof. Ravivarma Kumar, learned Senior Advocate for the petitioners in W.P.No.2347/2022 has concluded his rejoinder submissions. Mr.Mohammed Tahir, learned advocate for the petitioners in W.P.No.2146/2022 has concluded his rejoinder submissions. Mr.Yusuf Muchhala, learned Senior Advocate for the petitioners in W.P.No.3038/2022 has concluded his rejoinder submissions. Dr.Vinod G. Kulkarni, the petitioner appearing in person in W.P.No.3424/2022, has concluded his rejoinder submissions. Mr.Subhash Jha, learned Advocate for the petitioner in W.P.No.4338/2022 has also concluded his submissions. Judgment reserved.

IN THE HIGH COURT OF KARNATAKA

AT BENGALURU

I.A No. 8/ 2022

IN

W.P. No. 2347/2022 (GM-RES) and Connected matters

IN RE:

SAJEEDA BEGUM ... **APPLICANT**

BETWEEN:

SMT RESHAM & ANR. ....**PETITIONER**

AND

STATE OF KARNATAKA & ORS. ....**RESPONDENTS**

WRITTEN ARGUMENTS ON BEHALF OF IMPLEADING APPLICANT IN SUPPORT OF THE PETITIONERS

Impleading Applicants submit as follows:-

A. Preliminary Submissions - Reservation of Rights

1. That the Applicant has been denied even the right to argue or urge her application seeking impleadment as Petitioner, which has resulted in prejudice to the Applicant and the cause she espouses. While initially, vide order dated 14/02/2022, this Hon'ble Court was gracious and kind to observe: -

> *"WP NO. 2347/2022 Connected Cases: WP NO. 2146/2022, WP NO. 2880/2022, WP NO.3038/2022, WP NO.3148/2022 & WP NO.3044/2022 Heard. The arguments of Mr.Devadutt Kamath, learned Senior Advocate on behalf of the petitioners in W.P.No.2880/2022 are continuing. It is informed at the Bar that Mr.Kaleeshwaram Raj, learned Senior Advocate, Mr.Yusuf Muchhala, learned Senior Advocate, Prof.Raviverma Kumar, learned Senior Advocate, Smt.Thulasi K.Raj, learned Advocate and Mr.Aditya Sondhi, learned Senior Advocate who has moved an application for intervention - **I.A.No.8/2022** are to be heard on behalf of the petitioners. List on 15.02.2022 at 2.30 p.m."*
>
> (Emphasis supplied)

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That it can be noted that, amongst others, the name of the Applicant's senior counsel was noted in the list of counsel who were to argue the case.

2. However, subsequently, after hearing the Petitioners and the Respondents no opportunity to assist the Hon'ble Court has been granted to the Applicant who sought to be impleaded as being an affected party on the issue of determination of the nature of religious practice of wearing *Hijab* - a kind of covering. It is humbly and respectfully submitted that filing of written submissions is not a substitute for oral arguments. The principle of orality is essential to system of adjudication and the Applicant respectfully states that certain points were not argued and even the State of Karnataka did not have an occasion to respond to the said points, which are now set out below.

3. That the Applicant respectfully asserts that she is an affected party and had thus moved an application seeking impleadment. The Applicant is herself a *hijab* wearing woman and if this Hon'ble Court once decides on the essential nature or otherwise observes on the nature of the *Hijab* under Islamic law with reference to fundamental rights under the Constitution, the same would impact the Applicant and other similarly situated women. More so, when the Ld. Single Judge had referred the matter to a larger bench, as the same was itself having wide ramifications and raising substantial constitutional issues of public importance. It is for this reason that the Applicant had sought impleadment as Petitioner and not mere intervention.

4. The Applicant did not file a separate and independent Writ Petition as the matter was already referred by the Learned Single Judge to the Chief Justice for constitution of a larger bench of this Hon'ble Court, and having regard to the issue of propriety in pending referred matter where certain counsels for Petitioners had substantially advanced their arguments, the Applicant had considered it proper to seek impleadment as Petitioner and not file another fresh Writ Petition.

5. It is respectfully stated that the valuable right of the Applicant to respond to the pleadings in writing and also to address this Hon'ble court orally has been denied. It is once again requested that the Hon'ble Court may kindly re-list the matter for further hearing and allow the Applicant to respond to pleading and allow oral arguments. **This written submission, may kindly be treated as being filed without prejudice to the right to orally urge her case that the valuable right of the Applicant has been denied.**

6. The Applicant has not been heard and therefore has been denied the opportunity to assist the Hon'ble Court on the aforesaid aspect.

B. The credentials of the Applicant

1. That the Applicant herein is a public-spirited individual with substantial experience representing the causes of women, especially those pertaining to women from sections of religious minority. It is respectfully submitted that the Applicant is directly affected by restrictions on wearing Hijab as she herself wears Hijab and restrictions on dress have a cascading effect on rights of women and their dignity. The Applicant is a necessary and proper party that deserves to be heard on the issue raised in the instant writ petition, as the same raises substantial issues of constitutional significance.

2. The Applicant is the Founder and President of AASRA Women & Children Welfare Trust. She is a well known social activist and has been working for over three decades for the upliftment and empowerment of women and children. She has been recognized for her work by the government and was awarded the prestigious Kempegowda Award in 2014 and the Kittur Chennamaa Award in 2016.

C. Core challenge in the Petition

3. That the present Petition and connected Petitions have been filed challenging the Government Order dated 05.02.2022 issued by the Respondent State holding that the Hijab is practice not protected under Article 25 of the constitution and the operative portion, which holds that :-

> "*In all government schools of the state, students must compulsorily wear the government prescribed uniforms only. Private schools' students must wear uniforms prescribed by the school management committees. Those colleges under the PU Education Department must ensure students wear uniforms prescribed by the respective College Development Committees (CDC) or management committees. If CDC or management committees does not prescribe uniform code, students must wear such clothes that do not disrupt peace and [public] order and that they promote equality and fraternity among all.*"
>
> *(translated version)*

4. In addition to the above-said Government Order dated 05.02.2022, the actions of various respondent Pre-University colleges restricting the entry of Muslim girl students wearing headscarves into classrooms was challenged on ground of violation of Article 14, 15 (1), 19(1) (a), 21 and 25 of the Constitution of India.
That on 09.02.2022, this Hon'ble Court after hearing this Petition along with connected petitions for some time was of a considered opinion that the subject-matter of the petitions had enormous public importance of the questions involved

and that the batch of these cases may be heard by a Larger Bench, if Hon'ble the Chief Justice so decides. Subsequently, the Hon'ble Court constituted the above-said larger bench and proceeded to hear the petitions on 10.02.2022.

12. That on 10.02.2022, this Hon'ble Court was pleased to pass an interim order, and subsequently the Court has heard the matter on a day to day basis and finally after hearing petitioners and respondents has reserved this Petition along with connected matters for Judgment. The Application was filed on 11.02.2022 and came to be numbered as IA No.8/2022.

D. Certain facts to be noted

13. Although the Applicant is interested in questions of law framed by this Hon'ble Court, there are certain facts that need to be highlighted.

14. That on 07.02.2022 the Respondent State filed its objections in W.P No. 2146/ 2022 & W.P No. 2347/ 2022. That these petitioners herein were students of Government Pre-University College for Girls, Udupi City. However, subsequently, other petitions came to be filed having similar grievance of restricting the entry of Muslim girl students wearing headscarves into classrooms, such as WP NO. 2880/2022 and WP NO. 3038/2022. As per the knowledge of the Applicant, no objections/ response by the state was filed in these matters, therefore, it is unclear on what basis are students being prohibited into the classroom due to them wearing headscarves.

15. That in the objections by the respondent State dated 07.02.2022, there appears to be only one document that describes the uniform, which is the "***Committee Meeting- 01, Dated 23/06/2018***" (pg. 68 of objections), holds that: -

> *"It was decided that the blue colouredchudidhar pant, white and blue checks top and shawl to be draped over the shoulder (which is of the same blue as the colour of the pant) which was there for 6 days of the week will be continued this year ...."*

16. That subsequently in another meeting held by the CDC dated 25.01.2022, it was decided that: -

> *"In respect of the issue concerning Uniforms and wearing of Hijab by the girl students, a high-powered committee has to be constituted to conduct a study on the topic "Enforcing Uniform / Uniform Code" and submit a report. Later, the said report shall be forwarded to the Government to take appropriate action. Until then, the Girls Government PU College shall maintain status quo within*

their institution in respect of Uniform/Uniform code as per the government order no EP/14/SHH/2022 dated 25.01.2022" (Translation of relevant portion in Pg. 104-105 of objections by state)

17. That the above said Government order/direction referred to bearing No. EP/14/SHH/2022 dated 25.01.2022 stated that: -

> *"With regard to the above-mentioned subject, while also drawing your attention to the aforementioned reference, it is evident that there is no uniform code fixed for students studying in Pre-University Colleges across the state. But female students studying in Udupi Girls Government PU College, who are now demanding that they be allowed to wear clothes of their choice to the college, at the time of admission to the college, have willingly accepted the uniform code posed by the college. But, creating confusions that were not there for all this while, is not a good sign from an educational point of view.*
>
> *Therefore, there is a necessity to set up the expert committee that will study the various uniform code patterns in force in different states of the country, and also the judgements of the Hon'ble Supreme Court and other High Courts of the states, pertaining to the matter. The government will have to take necessary actions based on the report given by this committee. Until this process completes, I am being directed to inform you to take action and see that status quo is followed in the Udupi College pertaining to the uniform issue."*(Translation of Pg. 112-113 of objections by state)

18. It is important to note that no such report by any special committee was submitted by the state in their objections, so it remains unclear as to whether such a committee was set up and if so, what was the report of such a committee. However, subsequently on 31.01.2022, the President of the College Development Committee convened the meeting and explained the above said Government Order, to the students (some of the petitioners) and their parents. Herein, the parents were categorically told that if their children come to college wearing Hijab, disciplinary action would be initiated against them. That subsequently, the impugned order dated 05.02.2022 came to be issued. Notably, all of the above material pertains to Government Pre-University College for Girls, Udupi City and not other colleges. That to the best of the knowledge of the Applicant, no other materials have been provided by the state that restrict the right of wearing headscarves in classrooms. The facts in the present case are covered by judgment of *Eddie Thomas of US Supreme Court*

E. The concession by the Advocate General and its impact

19. That even though the petitioners had argued on Hijab being an essential religious practice to contradict the contents of the impugned government. However, during his submissions, the Advocate General appearing for the State stated that the contents of the impugned government order were ill-advised and he would be defending only the operative portion of the Government Order. In view of the said submissions, the issue of whether Hijab is an essential religious practice becomes an academic question. Precious time of the court could have been saved if Advocate General had stated the same in his affidavit or had stated the same orally at the outset of the hearing.

20. The operative portion of the Government Order deals only with the issue of prescription of uniform, and does not decide whether Hijab is or is not essential or even whether wearing of a hijab (even if of the same colour as the uniform) is contrary to the dress/uniform. Thus, the issue of whether Hijab forms a practice protected under Article 25 does not arise in the present case. The decision on the said issue may kindly be deferred to future in a case where the issues is actually arising.

21. The validity of the operative portion of the impugned notification/ order can be decided on pure constitutional and administrative law issues, and does not need adjudication of the content of the right under Article 25, which is to be left for appropriate cases in the future.

F. Propositions in support of the Petition

F.1: The Impugned Government Order/Notification is *ultra vires* the Act and the Constitution

22. The impugned government notification is illegal being *ultra vires* that Karnataka Education Act, as the same has been issued where the powers of the Government have been delegated to the CDC. The same is not permissible by the Act. Further, while prescription of uniform may be permissible, the Government notification does not prescribe the uniform. A private party cannot be permitted to restrict fundamental freedoms and the Government notification allowing the same is *ultravires* the Constitution.

23. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise.

F.2: The Right to Dress and Freedom of Speech & Privacy

24. The fundamental Right to Dress inheres in the right to freedom of speech and expression, right to identity, privacy and the right to life under Article 21 of the Constitution of India:

A. Privacy postulates reservation of a private space for an individual, described as the right to be let alone. In such a right, the autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The individuals have the right to preserve their beliefs, thoughts, expressions, ideals, ideologies, preferences and choices against societal demands of homogeneity. It is humbly submitted that the freedom of expression guaranteed under Article 19(1)(*a*) includes the freedom to express one's chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing, etc (***National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, para. 71)**

B. That much like expression of one's gender Identity, the expression of one's religious identity is also guaranteed under Article 19(1)(*a*).

C. In ***K. S. Puttaswamy v. Union of India (2017) 10 SCC***, a nine judge bench of the Hon'ble Apex Court upheld the Right to privacy as a Fundamental right. The concept of privacy was discussed at length, with different judges having different formulations of it, often overlapping. The feature common to all understandings was that it meant 'the right to be left alone' or the freedom from unwanted intrusion by state or private actors. Justice Chandrachud writing for three other judges, stated :-

> *'Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. Spatial control denotes the creation of private spaces.* ***Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress.*** *Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.* **(RelevantParas 248,298 and 300)**

F.3 Burden of Proof

25. The burden of sustaining the impugned Government Order is upon the State Government and not upon the Petitioner or the Applicant. It is stated that in case, a challenge is based on Articles 19 or Article 21, the burden of proof is upon the State to show that the action complained of falls in one of the exceptions of Article 19 or that the process of deprivation of life and liberty is compliant with the notions of "due

process" . The delegated legislation in the present cases is a "suspect legislation" and ought to be treated as such.

In ***Bachan Singh v. State of Punjab*, (1982) 3 SCC 24, para 35), the Hon'ble SC has held that:**

> *"35.....It is a trite saying that the court has "neither force nor will but merely judgment" and in the exercise of this judgment, it would be a wise rule to adopt to presume the Constitutionality of a statute unless it is shown to be invalid. But even here it is necessary to point out that this rule is not a rigid inexorable rule applicable at all times and in all situations. There may conceivably be cases where having regard to the nature and character of the legislation, the importance of the right affected and the gravity the injury caused by it and the moral and social issues involved in the determination, the court may refuse to proceed on the basis of presumption of Constitutionality and demand from the State justification of the legislation with a view to establishing that it is not arbitrary or discriminatory. There are times when commitment to the values of the Constitution and performance of the constitutional role as guardian of fundamental rights demands dismissal of the usual judicial deference to legislative judgment...."*

26. Given the egregious nature of the G.O. challenged in the present case, the burden is upon the State Government and the presumption of Constitutionality is not available. The present notification is also covered by "FootNote Four" and Strict Scrutiny test. ***(see Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720, para 85 to 87)***

F.4: No "law" to curtail freedoms

27. The fundamental rights protected under Article 19 (1) can be restricted under Article 19(2) through an enactment of law and not through executive orders.

28. In the present case, the fundamental right of the students to wear headscarf or Hijab, is protected under Article 19 (1) (a) freedom to speech and expressions and Article 25 guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens. Crucially, the learned Advocate General conceded at that the right to wear headscarves falls well within the purview of Article 19 (1) (a, and that the case at hand is not about a "Hijab ban" , since the restriction does not apply in public but only applies in classroom . Moreover, the justification taken by the learned Advocate General was that such a restriction was a reasonable restriction under Article 19 (2) of the Constitution. i.e for the legitimate object of uniformity and

discipline in Pre-university educational institutions. The question then remains what is the validity of such a restriction?

A. In ***Kharak Singh v. State of U.P., AIR 1963 SC 1295*** while examining the question as to whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Art. 19(2) to (6). The Hon'ble Apex Court Constitutional Bench answered the question in the negative and said:-

"Though learned Counsel for the respondent started by attempting such a justification by invoking s. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Ch. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant cls. (2) to (6) of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19(1), not would the same be "a procedure established by law" within Art. 21."

B. In ***Bijoe Emmanuel &Ors vs State of Kerala 1987 AIR 748***, while examining the circulars issued by the Director of Public Instructions, Kerala, making it mandatory to sing the national anthem, observed that there was no legal sanction to the circulars and was not issued under the authority of statue. Accordingly, the Hon'ble Apex court held as follows:

"The law is now well settled that any law which may be made under clauses (2) to (6) of Art. 19 to regulate the exercise of the right to the freedoms guaranteed by Art. 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction."

C. *In **Union of India v. Naveen Jindal AIR 2004 SC 1559***, the Hon'ble Apex Court held that the Flag Code which contained only executive instructions of Government of India not being a law could not be considered to have imposed reasonable restrictions under Clause (2) of Article 19 of Constitution of India and laid down the law as follows:

"29. A bare perusal of the said provision would clearly go to show that executive instructions would not fall within the aforementioned category. Such executive instructions may have the force of law for some other purposes; as for example those instructions which are issued as a supplement to the legislative power in terms of clause (1) of Article 77 of the Constitution of India. The necessity as regards determination of the said question has arisen as Parliament has not chosen to enact a statute

which would confer at least a statutory right upon a citizen of India to fly the National Flag. An executive instruction issued by the appellant herein can any time be replaced by another set of executive instructions and thus deprive Indian citizens from flying National Flag. Furthermore, such a question will also arise in the event if it be held that right to fly the National Flag is a fundamental or a natural right within the meaning of Article 19 of the Constitution of India; as for the purpose of regulating the exercise of right of freedom guaranteed under Articles 19(1)(a) to (e) and (g) a law must be made."

29. The Hon'ble Supreme court in a 9 Judge Bench decision in ***K. S. Puttaswamy v. Union of India (2017) 10 SCC 1,*** emphasized on the need for a statutory law to restrict a fundamental right, while observing as follows:

"An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them" ***(Detailed exposition of test in para 310 and 638)***

30. That in this case, the CDC itself does not have any authority to pass resolutions restricting the wearing of headscarves, hence, there exists no valid law in the first place to fulfil the above test. In arguendo, even if it is assumed that a valid law exists having such a restriction, it has to be done to achieve a legitimate state aim. That through the submissions of the respondent it can be ascertained that the state aim here is uniformity and discipline in the school uniform and some respondents (other than state) argued that the purpose of the restriction was to restrict the display of religious symbols in line with the principle of secularism and equal treatment of students. Diversity and accommodation of diversity inheres in the Constitutional values which cannot be divorced in executive decision making.

31. That other than simply stating the object of uniformity and discipline, no attempt was made by the state or any of the respondents to establish its connection with maintaining an ideal academic atmosphere. In fact, the contrary was held by the Calcutta High Court with respect to teachers in***Swati Purkait v. State of West Bengal, 2010 SCC OnLine Cal 1501: (2010) 4 Cal LT 622***

*"**20**- A class room in an institute is not such a workplace or work room that should need a specified dress to get the best out of the workforce. **It is beyond comprehension of a person of reasonable prudence how a specified dress used especially by the women teachers at work will create an ideal academic atmosphere**.*

32. In arguendo, even if it is assumed that uniformity in school uniform and discipline in Pre-university colleges is a legitimate state object, the question then emerges is: what is the nexus between restricting ***headscarves along with the uniform*** and maintaining the object of school uniform ? and if there is a nexus, is the restriction proportionate ? In other words, is this action the least restrictive manner of achieving the object of school uniform and discipline in Pre-university colleges.

33. It is submitted that entirely prohibiting headscarves (including those which match with the uniform colours) is a disproportionate taking away of the right to decisional autonomy (privacy) vis-a-vis the object of maintaining uniformity in school uniform and discipline. In fact, the principle of Harmonious construction may be invoked here to only permit headscarves of the colour of the uniform in order to balance the competing interests.

F.5 Effects Test and violations of Article 14 and 15 of the constitution

34. When adjudicating a constitutional challenge on fundamental rights grounds, this Hon'ble Court will consider not the *object* or the *form* of the law, but its *effect*. Thus, facially neutral laws will nonetheless be held unconstitutional if they are discriminatory *in effect*, or their *effect* is to violate a fundamental right. **State of Bombay v Bombay Education Society, AIR 1954 SC 561, para. 16 (CB); Khandige Sham Bhat v The Agricultural Income Tax Officer, 1963 SCR (3) 809 (CB), para. 7; Navtej Singh Johar v Union of India, (2018) 10 SCC 1, para 428).**

35. The effect of the law is disproportionate. The law, in its impact and also in its implementation, affects women's choices and Muslims disproportionately. Hence the notification is violative of Articles 14 and 15 of the Constitution. The instant is classic case of reverse discrimination.

36. In ***Madhu v. Northern Railway, 2018 SCC OnLine Del 6660,*** the Delhi High Court detailed the concept of indirect discrimination, while relying on it, the court held:-

> *"22. Council Directive 2000/78/EC (27 February, 2000) defines the concept of 'indirect discrimination' as, "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at aparticular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."*

23. It is also worth paying attention to the case of Bilka-Kaufhaus GmbH v. Webber von Hartz (1986) ECR 1607. Bilka was a supermarket that paid all employees who had worked full-time for more than 15 years a pension. Mrs. Webber worked part-time at Bilka for over 15 years, but was denied the pension because she was only a part-time employee. Mrs. Webber alleged that the requirement to be a full-time employee before securing the pension was discriminatory against women, since women were far more likely than men to take up part-time work, so as to take care of family and children. The Court noted,

> "Article 119 of the EEC Treaty is infringed by a department store company whichexcludes part-time employees from its occupational pension scheme, where that exclusion affects a far greater number of women than men, unless the undertaking shows that the exclusion is based on objectively justified factors unrelated to any discrimination on grounds of sex."

24. The Canadian Supreme Court has also espoused an understanding of "disparate impact", where the touchstone to examine the validity of an allegedly discriminatory action is whether or not the effect of the action has a disproportionate impact on a class of citizens. The Court in Andrews v. Law Society of British Columbia [1989] 1 S.C.R. 143 noted,

> "Discrimination is a distinction which, whether intentional or not but based ongrounds relating to personal characteristics of the individual or group, has an effect which imposes disadvantages not imposed upon others or which withholds or limits access to advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed. [...] The words "without discrimination" require more than a mere finding of distinction between the treatment of groups or individuals. These words are a form of qualifier built into s. 15 itself and limit those distinctions which are forbidden bythe section to those which involve prejudice or disadvantage. The effect of the impugned distinction or classification on the complainant must be considered. [...] I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or

disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society."

28-The origin of the idea of "disparate impact" originated in the landmark case of Griggs v. Duke Power Co. 401 U.S. 424. The Court was faced with the case of an employer who required employees to pass an aptitude test as a condition of employment. The work in question was manual work. Although the same test was applied to all candidates, the Court noted that African-American applicants had long received sub-standard education due to segregated schools. Thus, the employer' srequirement disproportionately affects African-America candidates. The Court held in the context of the Civil Rights Act, "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

37. In ***Eddie C. Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707,*** it washeld by the US Supreme Court that A person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. It is true that the Indiana law does not compel a violation of conscience, but where the state conditions receipt of an important benefit upon conduct prescribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. (at pp 716-718)

38. The Supreme Court in ***Nitisha v. Union of IndiaAIR2021SC 1797,*** applied the doctrine of indirect discrimination while holding that women army officers being denied Permanent Commission ("PC") by the Indian Army was discriminatory. Through the judgment it acknowledged that though certain rules or laws appear to be neutral they may have a disparate impact on certain groups/ communities of people due to their identities.

39. That such a restriction on headscarves in classrooms of Pre-universities, has the effect of singling out Hijab observing Muslim girl students as a class and pushes them to chose between their right of religious/ cultural expression under Article 19 1 (a) and the Right to education under Article 21. However, other classes of students do not have to face this disadvantage. That such a rule/resolution/ regulation may seem neutral, and may prohibit headscarves for all irrespective of religion. However, it has the effect of causing disproportionate disadvantage to a particular group (Muslim girl

students) who in the social context have been known to wear headscarves as a religious/cultural commitment for a considerable period of time. One can describe the wearing of headscarves, a group characteristic in our social and historical context.

40. Article 15(1) holds that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. That the actions of various colleges forcibly preventing students from entering class for wearing headscarves, is discriminatory on grounds of 'sex' and ' 'religion'.

41. That the actions of the respondents are manifestly arbitrary as per the formulation in ***ShayaraBano v/s Union of India (2017) 9 SCC 1***. In differentiating between the above-said classes, there is no adequate determining principle vis-a-vis the object sought to be achieved. In other words, the question of, how is accommodating the headscarf more detrimental than other forms of religious expression, such as bindi/ kumkuma, cross etc to the concept of uniform, remains unanswered by the state or any of the respondents. Further, if the object is to erase religious symbols, why is one religious symbol being restricted while others are being allowed. Such a net result, is manifestly arbitrary and hence violative of Article 14 of the constitution.

F.6 Make Education Accessible and Inclusive in line with the right to Education

42. In ***MEC for Education Kwa Zulu Natal and others v Pillay (CASE: CCT 51/06)*** the South African Constitution Court protected the right of a Hindu girl in South African being in minority there to profess her religion on here sincere belief of the religion and culture, and allowed her to wear nose ring. It may be noted that a general undertaking signed by the girl's mother that she will follow the Code of Conduct of the School was not held against her.

43. Submission of the CDC submission that dress has a connection with scientific education is unacceptable. India has many great scientists and other scholars whose scientific or secular education had no connection with their religious outlook. In fact, dress has no connection whatsoever with receiving education, and in many cases uniforms are prescribed to conceal economic disparities between children at such a young age.

44. The purpose of the Karnataka Education Act 1983 is to make good education accessible to all and not to disallow certain group by being overtly discriminatory or insensitive. In the present scenario when right to education is gradually transforming from legal right to a fundamental right and the Government is providing mid day

meals also to encourage attendance, it fails to reason as to why certain groups would be excluded on the basis of mere headscarf.

45. Further, headscarf is not an aberration or non-permissible under prescribed uniforms. Its a covering for hair and bosom, and in the absence of any prescription for contrary headgear or similar article, the uniform even where prescribed cannot be read as excluding headgear.

46. By not insisting on the uniforms excluded headscarves in the past, the uniform itself is directory and ceremonial, and not mandatory. The issue of Hijab is a recent one, and previously there had been no objection to the same. The same is thus, covered by acquiescence.

F.7 Subordination test

47. ***In Joseph Shine v. Union of India*, (2019) 3 SCC 39, it has been held that:-**

> *"172. The primary enquiry to be undertaken by the Court towards the realisation of substantive equality is to determine whether the provision contributes to the subordination of a disadvantaged group of individuals."*

48. There is no doubt that education for women should be top priority for the Government and therefore her dress or head covering should not be a problem for the government. In the name of uniformity of dress, the diversity of the country could not be lost. "We, the People" assimilates diversity of the nation. In the present case, the impugned notification seeks to exclude women from a certain religious group

When either the text or effect of the law is to 'demean' people, it amounts to subordination which is contrary to Article 14 and Article 17 of the Constitution of India.

The Denial of head scarf / Hijab or worse forcing young girls to take of articles of clothing that they connect with modesty and religious values amounts state sanction indignity and is violation of a gamut of human rights. It amounts state sponsored humiliation, which breaches the principles embodied in Article 17 and Article 22 of the Constitution. The same affects irreparably and damages the psyche of young girls wanting to benefit from the education at colleges.

F.8Violation of Fraternity Principle

49. That the effect of the impugned notification is that it results in violation of the fraternity principle of the Constitution. It makes diversity in the classroom an impossibility under the law, making it a *de facto* prohibition. The G.O. does not allow mingling of religious-cultural traditions and thrusts upon artificial uniformity which has no connection with the object sought to be achieved.

F.9 Heckler's Veto and Threat to Public Order

50. There is no threat to public order by the girls wearing Hijab. There is not even a law and order issue. If there is a law and order issue, it is created by the administration of the college and certain other elements, and that is not a ground to deny exercise of a right - whether legal or fundamental. In any event, The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.

51. That the actions of the respondent State and other respondents of denying entry of students wearing headscarves into classroom to avail education, has a deeply detrimental psychological impact on the young girls. These actions have the effect of suppressing the dreams and aspirations of the young girl students.

52. Hence, in light of the facts and grounds stated above it is humbly prayed by the impleading Applicant that the main Petition be allowed by setting aside and quashing the impugned Government order dated 05.02.2022 and that a direction be issued to the respondents to permit petitioners and other similarly placed persons to attend their classes while wearing the headscarves or issue such other order or direction as this Hon'ble Court may deem fir in the interest of justice and equity.

Place: Bengaluru

Date: 04.03.2022

Advocate for Impleading Applicants
Talha Abdul Rahman, Afeef Sadullah and Basawa Prasad

//TRUE TYPED COPY//

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) No._____ OF 2022

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING PERMISSION TO FILE SPECIAL LEAVE PETITION

TO,
THE HON'BLE CHIEF JUSTICE AND
OTHER COMPANION JUDGE OF
THE SUPREME COURT OF INDIA

The humble application of the applicant hereinabove:

MOST RESPECTFULLY SHOWETH:

1. The instant SLP is being filed against judgment and order dated 15.03.2022 passed Writ Petition No. 2347 of 2022 and connected matters passed by the Hon'ble Karnataka High Court upholding the Government Order dated 05.02.2022 ("**Government Order**") that pre-decided the issue of exclusion of *hijab* from school uniform in its descriptive part, and permitted private persons (i.e. respective College Betterment/Development Committees) to interfere with practice of fundamental freedoms including the right to dress modestly and the

right to freedom of religion and conscience, without there being any authority of law.

2. That the present application is being filed seeking permission to file Special Leave Petition .

3. That the facts and circumstances of the instant matter are not being repeated here for the sake of brevity and the same shall be treated as part and parcel of the instant application

4. That the Applicant herein is a public-spirited individual with substantial experience representing the causes of women, especially those pertaining to women from sections of religious minority. It is respectfully submitted that the Applicant is directly affected by restrictions on wearing Hijab as she herself wears Hijab and restrictions on dress have a cascading effect on rights of women and their dignity. The Applicant is a necessary and proper party that deserves to be heard on the issue raised in the instant writ petition, as the same raises substantial issues of constitutional significance.

5. That it is pertinent to submit that the Applicant was not a party before the Hon'ble High Court. The Applicant in order to safeguard her rights filed an impleadment application to implead the Applicant as Petitioner in the writ petition (WP NO. 2347 OF 2022) which was never heard by the Hon'ble High Court before disposing of the matter

6. That the Applicant is herself a *hijab*-wearing woman and thr impugnrf order dated 15.03.2022 has impacted the Applicant and other similarly situated women.

7. In view of the above-stated facts and circumstances it is humbly prayed to allow the Applicant to file the instant SLP against the judgement and order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka, at Bengaluru in Writ Petition No. 2347 of 2022

8. That the present application is *bonafide* and in the interest of justice.

PRAYER

In view of the facts and circumstances as stated above it is humbly prayed before this Hon'ble Court that:

A. The Hon'ble Court may be pleased to allow the present application and permit the Applicant to file the instant Special Leave Petition;
B. The Hon'ble Court may be pleased to pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

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

Drawn on:16.03.2022
New Delhi

Talha

Talha Abdul Rahman
Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) No._____ OF 2022

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER

TO,
THE HON'BLE CHIEF JUSTICE AND
OTHER COMPANION JUDGE OF
THE SUPREME COURT OF INDIA

The humble application of the applicant hereinabove:

MOST RESPECTFULLY SHOWETH:

1. The instant SLP is being filed against judgment and order dated 15.03.2022 passed Writ Petition No. 2347 of 2022 and connected matters passed by the Hon'ble Karnataka High Court upholding the Government Order dated 05.02.2022 ("**Government Order**") that pre-decided the issue of exclusion of *hijab* from school uniform in its descriptive part, and permitted private persons (i.e. respective College Betterment/Development Committees) to interfere with practice of

fundamental freedoms including the right to dress modestly and the right to freedom of religion and conscience, without there being any authority of law.

2. That the facts and circumstances of the instant matter are not reiterated here for the sake brevity and the same be treated as part and parcel of the instant application

3. That due to the paucity of time the Petitioner, could not get the certified copy of the impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru. The Petitioner to avoid delay in filing of the present Special Leave Petition has filed the true copy of the impugned order as downloaded from the website of the Hon'ble High Court on 15.03.2022.

4. That the Petitioner undertakes to obtain and provide a certified copy of the impugned order from the High Court if this Hon'ble Court so directs.

5. That the instant application is *bonafide* and in the interest of justioce

PRAYER

In view of the facts and circumstances as stated above it is humbly prayed before this Hon'ble Court that

a. The Hon'ble Court may be pleased to allow the present application and exempt the Petitioner from filing the certified copy of the

impugned order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP No. 2347 of 2022 ;

b. The Hon'ble Court may be pleased to pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

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

Drawn on:16.03.2022
New Delhi

Talha

Talha Abdul Rahman
Advocate for the Petitioner

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

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING PERMISSION TO PLACE ON RECORD ADDITIONAL DOCUMENTS

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

The humble application of the applicant hereinabove:

MOST RESPECTFULLY SHOWETH:

1. The instant SLP is being filed against judgment and order dated 15.03.2022 passed Writ Petition No. 2347 of 2022 and connected matters passed by the Hon'ble Karnataka High Court upholding the Government Order dated 05.02.2022 ("**Government Order**") that pre-decided the issue of exclusion of *hijab* from school uniform in its descriptive part, and permitted private persons (i.e. respective College Betterment/Development Committees) to interfere with the practice of fundamental freedoms including the right to dress modestly and the right to freedom of religion and conscience, without there being any authority of law.

2. That the facts and circumstances of the instant matter are not reiterated here for the sake brevity and the same be treated as part and parcel of the instant application

3. That the instant application is being filed seeking permission to place the following documents as additional documents, to better assist this Hon'ble Court in adjudicating the instant matter.

   i. A true copy of the article dated 21.02.2022 reported on livelaw.in with heading "*State Hasn't Banned Hijab, Says Karnataka AG; If Institutions Permit, Will You Object? High Court Asks*" is annexed as **Annexure P- 7 (Pg__260 TO 269___)**

4. That the instant application is *bonafide* and in the interest of justice

PRAYER

For the facts reasons as stated above:

a. The Hon'ble Court may be pleased to allow the present application and allow the Applicant to file Annexure P-7 as an additional document ;

b. The Hon'ble Court may be pleased to pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT SHALL AS IN DUTY BOUND FOREVER PRAY

Talha

Drawn on:16.03.2022
New Delhi

Talha Abdul Rahman
Advocate for the Petitioner

ANNEXURE P-7

State Hasn't Banned Hijab, Says Karnataka AG; If Institutions Permit, Will You Object? High Court Asks

Mustafa Plumber

21st feb 2022 5:37pm

A Full Bench of the Karnataka High Court today continued hearing **Advocate General Prabhuling Navadgi** on behalf of the State, in the petitions filed by Muslim girl students, who have challenged the action of a government college in denying their entry for wearing a *hijab* (headscarf). Today is the 7th day of the hearing before the Full Bench.

When the hearing started, the bench led by the Chief Justice sought a clarification from the State regarding its stand on banning *hijab*. This arose in view of the AG's submission that the Government Order dated February 5, which has been challenged in the writ petitions, does not prescribe any ban on *hijab* and that it is only an "innocuous" order which asks students to follow the uniforms prescribed by their institutions.

"*What is your stand?Whether hijab can be permitted in institutions or not?"*, the Chief Justice raised a pointed query.

"The operative portion of the GO leaves it to the institutions", the AG submitted.

*"If institutions permit hijab, you have objections?", t*he CJ asked further

"If the institutions are to permit, we would possibly take a decision as and when the issue arises...", the AG responded.

"You have to take a stand", the CJI reiterated.

"*It is argued that they may be permitted to wear the same colour headdress as permitted in uniform prescribed by the college. We want to know the stand of*

the state? Suppose if they are wearing duppata which is part of uniform, can it be allowed?", the CJ asked further.

"My answer is that we have not prescribed anything. The Order , it gives complete autonomy to institution to decide uniform. Whether students be allowed to wear dress or apprarel which could be symbol of religion, the stand of the state is.. element of introducing religious dress should not be there in uniform. As a matter of principle, the answer is in preamble of Karnataka Education Act which is to foster secular environment", the AG said.

It may be recalled that on the last hearing date (February 18), the AG had conceded that the GO could have been worded in a better manner and the references to *hijab* could have been avoided.

"On a better advise, these could have been avoided. But that stage has passed," the AG had submitted then. The AG had also said that the draftsman of the GO went "over enthusiastic" by referring to unity and public order in it.
Why should Court decide on Article 25 if state has not banned hijab? HC asks

If that is the stand of the State, the CJ asked, whether it was necessary to go into the constitutional question if hijab was essential religious practice.

The AG said that the question might be necessary as institutions can bar hijab. He submitted that in this case, the Udupi Pre-University College has taken a stand that we will not allow wearing of hijab in the institution. So, this issue might have to be gone into by the Court.

"*The second issue (ERP) might be necessary because of this. Let us say this institution is before your lordships. The question that would be posed can you prevent someone from entering the institution for wearing hijab.*

If lordships are to decide that wearing of hijab does not fall under Article 25, then it would be different for students and institution. The entire question revolves around whether wearing of hijab falls under Article 25."

"*In Feb 5 order (GO), we do not decide anything. I say so because, from Shirur mutt case it has evolved, State unless it is a secular activity should not involve in religious practises…If we had decided the hijab cannot be worn, it would have been seriously challenged on the ground that State has interfered in a religious matter.*"

He relied on Justice DY Chandrachud's decision in Sabarimala case to submit that a Constitutional court has an important role to decide whether a religious practice can be permitted the protection under Article 25.

"*GO is innocuous and it is consciously so. This question, controversy would not have arisen. If petitioners would have come and said the college is not permitting us to wear hijab as a head scarf, it is different. But they want to wear this head scarf as a religious symbol.*"

The Court pointed out that College Development Committees are not statutory bodies (as they are created under a Government Circular), and that private institutions may not be amenable to writ jurisdiction.

Burden on Petitioners to show that wearing hijab is essential religious practice: AG

Navadgi told the Bench comprising **Chief Justice Ritu Raj Awasthi**, **Justice Krishna S Dixit** and **Justice JM Khazi** that wearing *hijab* is not an Essential Religious Practice and is thus not protected under Freedom of Religion under Article 25 of the Constitution. Further, it would not come within the concept of Freedom of Conscience under Article 25 of the Constitution.

"*Protection under Articles 25 & 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. Thus, a practice may be a religious practice but not an essential & integral part of practice. The latter shall not be protected by the Constitution," he submitted.*

The AG argued that the burden is on the petitioners to show that hijab satisfies all tests of essential religious practice. These principles are:

1.The practise must be fundamental to the religion;

2 If the practise is not followed, it will change the religion itself;

3. Practice must precede the birth of religion. Foundation of religion must be based on that. It must be co-existent with the religion;

4. Binding nature. If it is optional, then it is not essential. If wearing of it is not obligatory, then it is not essential.

AG culled out these principles based on a reference to various Supreme Court precedents.

He contended that petitioners have shown zero materials to show *hijab* is essential religious practice. He pointed out that the declaration which the petitioners seek would bind every Muslim woman to wear a *hijab*.

"*I am nobody to criticise. But I can say with some responsibility. In a case like this, where you want to bind every Muslim women, and which can gives rise to religious sentiments and division, you should have shown more circumspection to lay a foundation. You should have shown more circumspection and discretion seeking declaration before a constitutional court binding not only petitioners but everyone...Law is for all of us. The sentences, averments made by petitioners show nothing.*"

AG argued that whenever reliance was placed on Quran to declare an Essential Rreligious Practice, in four cases SC negated. He illustrated:

In the case of Mohd. Hanif Quareshi & Others vs The State Of Bihar, it was held that what is optional does not constitute ERP.

In the case of Javed & Ors vs State Of Haryana & Ors, the Court denied the proposition that Quran protects plurality of marriages.

In the case of Dr. M. Ismail Faruqui v. Union of India (Babri Masjid case) the Supreme Court negated the argument that praying in a mosque is an essential practice.

In Shayara Bano case, it was held that Triple Talaq is not a part of Quran.

Scope of Freedom of Conscience

It is the State's stand that the question of Essential Religious Practice would not come within the concept of Freedom of Conscience under Article 25 of the Constitution.

Justice Dixit pointed out that in the Constituent Assembly, there was a debate on whether to include "conscience" in Article 25. Dr. Ambedkar had suggested it to be included, saying even people who do not believe in God are also entitled to Article 25 protection.

At this juncture, the Chief Justice opined that conscience and religion are two different aspects.

"*Different but mutually existing also,*" Justice Dixit said.

AG then submitted the apprehensions exhibited by members of the constituent assembly on including religion as a matter of right, as it "*may result in some religions placing their hegemony over others…They reached to consensus that we will control vide public order, morality and health.*"

He that there was a telling statement made by Dr. Ambedkar in the assembly debates to keep the religious instruction outside educational institutions.

Justice Dixit then remarked orally, "*Secularism which the makers of our Constitution is not what akin to what American Constitution envisages. Our secularism oscillates between "sarva dharma sama bhava" and "dharma nirapekshatha". It is not a war between the Church and the State…Our Constitution did not enact what Karl Marx has said, that "religion is the opium of the masses*""

Practice must be essential to Religion

The AG argued that the protection under Articles 25 & 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. Thus, a practice may be a religious practice but not an essential & integral part of practice. The latter shall not be protected by the Constitution.

He referred to the case of Durgah Committee, Ajmer v. Syed Hussain Ali & Ors. (Ajmer Dargah case), where an Act taking away the rights of *sufis* from collections in Dargah was under challenge.

He quoted the following excerpt from the judgment:

"*…in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices.*"

It was further held in this case,

"*Even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself…Unless such practices are found to constitute an essential and integral part of a religion their claim for the protection under Art. 26 may have to be carefully scrutinized.*"

He then referred to the case Commissioner Of Police & Ors v. Acharya J. Avadhuta, where the question was whether Ananda Margis can perform Tandava dance in public street. It was held therein that 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…Test to determine whether a part or practice is essential to the religion is to find out whether the nature of 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,*" it was held therein.

It was further emphasized that alterable parts or practices are not the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non- essential part or practices.

In this vein, the AG submitted that there are three test to determine if a practice is essential religious practice : 1. Is this part of core belief? 2. Is this practice fundamental to that religion? 3. If that practice is not followed, will the religion cease to exist?

"*Article 25 has different sections. To establish right under Article 25, they should first prove religious practise, then that it is an essential religious practice, then that ERP does not come in conflict with public order, morality or health or any other fundamental right,*" he added.

Food and dress should not be considered as Essential Religious Practices: AG argues

The AG submitted that in AS Narayana Deekshitulu Etc v. State Of Andhra Pradesh, the Supreme Court has said that food and dress should not be considered as Essential Religious Practices.

"*There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which in not considered a religious activity. Every mundane or human activity was not intended to be protected by Constitution under the guise of religion,*" it was held therein

AG pointed out that the Petitioners side had relied on the Shirur mutt judgement as if dress and food would automatically qualify as Essential Religious Practice. But this has to be understood in the light of the

subsequent judgment which says a pragmatic approach should be taken, he said.

He informed the Bench that during the Constituent Assembly debates, KM Munshi had said that we should put a foot down on all practices which will bring down the country and seek to narrow down religious practices. These statements were also quoted by the Supreme Court in Shayara Bano case.

"*We want to divorce religion from personal law. We are in a stage where we must unify our nation without interfering with religious practice. Religion must be restricted to spheres which are religious…Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible, a strong and consolidated nation,*" Munshi had said.

It was also held in that case that views of religious denomination, though significant are not determinative in essentiality of practice, the AG said. "*A practice claimed to be essential must be mandatory and not optional,*" it was held.

Alleged misuse of Interim Order

Previously, Advocate Mohammad Tahir had alleged that the interim order of the Court restraining students from wearing any sort of religious clothes in classrooms was being widely misused to harass students and even teachers.

Responding to the same, the AG today informed the Court that he has spoken to the Principal Secretary and a meeting will be convened soon.

"*I have spoken to Principal Secretary, education department and soon a meeting will be convened of all concerned. I assure court that report will be submitted to the court and to him. I assure all such instances will be taken care of.*"

Case so far

The Advocate General commenced his arguments last Friday. He stressed the following aspects: (i) wearing of hijab does not fall within the essential religious practise of Islam; (ii) right to wear hijab cannot be traced to freedom of expression under Article 19(1)(a) of the Constitution; (iii) Government Order dated February 5 empowering College Development Committees (CDCs) to prescribe uniform is in consonance with the Education Act.

Hijab Not Essential Practice Of Islam, Karnataka AG Says; What Was Necessity Of Saying This In GO, Asks High Court?

Senior Advocate Devadatt Kamat appearing for the petitioners argued that wearing Hijab is an essential religious practice under Islam, and suspension of the same, even for a few hours during school, undermines the community's faith and violates their fundamental rights under Article 19 and 25 of the Constitution.
Kamat heavily relied on a judgment of the Constitutional Court of South Africa, in KwaZulu-Natal and Others v Pillay, which upheld the right of a Hindu girl from South India to wear a nose ring to school.

Hijab Ban: South African Judgment Allowing Hindu Girl To Wear Nose Ring In School As Cultural Practice Cited Before Karnataka HC

Kamat also underscored that the declaration made by the State government that wearing of headscarf is not protected by Article 25 of the Constitution was "*totally erroneous*'. It was also submitted that the conduct of the State government in delegating to the College Development Committee (CDC) to decide whether to allow headscarfs or not is '*totally illegal*'.

Prof Ravivarma Kumar, Senior Advocate, appearing on behalf of the petitioners argued that the state is discriminating against Muslim girls, solely on the basis of their religion. He highlighted that the Government Order dated February 5 targets wearing of hijab whereas other religious symbols are not taken into account. This leads to hostile discrimination violating Article 15 of the Constitution.

If Turban Wearing People Can Be In Army, Why Not Hijab Wearing Girls In Classes : Ravivarma Kumar To Karnataka High Court

The Bench also heard Senior Advocate Yusuf Muchhala for the petitioners, who argued on the aspect of right to freedom of religion, contending that it is not necessary that a practice should be an 'essential religious practice' for attracting Article 25(1).
"*When the right is claimed under Article 25(1) and 19(1)(a) of the Constitution, what matters is the entertainment of a conscientious belief by individual. When right is claimed as a matter of conscience, it is not necessary to delve into the question whether it is an integral part of religion,*" he said.

During the course of hearing, an oral request for mediation in the matter was made. Responding, the High Court had observed that mediation was possible

only if both the petitioners and the respondents (State and College Development Committees) agree.
The matter was first listed before a single bench of Justice Krishna S. Dixit, which referred the petitions to larger bench observing that "questions of seminal importance" are involved.

The Full Bench, after hearing both sides passed an interim order restraining the students from wearing any sort of religious clothes in classrooms, regardless of their faith, till disposal of the matter.

The Petitioners are students of Govt PU college. They claim that they were wearing head scarf, as part of their religious and cultural practice, over their uniform. However, the teachers and principal of the Respondent-college insisted that they remove their heads scarf.

It is alleged that they are made to stand out of the class and this 'discrimination' is continuing since December 2021. They claim that a representation was made to the District Education Officer however, on January 1, the Principal called a meeting of the College Development Committee, which declared that petitioners should not wear headscarf. Following this, the petitioners were not allowed to attend classes and made to sit outside, which led to protests.

An important question before the Court in this case is whether wearing of hijab is part of essential religious practise of Islam and whether State interference in such matters is warranted. The court is also called to consider whether wearing of hijab partakes the character of right to expression under Article 19(1)(a) of the Constitution and whether restriction can be levied only under Article 19(2).
It is the petitioner's case that the right to wear hijab is an essential religious practice under Islam, and the State is not empowered to interfere with such rights under Article 14,19 and 25 of the Constitution.

Meanwhile, the State has claimed that it's aim is not to interfere with the religious beliefs of any community but, is only concerned to maintain uniformity, discipline and public order in educational institutions.

"*The feeling of oneness, fraternity and brotherhood shall be promoted within an institution. In educational institutions, students should not be allowed to wear identifiable religious symbols or dress code catering to their religious beliefs and faith. Allowing this practice would lead to a student acquiring a distinctive,*

identifiable feature which is not conducive for the development of the child and academic environment," it submitted in a written reply.

(Edited and compiled by Akshita Saxena)

Live Updates of the hearing available here.

Live Stream of the hearing available here:

SOURCE: https://www.livelaw.in/top-stories/state-hasnt-banned-hijab-says-karnataka-ag-if-institutions-permit-will-you-object-high-court-asks-192457?from-login=10786

//True Copy //

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

IA NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) No._____ OF 2022

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING OFFICIAL TRANSLATION

TO,
THE HON'BLE CHIEF JUSTICE AND
OTHER COMPANION JUDGE OF
THE SUPREME COURT OF INDIA

The humble application of the applicant hereinabove:

MOST RESPECTFULLY SHOWETH:

1. The instant SLP is being filed against judgment and order dated 15.03.2022 passed Writ Petition No. 2347 of 2022 and connected matters passed by the Hon'ble Karnataka High Court upholding the Government Order dated 05.02.2022 ("**Government Order**") that pre-decided the issue of exclusion of *hijab* from school uniform in its descriptive part, and permitted private persons (i.e. respective College Betterment/Development Committees) to interfere with practice of

fundamental freedoms including the right to dress modestly and the right to freedom of religion and conscience, without there being any authority of law.

2. That the facts and circumstances of the instant matter are not reiterated here for the sake brevity and the same be treated as part and parcel of the instant application

3. That the due to urgency official translations of the Annexure P- 2 could not be organized and therefore unofficial translations are being filed which are translated under the supervision of a lawyer well versed in both languages, i.e. originally Kannada to English.

4. That the Petitioner undertakes to obtain and provide a official translation if this Hon'ble Court so directs.

5. That the instant application is *bonafide* and in the interest of justice

PRAYER

In view of the facts and circumstances as stated above it is humbly prayed before this Hon'ble Court that

a. The Hon'ble Court may be pleased to allow the present application and exempt the Petitioner from filing official translation of Annexures P- 2;

b. The Hon'ble Court may be pleased to pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

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

Drawn on:16.03.2022

New Delhi **Talha Abdul Rahman**

Advocate for the Petitioner

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No. 8561 OF 2022

(Diary No)

IN THE MATTER OF:

SAJEEDA BEGUM ... PETITIONER

VERSUS

STATE OF KARNATAKA & ORS. ... RESPONDENTS

ADDITIONAL AFFIDAVIT ON BEHALF OF THE PETITIONER

I, Sajeeda Begum, aged 66 years, D/o Late Shri Abdul Samad, R/0 6th Main, Viviani Rd Cross, Near Adams Functions Hall, Frazer Town, Bangalore, Karnataka 560 005 being the Petitioner abovenamed do hereby solemnly affirm and state as under:

1. That the instant affidavit is being filed to place on record some of the instances of effect of Hijab ban upheld vide the impugned order. It is stated that the State of Karnataka had failed to show that wearing of Hijab itself had any adverse effect on educational standards and discipline, and the same did not amount to discrimination on the basis of dress – prohibited under the Constitution. The High Court has not even considered that the burden of proving the necessity to take such a hard line approach is upon the State Government. It is further stated that the High Court had allowed hecklers to veto or mould the conduct of the State Government in as much the State Government's G.O. does not itself prohibit the *hijab*.

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Sajida Begum

No. of CORRECTIONS.....NIL

2. That as schools were closed due to COVID-19, there has been a huge drop in learning levels in both reading and numeracy, especially in primary classes, in Karnataka. This is established by The Annual Status of Education Report (ASER), which was drawn up in March 2021.

3. That an article dated 20.02.2022, titled

"Hijab row: Why the ban is a double blow to Muslim girl students." Noted that:

> *[According to the Annual Status of Education Report. Data show that Muslim girls were already at a disadvantage in school education compared to those from other religions. According to the National Family Health Survey (NFHS)-5, the share of Muslim girl students in the 6-17 age group attending schools in 2019-20 was significantly lower than their Hindu and Christian counterparts in almost all States except Kerala. It is in this context that Muslim girl students face the hijab ban...]*
> *Source: https://www.thehindu.com/data/data-hijab-row-why-the-ban-is-a-double-blow-for-muslim-girl-students/article65066546.ece/amp/*

4. That it is reported that the number of Muslim girls in Udupi colleges doubled in 15 yrs, hijab ban threatens progress Data provided by the Education Department showed that the number of Muslim girls attending pre-university colleges in Udupi doubled between 2005 and 2021. But the hijab ban may reverse the trend. *(Source: https://www.thenewsminute.com/article/number-muslim-girls-udupi-colleges-doubles-15-yrs-hijab-ban-threatens-progress-164050?amp)*. It is stated that the Hijab ban is not compatible with "Beti Bachao, Beti Padhao" scheme of the Government of India. Therefore, the Hijab threatens to take away the advances in women education. It may be noted that the goal of education and advancing the cause of humanity cannot be achieved if the Government or the hecklers are allowed to stop women from gaining access to college by trying to control the

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No. of CORRECTIONS.....NIL

modest clothes they want to wear. It is fact widely acknowledge by scientist and anthropologist that girls who did not complete schooling do not have much control over decisions taken at home.

5. That the Hijab ban imposed by the impugned order has had irreparable and demonstrable adverse effect on women education in Karnataka, especially the women from the sections of minority, which has been set out herein below:

Aftermath of the Ban

a. An article in the Deccan Herald dated 20th August 2022 titled "Hijab ban: 16% Muslim girls from Mangalore University colleges drop out" reported that "145 out of the total 900 Muslim girl students who had enrolled for various courses in 2020-21 and 2021-22 had collected TCs". (Source: https://www.deccanherald.com/state/mangaluru/hijab-ban-16-muslim-girls-from-mangalore-university-colleges-drop-out-1137668.html)

It is stated that data on transfer certificates may not accurately represent the situation on the ground as many students continue to boycott institutions that seek to curtail the right which does otherwise inhibit the discipline in anyway. It is stated that the News reports reveal how the hijab ban has affected the future prospects of not just PU students but students enrolled in Class 10 and degree courses as well. It is stated that oddly and worryingly enough there have also been several reports of hijab wearing teachers in schools and colleges being affected. In this regard it may be noticed that

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reference in the impugned order had also been made to the instances where teachers had also complained of a dress which had been referred to by the impugned order (pg. 78). The case of ***Swati Purkait v. State of West Bengal, 2010 SCC OnLine Cal 1501: (2010) 4 Cal LT 622*** **also dealing with teachers was cited by the Applicant but not considered by the impugned order.**

b. An article in The News Minute dated 4th April 2022 titled "**Teachers wearing hijab cannot do board exam duty, says Karnataka govt**" reports Karnataka "Education Minister BC Nagesh has said that teachers who insist on wearing the hijab will be removed from duty for the SSLC exam as well as the PUC Class 12 exams." **Source:** (https://www.thenewsminute.com/article/teachers-wearing-hijab-cannot-do-board-exam-duty-says-karnataka-govt-162553)

c. An article in The Indian Express dated 16th June 2022 titled "**Hijab row: 19 girl students of Karnataka's Haleyangadi**college **continue to miss classes"** cites the college principal "the 19 girls did not appear for the exams, nor did they attend the new semester."**(Source:** https://indianexpress.com/article/cities/bangalore/hijab-row-19-girl-students-of-karnatakas-haleyangadi-college-miss-classes-7969927/lite/)

d. An article in DNA dated 2nd June 2022 titled "**Hijab row triggered in Karnataka again, 6 suspended from Uppinangady college for**

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No. of CORRECTIONS...Nil

wearing headscarves" notes the continuing difficulties hijab wearing students faced in attending classes.(Source: https://www.dnaindia.com/india/report-hijab-row-triggered-in-karnataka-again-6-suspended-from-uppinangady-college-for-wearing-headscarves-2957538/amp)

e. An article in the Hindustan Times dated 31st March 2022 titled "**7 teachers suspended for allowing hijab-wearing students to write exams in Karnataka"** noted that the government had taken action against teachers for allowing hijab wearing students to take their Class 10 exams. . (Source:https://www.hindustantimes.com/india-news/class-10-exams-7-teachers-suspended-for-allowing-hijab-wearing-students-in-ktaka-101648666006582.html)

f. An article in NDTV dated 29th March 2022 titled "**Karnataka SSLC Exam 2022: Muslim Girls Wearing Hijab Not Allowed To Write Class 10 Examination"** reported "girls who wished to appear for their Class 10 board examination wearing hijab were denied entry in Karnataka on Monday citing the recent High Court verdict". (Source: https://www.ndtv.com/education/karnataka-sslc-exam-2022-muslim-girls-wearing-hijab-not-allowed-write-class-10-examination)

g. An article on Scroll.in dated 28th March 2022 titled "**Action will be taken against those who defy hijab ban during Class 10 exams, says Karnataka minister"** quoted Karnataka's Home Minister and noted hijab wearing students were being turned away from exam

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No. of CORRECTIONS.....NIL

centres. (Source:https://scroll.in/latest/1020543/action-will-be-taken-against-those-who-defy-hijab-ban-during-class-10-exams-says-karnataka-minister)

h. An article in the Quint dated 28th March 2022 titled "**K'taka Govt Makes Uniform Compulsory for Board Exams From Monday, Hijab Barred**" reports on the circular issued by the Karnataka Department of Primary and Secondary Education on 25 March stating " that students of government schools will have to appear in uniforms prescribed by the government." (Source:https://www.thequint.com/news/india/amid-hijab-row-karnataka-govt-makes-uniform-compulsory-for-sslc-eexams)

i. An article in The News Minute dated 21st March 2022 titled "**The hijab ban aftermath: Over 400 Muslim girls in Udupi colleges stay out of class**" reports that "at least 232 girls studying in degree colleges and 183 girls studying in PU colleges are missing classes and examinations over the hijab row in Udupi district." The article notes that the latter is 12.5% of the total Muslim girls (1446) in pre-university colleges in Udupi. These figures reflect the situation in just a single district. (Source: https://www.thenewsminute.com/article/hijab-ban-aftermath-over-400-muslim-girls-udupi-colleges-stay-out-class-162127).

j. An article in The Hindu dated 16th March 2022 titled **"Several hijab-clad Muslim students miss classes, exam in Karnataka"** notes the impact of the High Court judgement across various districts.

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No. of CORRECTIONS...NIL

Source: https://www.thehindu.com/news/national/karnataka/several-hijab-clad-muslim-students-miss-classes-exam/article65231907.ece

6. That, it has also been studied and acknowledged that in the context of France that " the law reduces the secondary educational attainment of Muslim girls and affects their trajectory in the labor market and family composition in the long run". ***(See Abdelgadir, Aala, and Vasiliki Fouka. 2020. "Secular Policies and Muslim Integration in the West: The Effects of the French Headscarf Ban." American Political Science Review, 114(3): 707-723.).***

7. The hijab ban seriously impacts the career prospects of young Muslim girls as it is being interpreted to extend to entrance examinations for professional courses. That it is stated that as per information available on the basis of interaction with Muslim girls in the State of Karnataka, it appears that on account of Hijab ban, many Muslim girls could not write the Common Entrance Test examination.

Sajida Begum
DEPONENT

Verified the contents of Para 1 to 7 of the present affidavit which is based on information available in public domain and personally known to her which she believes to be true. So help me God.

Place :- Bengaluru
Date :- 1/9/2022

Identified by me
KAR/1532/17
Advocate

Sajida Begum
DEPONENT

NOTARY
VEENA. K
BENGALURU
Reg. No : 12485
Exp:10-01-2027
GOVT. OF INDIA

Sworn /Solemnly affirmed and signed before
on this 1 day of 9 201 22 at Bengaluru
No. of Corrections 2 N.R.No. 1665 /20 22

VEENA. K, Advocate & Notary, Bengaluru