IN THE SUPREME COURT OF INDIA
CIVIIL APPELLATE JURISDICTION
[Order XXI Rule 3(1) (a)]

SPECIAL LEAVE PETITION (CIVIL) NO.**15414** OF 2022
[Against the Judgment and final Order Passed by the Hon'ble Karnataka High Court at Bengaluru dated 15.03.2022 in WP NO. 2347/2022 (GM-RES)(

With

Prayer for Interim Relief

IN THE MATTER OF:

Mohamed Arif Jameel ...PETITIONERS

VERSUS

State of Karnataka & ORS. ... RESPONDENTS

WITH

I. A. NO. OF 2022: APPLICATION FOR EXEMTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER

I. A. NO. OF 2022: APPLICATION FOR PERMISSION TO FILE SLP

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: ADEEL AHMED

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF :

Mohamed Arif Jameel .PETITIONER

VERSUS

State of Karnataka & ORS. … RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The petition is/ are within time.

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

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

BRANCH OFFICER

NEW DELHI
DATED: 16.03.2022

PROFORMA FOR FIRST LISTING **" A"– /**

SECTION: IVA

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

□ Central Act: (Title) IPC

□ Section : 302

□ Central Rule : (Title) NA

□ Rule No(s): NA

□ State Act: (Title) NA

□ Section: NA

□ 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 Hon'ble High Court of Karnataka

□ Names of Judges: Hon'ble Chief Justice Ritu Raj Awasthi, Hon'ble Mr. Justice Krishna S. Dixit,J & J. M. Khazi, J)

□ Tribunal/Authority ; (Name) NA

1. Nature of matter : □ Civil

2. (a) Petitioner/appellant No : Mohadmed Arif Jameel

(b) e-mail ID: NA

(c) Mobile phone number: NA

3. (a) Respondents No. 1: State of Karnataka & Ors.

(b) e-mail ID: NA

(c) Mobile phone number: NA

4. (a) Main category classification: 14

(b) Sub classification: 1418

5. Not to be listed before: NA

6. (a) Similar disposed off matter with citation if any

and case details: No similar disposed matter.

(b) Similar Pending matter with case details: No similar pending matter

7. Criminal. Matters: YES

(a) Whether accused/convict has surrendered: NA

(b) FIR NA

(c) Police Station:

(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

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

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

Date: 16.02.2022

AOR for petitioner(s)/appellant/Respondent(s)
(Name):ADEEL AHMED
Registration No.2734
14, Lawyers Chamber,
Supreme Court of India, New Delhi -110001
Mob: 8585908959
adeelbox@gmail.com

B

SYNOPSIS & LIST OF DATES

The Petitioner has filed the present SLP challenging Against the Judgment and final Order Passed by the Karnataka Hon'ble High Court at Bengaluru dated 15.03.2022 in WP NO. 2347/2022 (GM-RES), whereby the Hon'ble Court was pleased to dismiss the WRIT PETITION NO. 2347/2022 (GM-RES) and held, inter alia, that wearing of *hijab* by Muslim women does not form a part of essential religious practice in Islamic faith, and that the prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to.

The Respondent Government has issued an order thereby denying the entry to the Muslim Women wearing *HIJAB* in the educational institutions. The impugned order creates an unreasonable classification between the non-Muslim female students and the Muslim female students and thereby is in straight violation of the concept of Secularism which forms the basic structure of the Indian Constitution. The impugned order is also in sheer violation of the Article 14, 15, 19, 21 and 25 of the Indian Constitution and also

violates the core principles of the International Conventions that India is a signatory to.

Being aggrieved by the impugned Government Order, as it is in violation of Indian constitution, the Petitioner had approached the Hon'ble High Court by way of a Public Interest Litigation (PIL) Petition challenging the validity of the same.

The Hon'ble High Court vide the impugned order has sought to curtail the fundamental right of *Muslim student-women* by upholding the impugned Government Order which bars Muslim women from wearing the *hijab* and pursue their education. It is hereby submitted that the right to wear a Hijab is an 'essential religious practice' and falls within the ambit of the right of expression guaranteed by Article 19 (1) (a), the right to privacy and also the Freedom of Conscience under Article 25 of the Constitution. The same cannot be infringed upon without a valid "law".

Hence, the present SLP.

D

LIST OF DATES

05.02.2022 It is submitted that the Respondent State Government passed the G.O. No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022 (hereinafter called as 'the Government Order') wherein the Government has ordered to maintain the status quo with respect to the uniforms prescribed in the Education institutions. This order has come in pursuance of several incidents in the State of Karnataka wherein the Female students professing the Islamic faith and wearing hijab were denied the entry in the institution's premises even though they have been wearing the uniform that is set out by the school authorities since the beginning of the academic year and were only wearing the hijab in addition to the uniform in compliance to their religious requirements. (A Copy of the Government order by the Respondent

E

Government dated 05.02.2022 is herewith produced and annexed as **ANNEXURE- P-1 Pages** 161-169

It is submitted that the order further states that "Where there is uniform prescribed by the Government to be worn in all Government Schools and in Private Schools, the uniform prescribed by the School Administration should be worn. In the Colleges which comes under Pre-University Education Department, the Uniform prescribed by the College's College Department Committee (CDC) or the Governing body of the College should be worn. In case if the college administration does not prescribe any uniform in such case, the dress should be worn in a manner by protecting the equality and unity which do not disturb the public order."

08.02.2022 The Petitioner herein initiated a Writ Petition by way of Public Interest Litigation under Article 226 and 227 of the Constitution of India numbered as

F

W.P.(C) 3148 of 2022 (PIL) challenging the Government Order dated 05.02.2022 as violative of the basic structure as well as Article 14, 15, 19 and 21 and 25 of the Indian Constitution. Copy of the W.P.(C) 3148 of 2022 filed before the Hon'ble High Court of Karnataka is annexed herewith as **Annexure P-2.** (Pages 170 - 228)

That prior to the same, the Petitioner herein had also filed an Application for impleadment numbered as IA No.1 of 2022, and which was listed along with WP 2347/2022. The impugned Government order was already challenged by other aggrieved students who were affected by the impugned order in question under several Writ Petitions, the leading petition being W.P. No. 2347 of 2022. The said Petitions were initially listed before the learned Single Judge Bench of this Hon'ble Court.

09.02.2022 The learned Single Judge Bench of the Hon'ble High Court vide order dated 09.02.2022 referred the Petitions before the Hon'ble Chief Justice of the High Court to consider if these matters can be considered by a Larger Bench 'regard being had to enormous public importance of the question involved'. Accordingly, the Hon'ble Chief Justice of the Hon'ble High Court vide special order dated 09.02.2022 constituted the Special Bench comprising of three Judges in order to consider the issue involved in the matter.

Since the Petitioner through a Public Interest Litigation had also challenged the constitutional validity of the impugned Government Order, the Public Interest Litigation filed by the Petitioner herein also got connected with the main petitions,

H

and the Petitioner herein withdrew the IA No.1 of 2022.

17.02.2022 The Hon'ble High Court dismissed the said Writ Petition No. 3148 of 2022 on grounds of maintainability and on grounds of not being in accordance with Rule 14 of 'The High Court of Karnataka (Practice and Procedure for Public Interest Litigation Rules, 2018'. Copy of the of Order dated 17.02.2022 passed in the W.P.(C) 3148 of 2022 filed before the Hon'ble High Court of Karnataka at Bengaluru is annexed herewith as **Annexure P-3(Pages** 230-234)

Thereafter, the Petitioner being highly aggrieved by the dismissal order passed by this Hon'ble Court in W.P. No. 3148/2022 also preferred a Review Petition No. 239 of 2022 which also came to be dismissed.

I

15-03-2022	The Hon'ble High Court of Karnataka at Bengaluru has passed the impugned and final Order, holding that wearing of *hijab* by Muslim women does not form a part of essential religious practice in Islamic faith, and that the prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to
16.03.2022	Hence, the present SLP.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

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

AND

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

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

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

IN W.P. NO.2347 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.2146 OF 2022

BETWEEN:

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

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

3. ALIYA ASSADI
AGED ABOUT 17 YEARS,

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

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

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

... PETITIONERS

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

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

AND:

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

2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012

3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101

4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101

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

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

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

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

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.2880 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.3038 OF 2022

BETWEEN:

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

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

... PETITIONERS

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

AND:

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

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

BANGALORE-560001.

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.3424 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4309 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4338 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

4. THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

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

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

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

ORDER

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

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

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

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

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

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

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

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

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

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

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

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

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

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

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

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

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

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

College Development Committee or *College Supervision Committee; and*

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

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

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

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

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

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

II. BROAD CONTENTIONS OF PETITIONERS:

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

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[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*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

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

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

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

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

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

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

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

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

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

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

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

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

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

[47] (1985) 2 SCC 556

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

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

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

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

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

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

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

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

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

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

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

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

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

have broadly framed the following questions for consideration:

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

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

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

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

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[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

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[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*

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[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

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

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

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

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

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[66] 354 US 436 (1957)

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

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

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

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

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

[67] 1971 SCR (2) 446

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

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

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

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

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

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

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

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

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

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

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

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

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

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

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

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

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

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

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

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

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

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[68] Principles of Mahomedan law, 20th Edition (2013)
[69] Outlines of Muhammadan, Law 5th Edition (2008)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sūra xxiv (Nūr):

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

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

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

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

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

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

Sūra xxxiii (Ahzāb)

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

Is *hijab* Islam-specific?

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

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* *Id*

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

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

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

Sūra xxiv (Nūr)

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

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

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

Sūra xxxiii (Ahzāb)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[70] 2004 (1) JKJ 418

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

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

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

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

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

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

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

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

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

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[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*

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[73] (1901) A.C. 495

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

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

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

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

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[74] (1909) 33 BOM. 122

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

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

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

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

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

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

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

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

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

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[75] AIR 1957 SC 133

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

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

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

§251. Several cases have held that school regulations proscribing certain hairstyles were valid, usually on the

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

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

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

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

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

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

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

[76] (1929) 2 KB 416

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[80] (2020) 10 SCC 274

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

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

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

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

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

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

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

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

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

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

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

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

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[83] (1985) 1 SCC 641

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[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

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[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*

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

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

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

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

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

XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

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

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

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

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

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

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

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

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

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[89] AIR 1965 SC 491

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

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

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

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

XIX. THE PUBLIC INTEREST LITIGATIONS:

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

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[90] AIR 1986 CAL. 104

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

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

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

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

Costs made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

SJ/CBC

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Order XXI Rule 3 (1) (a)
(Under Article 136 of the Constitution of India)
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022
(WITH PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF:

Position of Parties

		High Court	This Court
1	Mohamed Arif Jameel S/o Late Abdul Rashid Aged about 50 years R/o - #179, 2nd Floor, 6th Cross, 8th Main, 3rd Stage, Pillanna Garden, Bengaluru – 560045	Not Party	Petitioner
		Versus	
1	State of Karnataka Represented by the Principal Secretary Primary and Secondary Education Department of Education, Karnataka government Ministry, MS Building,	Respondent No.1	Respondent No.1

	Bangalore-560001.		
2	Government PU College for Girls, Behind Syndicate Bank, Near Harsha Store Udupi, Karnataka-576101 represented by its Principal	Respondent No.2	Respondent No.2
3	District Commissioner, Udupi District, Manipal, Agumbe-Udupi Highway,Eshwar Nagar, Manipal Karnataka-576104	Respondent No.3	Respondent No.3
4.	The Director, Karnataka Pre-University Board, Department of Pre-UniversityEducation, Karnataka, 18th Crross Road, Sampige Road, Maleswaram, Bengaluru-560012	Respondent No.4	Respondent No.4
5.	Smt. Resham	Petitioner	Respondent

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	D/o K Faruk Residing at No. 9-138, Perampali road, Santhekatte, Santhosh Nagara, Manipal Road, Kunjibettu Post, Udupi, Karnataka-576105		No.5

To

The Hon'ble Chief Justice of India and His Companion Justices of the Hon'ble Supreme Court of India at New Delhi.

The humble petition of the
Petitioners above named

MOST RESPECTFULLY SHEWETH:

1. The Petitioner has filed the present SLP challenging the Judgment and final Order dated 15.03.2022 in WP NO. 2347/2022 (GM-RES), passed by the Hon'ble High Court of Karnataka at Bengaluru, whereby the Hon'ble Court was pleased to dismiss the WRIT PETITION NO. 2347/2022 (GM-RES)C/W and held, inter

alia, that wearing of *hijab* by Muslim women does not form a part of *essential religious practice* in Islamic faith, and that the prescription of school uniform is only a reasonable restriction constitutionally permissible which the students cannot object to.

2. QUESTIONS OF LAW

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

a. Whether the right to wear a Hijab falls within the ambit of the right of expression guaranteed by Article 19 (1) (a), the right to privacy and also the Freedom of Conscience under Article 25 of the Constitution and the same has been infringed by the impugned Government Order No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022?

3. DECLARATION IN TERMS OF RULE 3 (2)

The petitioners state that no other petition seeking leave to appeal has been filed by them from the impugned and final order passed by the Hon'ble High Court of Karnataka at Bengaluru dated 15.03.2022 in WP NO. 2347/2022 (GM-RES)

4. DECLARATION IN TERMS OF RULE 5:-

The annexures P-1 to P-3 produced along with the Special Leave Petition are true copies of the pleadings/documents which form part of the records of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

The petitioners beg to seek leave to appeal on the following grounds:-

A. Because the impugned order is liable to be set aside in view of the observation that the Hon'ble High Court has failed to pass a speaking order as to why indulgence has not been given to the Public Interest Litigations that have been otherwise acknowledged by the Hon'ble High Court in the impugned judgment.

B. Because the "Hijab" is an integral part of the Islamic way for womankind and has been laid down for in the "Surahs" of the Quran

as well as 'hadiths' and is therefore an 'essential religious practice' of the Islamic faith and of a believing Muslim woman:

1. That the Hon'ble High Court has erroneously observed that 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. The Hon'ble High Court has erroneously stated that at the most the practice of wearing this apparel may have something to do with *culture* but certainly not with religion.

2. 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* (1986) 3 SCC 615

3. The Hon'ble High Court by drawing an erroneous parable with the ratio of this Apex Court in *SHAYARA BANO, which* proscribed the 1400 year old pernicious practice of *triple talaq* in Islam, has arrived at flawed conclusion that what is made recommendatory by the Holy Quran cannot be metamorphosed into mandatory dicta by Ahadith which is treated as supplementary to the scripture. The Hon'ble High Court by placing sole reliance on 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, has misinterpreted the tenants as laid down in the Qur'an, which prescribes the 'hijab' to be mandatory and an essential tenant of the practitioners of Islam:

a. 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 to reveal their adornment save to their own husbands or fathers or husbands' fathers, or their sons or their husbands' sons, or their brothers or their brothers' sons or sisters' sons, or their women, or their slaves, or male attendants who lack vigour, 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."

b. 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 neck too."

c. In the Chapter 33 known as "*The Clans*" in verse 59 of the Holy *Quran*, the command is as follows:

"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful."

d. In one of the *Hadidhs* (words of Prophet Mohammed), explaining the *Quranic* verses to his sister-in-law '*Asma*' is as follows:

"O Asmal It is not correct for a woman to show her parts other than her hands and face to strangers after she begins to have menstruation." [Reported by Abudawud ref: hadith no 4092 kitab al libas (book of clothing Sunan Abu Dawud)

e. In another *Hadidh* reported by *Thirmidi* is as follows:

"Abdullah, son of Umar bin al-Khattab, with whom Allah is pleased, reported that the Messenger of Allah, said : On the Day of Resurrection, Allah will not look at

the man who trails his garment along boastfully". Thereupon, Umm Salamah asked, 'What should women do with their garments?' The Prophet said: 'They should lower their garments a hand span,' Umm Salamah further said, 'Women's feet would still be uncovered.' The Messenger of Allah (S), replied: 'Let them lower them a forearm's length, but not longer.'

[Ref : The Islamic Digest of Aqeedah and Fiqh by Mahmoud Rida Murad]

4. That the freedom of conscience and the right to practice, profess and propagate religion are explicitly recognized under Article 25 of the Constitution. The Hon'ble Supreme Court has also recognized the freedom of conscience to be a part of the right to privacy. The Hon'ble High Court has erred by observing that Conscience is by its very nature subjective and that whether the petitioners had the conscience of the kind and how they developed it are not averred in the petition with material particulars. The Hon'ble

High Court has inaccurately observed that the Petitioners have not averred anything as to how they associate wearing hijab with their conscience, as an overt act, and that 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.

5. That a Constitutional Bench in *M. Ismail Faruqui (Dr.)* v. *Union of India*, 1994 (6) SCC 360, grants protection to essential Religious practices under Article 25. It is therefore, submitted that assuming that the Essential Religious Practices Test applies, the wearing of Hijab is essential to the Islamic faith

C. Because the impugned order is also in sheer violation of the Article 14, 15, 19, 21 and 25 of the Constitution of India :

a. As per Article 14, any law being discriminatory in nature has to have the existence of an intelligible differentia and the same must bear a rational nexus with the object sought to be

achieved. The object as has been claimed is to the maintain he public order in the institutions, however, the authorities have failed to provide any nexus on how the public order will be disturbed if the Muslim women enters the institution's premises while wearing *HIJAB*. This being the case, the classification based on the religious attire which is to comply with their religious practice does not have the nexus with the object sought by the Respondent Government, i.e. of the maintaining the public order. It is pertinent to note that the *HIJAB* is an express way to profess the Islam religion and this practice of wearing *HIJAB* does not attract any violation of any rule or uniform code prescribed therein by the institutions as the Muslim female students wear the *HIJAB* in addition to the prescribed uniform. That by seeking to draw an unreasonable distinction in the form of two categories of girl students viz., those who wear the uniform with hijab and those who do it without, and that would establish a sense of 'social-separateness', the Hon'ble High Court has infringed

the principles of Article 14 of the Constitution of India. Hence, the classification made in the impugned order is not justified or proportionate and does not stand the test of Article 14, and is therefore liable to be struck down.

b. That the Article 15(1) of the Constitution of India, 1950 embodies a guarantee against discrimination by prohibiting discrimination on several grounds including religion. *The* impugned order discriminates the Muslim women students wearing *HIJAB* on the basis of religion which is a clear infringement of the right guaranteed under Article 15(1).

c. The Hon'ble Supreme Court in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 has recognized that clothing and appearance fall within the ambit of the right of expression guaranteed under Article 19 (1) (a) of the Constitution. In this case, wearing of a Hijab is an expression of religious identity. The same is a right protected under Article 19 (1) (a) of the Constitution. It can only be curtailed by way of

reasonable restrictions under the grounds mentioned in Article 19 (2). None of the grounds are made out in this case. It is also relevant to submit that there is a *"positive obligation on the State to create and maintain conditions in which the freedoms guaranteed by the Constitution can be exercised" as has been held by this Hon'ble Court* In *Indibily Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436.

d. Though the Hon'ble High Court agreed with the submissions with regard to the concept of 'hecklers veto', as discussed in Union of India Versus K.M.SHANKARAPPA, (2001) 1 SCC 582 , and 'positive secularism' as propounded in State of Karnataka Vs. PRAVEEN BHAI THOGADIA , (2004) 4 SCC 684, meaning the State should endeavor to create congenial atmosphere for the exercise of citizens rights, by taking stern action against those who obstruct, instead of asking the Muslim girl students to remove their hijab,

the Hon'ble High Court has refused to act on the same, and invalidate the Government Order in question.

a. By choosing to describe schools and places of educational institutions as 'qualified public places', the Hon'ble High Court has erroneously sought to justify that 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.

D. Because The Karnataka Education Act, 1983 (hereinafter referred to as the "Act of 1983") and the rules madethereunder do not prescribe a uniform. Even assuming that a uniform is mandated, there is no punishment prescribed for failure to wear a uniform :

a. The Hon'ble High Court erred in observing that the word 'curricula' employed in section 7(2) of the Act needs to be broadly construed to include the power to

prescribe uniform. Further, the Hon'ble Court has wrongfully drawn from the scheme of 1983 Act coupled with international conventions to which India is a party, that 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, and that even in the absence of enabling provisions, that the power to prescribe uniform as of necessity inheres in every school subject to all just exceptions.

b. The Karnataka Education Act, 1983 (**"Act of 1983"**) aims to provide for (i) the planned development of educational institutions, (ii) inculcation of healthy educational practice, (iii) maintenance and improvement in the standards of education and (iv) better organisation, discipline and control over educational institutions in the State with a view to fostering the harmonious development of the mental

and physical faculties of students and cultivating a scientific and secular outlook through education. The scheme of the Act of 1983 reveals that it aims to regulate institutions, not students. This is clear from Sections 3 and 7 of the Act. Section 3 of the Act of 1983 which provides the State with the power of *"regulation of education"*. Section 7 of the Act of 1983 empowers the Government to inter alia prescribe; the curriculum of study, the medium of instruction, the number of working days and working hours in an academic year etc. Notably, neither of the provisions empowers the Government to prescribe a uniform.

c. Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 make a provision for uniform. The Rule is reproduced below:

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

(1) Everyrecognised educational institution may specify its own set of

Uniform. Such uniform once specified shall not be changed withinthe 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 parentsin this regard at least one year in advance.

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

As is clear from the above, the rule does not make it mandatory for an institution to prescribe a

uniform. The same is left to the discretion of theschool/ institution. In this case, no uniforms were prescribed by the respective institutions.

d. Because the Hon'ble Court failed to appreciate that there is no provision to prohibit students from access to education. Every executive action that operates to the prejudice of a person, must be supported by some legislative authority. [*State of M.P. v. Bharat Singh*, AIR 1967 SC 1170 (Paragraph 4 at Page 5 of the Compilation]; Satvant Singh Sawhney v. Ramarathanana, AIR 1967 SC 1836]. Presuming that there indeed is a mandate to wear a particular uniform, it is submitted that there is no punishment prescribed in case a student does not wear the uniform. Chapter XVII prescribes penalties for various offences under the Act of 1983. This includes penalties for impersonation during examination, penalty for ragging etc. No penalty is prescribed for failure to wear a uniform. Similarly,

Rule 15 of the 1995 Rules prescribes penalties that can be levied for violation of any provision of the Acts or rules by institutions. There is no rule prescribing punishments for any conduct by students. Viewed thus, the impugned Government order in prohibiting the aggrieved students from wearing their religious dress is without any legal basis, and is liable to be struck down on this ground alone.

e. The Government Order has been issued under Section 133(2) of the Act of 1983, which is reproduced below:

"133. Powers of Government to give directions.-

(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."

A perusal of the above reveals that the State Government can (a) issue directions to institutions; (b) such directions must be necessary or expedient for carrying out the purposes of the Act or to give effect to any of the provisions of the Act or the rules made thereunder. Thus, the notification issued by the State Government does not mention the objective or provision of the Act of 1983, it seeks to achieve and it is difficult to see how a mandatory uniform fulfils any of these. Further, as has already been stated, there is no provision in the Act or in the rules, mandating uniforms. This being the position, the Government Order is beyond the scope of the powers under S.133 (2). In any event, the Government Order seeks to create a new obligation. This is not permissible. In *Kunj Behari Lal Butail* v. *State of H.P.*, (2000) 3 SCC 40 the Court held:

> *"13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When sucha power is given, it may*

be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If the rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.

14. *We are also of the opinion that a delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.* [Pages 12-13 of the Compilation]

In this case, the power to issue direction to carry out the purposes ofthe Act of 1983, has in effect

been used to bring into existence an obligation to wear a particular uniform. The same is not permissible.

E. BECAUSE the Hon'ble High Court has erroneously interpreted international conventions and foreign case laws in the case at hand. That for instance, the Hon'ble High Court in the impugned judgment has sought to draw inference from the famous case of Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). The said case was in fact a landmark decision by the United States Supreme Court that defined First Amendment rights of students in U.S. public schools. The Tinker test, also known as the "substantial disruption" test, is still used by courts today to determine whether a school's interest to prevent disruption infringes upon students' First Amendment rights. The court's 7–2 decision held that the First Amendment applied to public schools, and that administrators would have to demonstrate constitutionally valid reasons for any specific regulation of speech in the classroom. The court observed,

"It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Justice Abe Fortas wrote the majority opinion, holding that the speech regulation at issue in Tinker was "based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam." The Court found that the actions of the Tinkers in wearing armbands did not cause disruption and held that their activity represented constitutionally protected symbolic speech. The Court ruled that First Amendment rights were not absolute, and could be withheld if there was a "carefully restricted circumstance." Thus, if any semblance were to be drawn to the facts of the instant case, it can be held that the students in question were only silent practitioners of 'hijab', and never in any way, by their conduct sought to disrupt the functioning if the school.

F. Nonetheless, the Hon'ble High Court by the impugned judgment has stated that "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.". Thus it is humbly submitted that on the one hand, the Hon'ble High Court has extensively relied on foreign judgments, and treatise on the subject, and that on the other, it has completely negated submissions and cases relevant to the case-at hand, namely, MEC FOR EDUCATION: KWAZULU – NATAL vs. NAVANEETHUM PILLAY [CCT51/06 [2007] ZACC 21], CHRISTIAN EDUCATION SOUTH AFRICA vs. MINISTER OF EDUCATION [2000] ZACC 2, R. vs. VIDEOFLEX 1948 2D 395, BALVIR SSINGH MULTANI vs. COMMISSION SCOLAIRE MARGUERITE – BOURGEOYS 37 (2006) SCC OnLine Can SC 6, ANTONIE vs. GOVERNING BODY, SETTLERS HIGH SCHOOL 2002 (4) SA 738 (T) and MOHAMMAD FUGICHA vs.

METHODIST CHRUCH IN KENYA (2016) SCC OnLine Kenya 3023

6. GROUNDS FOR INTERIM RELIEF

That the II Pre University Preparatory Examination – 2022 is scheduled to commence from 16-03-2022 and shall end by 29-03-2022. The final Examination of the Pre University students are also scheduled to commence from 28th of April, 2022. There are a significant number of Muslim women students who wore the hijab and attended classes and pursued their examinations. However, in view of the impugned Government order, now upheld by the Hon'ble High Court vide the impugned judgment, Muslim women students have been asked to not wear the 'hijab/head-scarf' and not insist on wearing religious attire, thus placing the plight of the Muslim women students in a tremendous ordeal in having to choose between their faith/religion/belief/conscience and their choice of education.

It is, therefore, necessary that an appropriate order be made staying the operation of the impugned order till the disposal of this petition

otherwise the purpose of filing of the Special Leave Petition may be defeated and the same may be rendered in-fructuous.

7. MAIN PRAYER

It is therefore most respectfully prayed that your lordships may graciously be pleased to;

(a) grant special leave to appeal against the impugned judgment and final order dated 15th of March, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in in WP NO. 2347/2022 (GM-RES).

(b) pass such order and orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEFS:-

In the premises and in the interest of justice, this Hon'ble Court may be pleased to :-

(a) grant ex-parte ad-interim stay of operation of the against the impugned and final order dated 15th of March, 2022 passed by the

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Hon'ble High Court of Karnataka at Bengaluru in WP NO. 2347/2022 (GM-RES) , and

(b) pass such order and orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

DRAWN BY :
Rahamatullah Kothwal
Drawn on :- 15.03.2022
Filed on :- 16.03.2022

FILED BY

(ADEEL AHMED)
Advocate for the petitioner

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:

Mohamed Arif Jameel ...PETITIONERS

VERSUS

State of Karnataka & ORS. ... RESPONDENTS

CERTIFICATE

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

FILED BY

Place: New Delhi. (ADEEL AHMED)

FILED ON:16.03.2021 Advocate For The Petitioner

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF :
Mohamed Arif Jameel

...Petitioner

Versus

State of Karnataka & Ors. ...Respondents

AFFIDAVIT

I, Mohamed Arif Jameel, S/o Late Abdul Rashid, Aged about 50 years, R/o - #179, 2nd Floor, 6th Cross, 8th Main, 3rd Stage, Pillanna Garden, Bengaluru – 560045 do hereby solemnly affirm and say as follows:

1. That I am the Petitioner in the Special Leave Petition and am fully conversant with the facts and circumstances of the present case and am competent to swear this affidavit.

2. That I have gone through and understood the contents of the Special Leave Petition in Para Nos. 1 to 8,

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Pages 130 to 157 and Synopses and List of Dates at page No. B – I and Misc. Applications are true to my knowledge and belief and on advice of my counsel. Nothing material has been concealed by me nor any material is false.

3. That the Annexures are the true and correct copies of their originals.

DEPONENT

VERIFICATION

I, the deponent abovenamed do hereby verify that averments made in this affidavit are true to my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi 16th on this March day of 2022

DEPONENT

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ANNEXURE – P-1

PROCEEDINGS OF GOVERNMENT OF KARNATAKA

Subject: Regarding Dress Code of the Students all over the State

References: 1. Karnataka Education Act, 1983

2. Government Circular No. 509 SHH 2013 dated 31.01.2014.

Proposal:-

As read above, The Karnataka Government has enacted the Education Act, 1983, 71-19959 in Article 7 (2) (5) of the Act, which states that all students of all schools of Karnataka should act in a single family and socially equitable manner, not confined to any one category. The Government shall be empowered to issue appropriate directions to schools and colleges under Article 33 of the present Act.

Under the Circular No 2 (2) above, Development Committees have been constituted in all schools and

colleges in the State in order to ensure that the pre-school education is important in the life of the student in accordance with the Government's instruction and release grants, and to maintain the educational standards of infrastructure development. It is suggested to act according to the resolutions of the Committee.

The Monitoring Committee of any educational institution (SDMC in private -school colleges in the government school colleges and the Parents and Teachers Committee and the governing body of the Institution): The appropriate code of conduct can be assessed in accordance with the policies of the government in the respective schools. The resolution of such committee shall be in respect of the respective schools and colleges.

The programmed have been conducted in' order to facilitate the students who are studying in schools and colleges of the state to participate in such programmed. But, it has found to the Education Department that in some of the educational situations, students are practicing their religion in a manner that threatens equality and unity in the schools and colleges.

In cases filed before the Honble Supreme Court and Hon'bie High Court of various States has passed judgements in respect of Uniform Dress Code rather than the Personal Dress Code.

1) The Hon'ble High Court of Karnataka in paragraph 9 of its Order in W.P.(C) No. 35923/2018 dated 04.12.2018 has explained the principle determined by the Hon'ble Apex Court as follows'

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

2) In Hussain Syed v/s Bharat Education Society and Others, (AIR 2003 Bom 75), an issue was raised in the manner which herein regarding the dress code in Karthik English School. The

Hon'ble High Court of Bombay has after hearing the issue has held that it is not the violation of Article 25 of the Indian Constitution if there is a direction from the Principal of the College to the Petitioner to not to wear the head scarf.

3) In reference to the above mentioned judgments, even the High Court of Madras also in V. Kamalamma v/s Dr. M.G.R Medical University, Tamil Nadu and Others has upheld the Dress Code which •was prescribed by the University. The same kind of issue has been resolved by the Hon'ble High Court of Madras in Sr.i. M Venkatasubbarao Matriculation Higher Secondary School Staff Association v/s Sri. M. Venkatasubbarao Metriculation Higher Secondary School (2004) 2 MLJ 653.

As per the above mentioned judgments passed by the Hon'bie Supreme Court and various High Courts, it is not a violation of Article 25 of Indian Constitution if direction .issued not to wear the head scar. if while coming to school and the Government after verifying the -Karnataka

Education Act, 1983 and its Rules in detail has passed the below Order:-

GOVERNMENT ORDER NO: EP 14 SHH 2022

BENGALURU, DATED

05.02.2022

As explained in the proposal, by using the powers as determined under the provisions of Section 133 sub-clause (2) of the Karnataka Education Act/ 1983 it is ordered that the uniform prescribed by the Government worn in all Government Schools and in Private Schools should wear the uniform prescribed by the School Administration

In the Colleges which comes under Pre-University Education Department, the Uniform prescribed by the College's College Development Committee (CDC) or the Governing body of the College should be worn. In case if the college administration does not prescribe any uniform in such case, the dress should be wear in a manner by protecting the equality and unity which do not disturb the public order.

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As per the Orders and in the name of Governor of Karnataka

(Padmhi S N)

Under Secretary to Government,

Department of Education (Pre-University)

To:

1. The Chief Secretary to the Government, Government of Karnataka, Vidhana Soudha, Bengaluru.
2. The Additional Chief Secretary to Government, Village Development and Panchayat Raj Department, Bengaluru.
3. Principal Secretary to Government, Department of Social Welfare, Bengaluru.
4. Principal Secretary to Government, Department of Minority Welfare, Bengaluru.
5. Principal Secretary to Government, Department of Women and Child Development, Bengaluru.

6. Principal Secretary to Chief Minister, Vidhana Soudha, Bengaluru.
7. Commissioner, Public Education Department, Bengaluru.
8. Director, Department of Pre-University Department, Bengaluru. 9. All Deputy Commissioners and District Magistrates of the State.
10. All Chief Executive Officers of Jilla Panchayat in the State.
11. Additional Commissioner, Public Education Department, Bengaluru.
12. Afl Joint/Deputy Directors, Public Education Department, of the State.
13. All Joint/Deputy Directors, Department of Pre-University of the State.
14. The Private Secretary of Hon'bte Primary, High School Education and Sakala, Vidhana Soudha.
15. The Private Secretary to Additional Chief Secretary of Department of Higher Education Department, Vidhana Soudha.

16. The Private Secretary to Additional Chief Secretary of Primary and High School Education Department, Vidhana Soudha,

17. Additional/Deputy SecretaJ ies Lo lhc Government-I, 2

18. Additlonal Copies.

True copy

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ANNEXURE-P2

BEFORE THE HON'BLE HIGH COURT OF KARNATAKA

AT BANGALORE,

(ORIGINAL JURISDICTION)

WRIT PETITION No. 3148/ 2022

In Matter of a Public Interest Litigation

BETWEEN:
Mohamed Arif Jameel ....PETITIONER

AND:
State of Karnataka & Ors ...RESPONDENTS

SYNOPSIS

DATE	EVENTS
05.02.2022	The Respondent Government passed the impugned order thereby denying the entry to the Muslim Women wearing *HIJAB* in the educational institution.
NIL	Being aggrieved by the discriminatory and arbitrary nature of the Government Order, as it is

	unconstitutional and is violative of the fundamental rights enshrined under the Indian Constitution. Hence, this petition.

PLACE:

DATE: ADVOCATE FOR PETITIONER

BRIEF FACTS

The Respondent Government has issued an order thereby denying the entry to the Muslim Women wearing *HIJAB* in the educational institutions. The impugned order creates an unreasonable classification between the non-Muslim female students and the Muslim female students and thereby is in straight violation of the concept of Secularism which forms the basic structure of the Indian Constitution.

The impugned order is also in sheer violation of the Article 14, 15, 19, 21 and 25 of the Indian Constitution and also violates the core principles of the International Conventions that India is a signatory to. Being

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aggrieved by the impugned Government Order, as it is in violation of Indian constitution, the Petitioner has approached this Hon'ble Court challenging the validity of the same.

BEFORE THE HON'BLE HIGH COURT OF KARNATAKA

AT BANGALORE,

(ORIGINAL JURISDICTION)

WRIT PETITION No. 3148/ 2022

In Matter of a Public Interest Litigation

BETWEEN:

Mohamed Arif Jameel
S/o Late Abdul Rashid
Aged about 50 years
R/o - #179, 2nd Floor,
6th Cross, 8th Main,
3rd Stage, Pillanna Garden,
Bengaluru – 560045 ....PETITIONER

AND:

1. State of Karnataka

   Represented by the Chief Secretary
   Vidhana Saudha,

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Dr. B.R. Ambedkar Veedhi,
Bangalore- 560001.

2. State of Karnataka

Represented by the Principal Secretary
Primary and Higher Education
Department of Education
Karnataka government Ministry
MS Building
Bangalore- 560001.

3. State of Karnataka

Represented by the Under-secretary
Primary and Higher Education
Department of Education
Karnataka government Ministry
MS Building
Bangalore- 560001.

4. State of Karnataka

Represented by the Director
State Department of pre-University
18th cross, Sampige Road,
MalleshwaramBangalore- 560012.

5. State of Karnataka

Represented by the Secretary
Primary and Secondary Education
Department of Education
6th Floor
MS Building
Dr. B.R. Ambedkar Vidhi
Bengalore- 560001. ...RESPONDENTS

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MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, 1950

The Petitioner above named most respectfully submits as follows;

1. The Petitioner does not have any personal interest or any personal gain or personal motive in filing this petition and is not guided by self-gain or for gain of any other person/institution/body. This Writ Petition is filed purely in the interest of the general public.

2. The issue of wearing *HIJAB* by Muslim women came up in news recently and the Petitioner came to know of the same via news. He verified the same from his known sources and has thereby approached this Hon'ble court in the instant PIL.

3. The present Petition has been filed in the general public's interest especially the Muslim women who wear *HIJAB* in practice & observance of their religion. The affected students are minor and are the vulnerable group of the society who cannot directly approach this Hon'ble Court to protect their rights and interests.

4. The instant writ Petition will have a huge impact on the Muslim Community in the country and will embark a new journey for the growth of the Muslim women who wear *HIJAB* in practice of their religion by securing their fundamental right to religion among other rights.

5. The Petitioner is a citizen of India, aged about 50 years. He is a social worker and RTI activist, working for the upliftment of the poor and the needy, especially for the minority communities. He

has approached this Hon'ble Court in several PILs ranging from CAA, NRC, NPR, Cow Slaughter to Triple Talaq and many more, wherein assisted this Hon'ble Court to look into the inequities and arbitrariness caused to certain sections of the society. The Petitioner has means to pay costs, if any, imposed by the Court and undertakes to comply with all orders of this Hon'ble Court as may be passed. The previous PILs filed by the Petitioner are as follows:

Sl. No.	Facts in Brief
01.	In W.P. No. 33599/2019 (PIL) wherein the Petitioner filed the Public Interest Litigation and sought for Certiorari and Mandamus from this Hon'ble Court challenging the Hyderabad Karnataka Reservation issue. But the same was withdrawn by the Petitioner on 09.01.2020.
02.	In W.P. No. 33332/2019 (PIL) wherein the

	Petitioner filed the Public Interest Litigation and sought for quashing of Muslim Women (Protection of Right on Marriage) Act, 2019 notified on 31.07.2019. The matter is transferred to Apex Court and pending for Adjudication before the Hon'ble Apex Court.
03.	In W.P. No. 15616/2020 wherein the Petitioner filed the Public Interest Litigation and sought for direction from this Hon'ble Court to direct the Respondent State to implement Sacchar Committee Report, Joint Parliamentary Committee Report and Minority Commission Chairman's Report in order to protect the Waqf Properties throughout the State. The Petition is pending before this Hon'ble Court for Adjudication.
04.	In W.P. No. 6435/2020 (PIL) wherein Petitioner filed the Public Interest Litigation and sought for directions from this Hon'ble Court to issue directions to regulate the Covid-19 issues. This Hon'ble Court has disposed the Covid-19 Petition on 04.12.2021.

05.	In W.P. No. 508/2021 (PIL) wherein Petitioner filed the Public Interest Litigation and sought for quashing of Karnataka Prevention of Slaughter and Preservation of Cattle Act, 2020. The matter is pending before this Hon'ble Court for adjudication.
06.	In W.P. No.13769/2020 (PIL) Petitioner filed the Public Interest Litigation and sought for quashing of Government Notification in appointing the Ex-Bar Council Member to the post of Karnataka State Board of Auqaf. The Petition is pending for adjudication.
07.	In W.P. Nos. 6631/2020 and 6656/2020 (PIL) wherein the Petition sought for the postponement of fieldwork of NPR and NRC procedure in view of covid pandemic. These petitions are still pending.
08.	In W.P. No. 52460/2019 (PIL) wherein Petitioner filed the Public Interest Litigation and challenging Citizenship Amendment Act. The petition is pending for adjudication since the matter is transferred to Apex Court and pending for Adjudication.

6. The matter involves grave urgency as the public order in the State is at risk and the Muslim women students wearing HIJAB are being denied the entry in the educational institutions while certain groups have resorted to strikes and hence, the law and order is greatly affected in the state. The students have already given the representations to the concerned Respondents in their personal capacities.

7. The present Writ Petition is filed under Article 226 and 227 of the Constitution of India is being filed by the Petitioner assailing the constitutional validity of the Government Order No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022 as violative of the Basic Structure of our constitution as well as Article 14, 15, 19, 21 and 25 of the Indian Constitution.

BRIEF FACTS OF THE CASE

8. It is submitted that the Respondent State Government has passed the G.O. No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022 (hereinafter

called as 'the impugned order') wherein the Government has ordered to maintain the status quo with respect to the uniforms prescribed in the Education institutions. This order has come in pursuance of several incidents in the State of Karnataka wherein the Female students professing the Islamic faith and wears *HIJAB* were denied the entry in the institution's premises even though they have been wearing the uniform that is set out by the school authorities since the beginning of the academic year and were only wearing the *HIJAB* in addition to the uniform in compliance to their religious requirements.

(A Copy of the impugned order by the Respondent Government dated 05.02.2022 is herewith produced and annexed as ANNEXURE- A).

9. It is submitted that the order further states that "*Where there is uniform prescribed by the Government to be worn in all Government Schools and in Private Schools, the uniform prescribed by the School Administration should be worn. In the Colleges which comes under Pre-University Education Department, the Uniform prescribed by*

the College's College Department Committee (CDC) or the Governing body of the College should be worn. In case if the college administration does not prescribe any uniform in such case, the dress should be worn in a manner by protecting the equality and unity which do not disturb the public order."

10. It is submitted that the Respondent State Government has unjustifiably and arbitrarily reached a conclusion to the effect that a direction by the Educational institutions, so as to not wear the *HIJAB* while coming to school, is not in violation of Article 25 of the Indian Constitution.

11. It is submitted that the *HIJAB* is a customary attire worn by the Muslim women and moreover, it is worn above the normal dress without compromising the already prescribed attire and is mandated by the Islam religion. The practice of wearing *HIJAB* has been a very intrinsic practice of the Islam religion and is widely followed across the world. India being a secular country have always made an exception as and when required to protect the essential religious practices of various religions.

12. It is submitted that the impugned order creates an unreasonable classification between the non-Muslim female students and the Muslim female students and thereby is in straight violation of the concept of Secularism which forms the basic structure of the Indian Constitution.

13. It is submitted that the impugned order is also in sheer violation of the Article 14, 15, 19, 21 and 25 of the Indian Constitution.

14. It is further submitted that India is constitutionally obligated to act in accordance with the customary international laws and treaties which has been ratified by it from time and again. It is submitted that the impugned order also breaches the core principles embodied in the international conventions and instruments and thereby failed to protect the basic fundamental rights of the people.

15. Furthermore, the impugned order is evidently and directly in contradiction of the Universal Declaration on Human Rights, as it entails arbitrary discrimination between people on the basis of their religion & faith they profess.

(A copy of the Universal Declaration on Human Rights is attached herewith as ANNEXURE – B).

16. It is also submitted that the impugned order is in apparent violation of the UN Convention on Elimination of all forms of Discrimination against Women (CEDAW) which has been ratified by India in 1993 and eliminates the discrimination against women and girls in all forms.

    (A copy of the UN Convention on Elimination of all forms of Discrimination against Women (CEDAW) Convention is attached herewith as ANNEXURE – C).

17. It is further submitted that the impugned order further goes against the principle of equality before the law and the principle of prevention of discrimination as provided in the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by India in 1996.

    (A copy of the International Covenant on Civil and Political Rights (ICCPR) is provided for herewith as ANNEXURE – D).

18. It is submitted that the impugned order is also in clear violation of the UN Convention on rights of child (UNCRC), which has been ratified by India in 1992 and protects the right of child to freedom of thought, conscience and religion.

    (A copy of the UN Convention on rights of child (UNCRC) is provided for herewith as ANNEXURE – E).

19. The impugned order also blatantly violates the values as provided for in the International Convention on Social, Cultural and Economic Rights, which has also been ratified by India in 1979, as it violates the intrinsic principles of human rights.

    (A copy of the International Convention on Social, Cultural and Economic Rights is provided for herewith as ANNEXURE – F).

20. Therefore, the impugned order is biased and preferential in its treatment of individuals and hence goes against the international obligations and duties of the state of India, and is a gross violation of Human Rights.

21. Thus being aggrieved, the Petitioner with leave of this Hon'ble Court is filing the present writ petition in the matter of a Public Interest Litigation under Article 226 and 227 of the Constitution of India on the following grounds: -GROUNDS

A. CONSTITUTIONAL GROUNDS

Article 14: RIGHT TO EQUALITY & INTELLIGIBLE DIFFERENTIA

22. That Article 14, right to equality is considered to be one of the cornerstones of the Indian Constitution guaranteed to all persons within the territory of India. All persons shall be treated equally before the eyes of law and equal protection shall be granted to all without favouritism and discrimination. The Article 14 is designed to prevent any person or class of persons from being singled out as a special subject for discrimination and hostile legislation.

23. As per Article 14, any law being discriminatory in nature has to have the existence of an intelligible differentia and the same must bear a rational nexus with the object sought to be achieved. The

object as has been claimed is to the maintain he public order in the institutions, however, the authorities have failed to provide any nexus on how the public order will be disturbed if the Muslim women enters the institution's premises while wearing *HIJAB*. This being the case, the classification based on the religious attire which is to comply with their religious practice does not have the nexus with the object sought by the Respondent Government, i.e. of the maintaining the public order. It is pertinent to note that the *HIJAB* is an express way to profess the Islam religion and this practice of wearing *HIJAB* does not attract any violation of any rule or uniform code prescribed therein by the institutions as the Muslim female students wear the *HIJAB* in addition to the prescribed uniform. Hence, the classification made in the impugned order is not justified or proportionate and does not stand the test of Article 14, and is therefore liable to be struck down.

24. THAT it is pertinent to note that the State does not prescribe any restrictions to not wear ornaments, items such as rosary worn by the Christians,

turban by sikhs or the sacred white thread by the Brahmin Community. However, the restriction on Muslims alone is arbitrary and violative of Article 14. A classification premised upon the assumption that students whose religion do not require them to wear *HIJAB* are entitled to protection from religious discrimination is ipso facto invalid, and utterly fails the test of "reasonable classification" for a legitimate purpose.

ARTICLE 15- PROHIBITION OF DISCRIMINATION

25. That the Article 15(1) of the Constitution of India, 1950 embodies a guarantee against discrimination by prohibiting discrimination on several grounds including religion. *The* impugned order discriminates the Muslim women students wearing *HIJAB* on the basis of religion which is a clear infringement of the right guaranteed under Article 15(1).

26. That the impugned order clearly signifies that it is not treating all religions as equal and is drawing the religion based discrimination against the Muslim women students. The Right to Religion is a fundamental right. The Right to Education is also

a fundamental right. In this light, it is pertinent to note that the Respondent Authorities and the Respondent state Government are indirectly treating the non-Muslim female students as one category by granting them both fundamental rights, i.e. Right to Religion and Right to Education. While on the other hand, it is denying the other category, i.e. the Muslim female students of one right out of the two, as she will have to compromise or waive off one of her fundamental rights and is thus, devoid of exercising both rights at a same time. Hence, the impugned order is violative of Article 15 and thus, deserves to be set aside.

ARTICLE 19- RIGHT TO EXPRESSION

27. That Article 19(1)(*a*) of the Constitution states that all citizens shall have the right to *'freedom of speech and expression'*. The practice of wearing *HIJAB* by Muslim Women is the expression of their religion & gender and hence, it falls under the ambit of the word "expression'.

28. That in *S. Rangarajan* v. *P. Jagjivan Ram* (1989) 2 SCC 574, the Hon'ble Supreme Court observed that:

> *"45. ... Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression."*

29. That the Hon'ble Supreme court of India in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 held that:

> *"69. Article 19(1) of the Constitution guarantees certain fundamental rights, subject to the power of the State to impose restrictions from (sic on) exercise of those rights. The rights conferred by Article 19 are not available to any person who is not a citizen of India. Article 19(1) guarantees those great basic rights which are recognised and*

guaranteed as the natural rights inherent in the status of the citizen of a free country. Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. The self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one's personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution."

30. That it is therefore, the right of the Muslim women to wear *HIJAB* as their expression of their religion & its observance and their gender.

31. That Islam is professed in many other countries; it is also pertinent to look into the holdings of the other countries. In so far as the right to express the identification with the female gender in Islam is concerned, in *Doe* v. *Yunits* [2000 WL 33162199 (Mass Super Ct 2000)] the Superior Court of Massachusetts, upheld the right of a person to

wear school dress that matches her gender identity as part of protected speech and expression and observed as follows:

> *"by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender. In addition, plaintiff's ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff's expression is not merely a personal preference but a necessary symbol of her identity".*

32. That, likewise, it is submitted that the US Supreme Court in Equal Opportunity Commission v Abercrombie & Fitch Stores Inc ruled that

> *"the employer may not refuse to hire an applicant if the employer was motivated by avoiding the need to accommodate a religious practice. Such behavior violates the prohibition on religious discrimination contained in Title VII of the Civil Rights Act, 1964 which prohibits discrimination in virtually every employment circumstance on*

the basis of race, color, religion, gender, pregnancy, or national origin."

33. It is therefore submitted that the Muslim women's right to express not only her religion but also the gender identity as enshrined under the Article 19 of the Indian Constitution, is violated by the impugned order.

ARTICLE 21- RIGHT TO LIFE

34. The Article 21 provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

35. It guarantees the protection of 'personal autonomy' of an individual. The personal autonomy includes both: the negative right of not to be subjected to interference by others, and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in. The Muslim women's choice to wear *HIJAB* is a facet of personal autonomy. The State can impose certain restrictions provided that the procedure for

deprivation must be free of the taint of that which is arbitrary. However, in the instant case, the impugned order is tainted with the arbitrariness as it blindly and without any just cause interferes in the personal autonomy of the Muslim women and is therefore, violative of Article 21.

36. That the Hon'ble Supreme Court in Navtej Singh Johar v Union of India (2018) 10 SCC 1, held that:

> *"640.2.1. This Court has expansively interpreted the terms "life" and "personal liberty" to recognise a panoply of rights under Article 21 of the Constitution, so as to comprehend the true scope and contours of the right to life under Article 21. Article 21 is "the most precious human right and forms the ark of all other rights" as held in Francis Coralie Mullin v. UT of Delhi [Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608 : 1981 SCC (Cri) 212] wherein it was noted that the right to life could not be restricted to a mere animal existence, and provided for much more than only physical survival (Francis Coralie Mullin [Francis Coralie Mullin v. UT of Delhi,*

(1981) 1 SCC 608 : 1981 SCC (Cri) 212] , SCC para 7). Bhagwati, J. observed as under : (SCC pp. 618-19, para 8)

"8. ... We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. ... it must in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."

37. That the Honorable Supreme Court in K. S. Puttaswamy v. Union of India (2017) AIR 2017 SC

4161 reaffirmed the above stand and held the right to privacy is a fundamental right under Article 21 of the Constitution of India. The right to privacy includes the right to personal autonomy or the right to choose whether or not to engage in certain acts or have certain experiences. The instant intrusion in the personal life of Muslim women is prohibited by the right to privacy which is part of personal liberty guaranteed by Article 21. It is submitted that the practice of wearing *HIJAB* in intricately related to the religion, and also protects the modesty of a woman. If the clothing that a person is following is indecent, i.e. not covering the private body parts or is obscene, then it will be a case of compelling public interest which will enable the State to deprive a person of the right to privacy by following the procedure established by law. However, such is not the case in the instant Petition and therefore, any restriction or direction pertaining to ban of *HIJAB* is in complete violation of the Right to privacy enshrined under the Article 21 of Indian Constitution.

38. That as observed by Honorable Justice Chelameswar's in his judgment in K. S. Puttaswamy v. Union of India (2017)- AIR 2017 SC 4161, "In other words, conditioning the thought process by prescribing what to read or not to read; what forms of art alone are required to be appreciated leading to the conditioning of beliefs; interfering with the choice of people regarding the kind of literature, music or art which an individual would prefer to enjoy. Such conditioning is sought to be achieved by screening the source of information or prescribing penalties for making choices which governments do not approve. In so far as religious beliefs are concerned, a good deal of the misery our species suffer owes its existence to and centers around competing claims of the right to propagate religion. Constitution of India protects the liberty of all SUBJECTS guaranteeing the freedom of conscience and right to freely profess, practice and propagate religion. While the right to freely "profess, practice and propagate religion" may be a facet of free speech guaranteed under Article 19(1)(a), the freedom of the belief or faith in any

religion is a matter of conscience falling within the zone of purely private thought process and is an aspect of liberty. There are areas other than religious beliefs which form part of the individual's freedom of conscience such as political belief etc. which form part of the liberty under Article 21."

39. That the Honorable Justice Chandrachud in his judgment in K. S. Puttaswamy v. Union of India (2017)- AIR 2017 SC 4161, observed that "169. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind."

40. That the Honourable Justice Bobde in his judgment in K. S. Puttaswamy v. Union of India (2017)- AIR 2017 SC 4161, stressed on the 'centrality of choice' in 'associative freedoms'. He observed that "I have already shown that the right of privacy is as inalienable as the right to perform any constitutionally permissible act. Privacy in all its

aspects constitutes the springboard for the exercise of the freedoms guaranteed by Article 19(1). Freedom of speech and expression is always dependent on the capacity to think, read and write in private and is often exercised in a state of privacy, to the exclusion of those not intended to be spoken to or communicated with. A peaceful assembly requires the exclusion of elements who may not be peaceful or who may have a different agenda. The freedom to associate must necessarily be the freedom to associate with those of one's choice and those with common objectives. The requirement of privacy in matters concerning residence and settlement is too well-known to require elaboration. Finally, it is not possible to conceive of an individual being able to practice a profession or carry on trade, business or occupation without the right to privacy in practical terms and without the right and power to keep others away from his work."

41. That in every democratic society the 'individual choice' must be respected and all citizens have the right to choose their clothing in the prescribed

format of decency and morality. Prima Facie it may seem like these clothing choices have no impact on the fundamental life decisions that are normally associated with individual autonomy. However, this has to be understood by using the Totalitarian perspective as the personal choice of a particular attire plays a huge role in any person's life. By putting such arbitrary restrictions on wearing *HIJAB* by Muslim Women, the State is indirectly forcing individuals into well-defined and rigid patterns. The State is exercising high degree of control over public and private lives of individuals. Hence, these actions of the state violate the individual liberty, choice and privacy guaranteed under Article 21.

ARTICLE 25- DOCTRINE OF 'ESSENTIALITY' IN RELIGIOUS PRACTICES

42. That the Indian Courts in catena of judgments have deeply examined the Doctrine of Essentiality in the Religious Practices by taking into consideration the factors that are inherent and intrinsic to the distinct identities of the people constituting it.

43. That the practice of wearing of *HIJAB* is an essential part of the Islamic faith and would therefore fall under the protection given by the Article 25 of Constitution of India. The Article 25 of Indian Constitution reads as follows:

> *"Freedom of conscience and free profession, practise 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 (2), the 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."

44. That the 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. Such being the case, a person cannot propagate his religion in a manner as to denigrate another religion or promote violence & hatred in the society.

45. That the practice of *HIJAB* is in no way in dissonance with the public order, morality and health and also does not violate any basic constitutional principle enshrined under the Part III of the Indian Constitution, in so far as the applicability of the restrictions under Article 25 is concerned. Moreover, this practice is instead protected and guaranteed by the Article 25 for freedom to follow rituals and observances, ceremonies and modes of worship and is an integral part of the Islam religion. The women through this practice also protect their modesty

which is again their fundamental right enshrined under the Article 21 of the Indian Constitution.

46. That it is pertinent to take into consideration the stand of *Quran* on this issue. Islam prescribes guidance to its followers for all walks of life. Islamic law is also known as the *Sharia*. *Sharia* consists of two sources:

    a) The laws revealed through the Holy *Quran*

    b) The laws that are taken from the lifestyle and teachings of the prophet Mohammed (PBUH). This part is called *Hadith*.

47. That since the Holy *Quran* consists of broad propositions and guidelines, it is through *Hadiths* that the *Quran* is to be interpreted and explained.

48. That in Chapter 7 '*Surah*' known as '*Heights*', the *Quran* reminds believer the requirements of following the *Hadiths*. In verse 157, it is stated as follows:

    "Those who follow the messenger, the prophet who can neither read nor write, whom they will find described in the Torah and the Gospel (which are) with them. He will enjoin on them

that which is right and forbid them which is wrong. He will make lawful for them all good tilings and prohibit for them only the foul; and he will relieve them of their burden and the fetters that they used to wear. Then those who believe in him, and honor him, and help him and follow the light which is sent down with him, they are successful."

49. In another Chapter 59 known as '*Exile*', in verse 7, the *Quran* commands the believer as follows:

"Whatever the messenger gives you, take it. And whatsoever he forbidden abstain from it."

50. 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 to reveal their adornment save to their own husbands or fathers or husbands' fathers, or their sons or their husbands' sons, or their brothers or their brothers' sons or sisters' sons,

or their women, or their slaves, or male attendants who lack vigour, 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."

51. 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 neck too."

52. In the Chapter 33 known as "*The Clans*" in verse 59 of the Holy *Quran*, the command is as follows:

"O Prophet, tell your wives and your daughters and the women of the believers to lower over them a portion of their jilbabs. That is more

suitable that they will be known and not be harmed. And even Allah Forgiving and Merciful."

53. n one of the *Hadidhs* (words of Prophet Mohammed), explaining the *Quranic* verses to his sister-in-law '*Asma*' is as follows: I

"O Asmal It is not correct for a woman to show her parts other than her hands and face to strangers after she begins to have menstruation." [Reported by Abudawud ref: hadith no 4092 kitab al libas (book of clothing Sunan Abu Dawud)

54. In another *Hadidh* reported by *Thirmidi* is as follows:

"Abdullah, son of Umar bin al-Khattab, with whom Allah is pleased, reported that the Messenger of Allah, said : On the Day of Resurrection, Allah will not look at the man who trails his garment along boastfully". Thereupon, Umm Salamah asked, 'What should women do with their garments?' The Prophet said:'They should lower their garments a hand

span,' Umm Salamah further said, 'Women's feet would still be uncovered.' The Messenger of Allah (S), replied: 'Let them lower them a forearm's length, but not longer.'

[Ref : The Islamic Digest of Aqeedah and Fiqh by Mahmoud Rida Murad]

55. That in *M. Ismail Faruqui (Dr.)* v. *Union of India*, 1994 (6) SCC 360, the Constitutional Bench grants protection to essential Religious practices under Article 25 and 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."

56. That the Hon'ble Supreme Court of India in Commissioner of Police v. Acharya Jagdishwarananda Avadhuta 1984 AIR 512, analyzed the Doctrine of essential religious practice and held that:

"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."

57. That the Hon'ble Kerala High Court in Amnah Bint Basheer and others vs CBSE and others, W.P. (C) No. 6913 of 2016 recognized the practice of wearing *HIJAB* by Muslim women as a fundamental right under Article 25, while examining the question of whether the practice of wearing *HIJAB* by Muslim women is an essential religious practice. The Hon'ble Court took into consideration the five degree of obedience as prescribed in Islam and noted that the practice of wearing *HIJAB* falls under the foremost category, i.e. *Fard*. The practice of wearing *HIJAB* is the distinctive identity that the Muslim Women carries with them and therefore, any rule or direction thereby depriving the Muslim women of the right

to follow their religion is in blatant violation of Article 25 of the Indian Constitution. The Hon'ble Court observed as follows:

"In the event of infringement of the dress code, punishment is referred in the Hadiths as follows: "Fudhalah bin Ubaid reported that the Messenger of Allah (s) said. Three people about whose evil fate you should not feel sorry : a man who disassociates himself from the Muslim Ummah, disobeys his Imam (the ruler of the Muslim Ummah), and dies in that state; a slave who runs away from his master and dies before returning to him; a woman whose husband goes away after having provided her with provisions but she displays her beauty, in tabarruj during his absence. So do not be concerned about them. The jilbab must conceal the underclothes. Such requirement applies to the garment a Muslimah should wear for Salah as well. He said: "There will be, in the latter days of my Ummah, women who will be dressed and yet undressed. (They will be wearing) On their heads (things) resembling camels' humps. Curse them. They are accursed."

"29. 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 any 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. As has been adverted above, the claim of the petitioners is well founded even though, a different view is possible. This Court is only expected to safeguard such freedom based on the Constitution in preference to giving a religious verdict."

58. That in *Bijoe Emmanuel v. State of Kerala(1986)*, the Hon'ble Supreme Court held that:

"whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do".

59. The Hon'ble supreme Court in the above case further states that *"Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it"*. Therefore, the practice of wearing *HIJAB* by Muslim women being the essential religious practice of Islam religion, the impugned order negates the fundamental right as guaranteed under the Article 25 of Indian Constitution and thereby arbitrarily

and indefensibly signifies towards the practicing the 'intolerance' of this religious practice.

B. RELEVANT INTERNATIONAL PRINCIPLES AND CONVENTIONS

60. That the impugned action of the Respondents is violative of the obligation of the State of India to respect and protect Human Rights, and to prevent discrimination on the basis of religion. Article 51(c) in The Constitution of India, 1950 provides that the State shall endeavour to *"foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration"* Hence, India is constitutionally obligated to act in accordance with the international treaties and customary international law which it is subject to.

61. That the impugned actions are in clear contradiction to the Universal Declaration of Human Rights (UDHR) which in Article 18 provides that "Everyone has the right to freedom of thought,

conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." This customary law on Human Rights specifically prohibits the arbitrary discrimination between people on the basis of their gender and religion. Moreover, the Respondent's actions are creating the arbitrary difference in access to education between the women students solely on the basis of the religious headgear *HIJAB*. Further, Article 26 of the UDHR grants everybody the Right to Education. It further provides that the technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the

maintenance of peace. However, in the instant case, the actions of Respondent run contrary to the above established principles as they are depriving a particular section of their Right to access education solely on the basis of their religious attire.

62. That the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) has been ratified by India in 1993 and the Article 1 of the convention provides with the Definition of Discrimination against women and girls as: "different treatment from men and boys that prevents them from enjoying their human rights. It includes both direct and indirect discrimination." The Article 2 provides with the State's obligations to Eliminate Discrimination against women and girls in all its forms, by establishing laws and policies to protect women and girls from discrimination and by including the principle of equality in constitutions and other national laws. Lastly, the Article 7 obliges the state to eliminate discrimination against women and girls in political and public life.

63. That the International Covenant on Civil and Political Rights (ICCPR) has been signed and

ratified by the state of India on 19th December 1996. The Article 18 (1) of the Covenant protects each person's Right to Freedom of thought, conscience and religion. It includes the freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. It further provides restrictions under the Article 18 (3) by providing that the Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The United National Human Rights Committee has stated that Article 18 is not limited in its application to traditional religions or religions and beliefs with institutional characteristics, and thus must be interpreted broadly. This multilateral treaty in consonance with the Indian Constitution also provides under Article 27 that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the

other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

64. That the United Nations Convention on rights of the child (UNCRC) was ratified by India in 1992, and it directs the State to respect the right of the child to freedom of thought, conscience, and religion. Article 30 further provides that "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language." The impugned order is lethal for the Indian secularism and it will directly impact the Muslim female child's right to Freedom and Education as well and hence, is violative the Convention.

65. That the International Convention on Social, Cultural and Economic Rights (CESCR) is another treaty which has been ratified by India on 10th April

1979 which states that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant. The Article 2 of the Convention provides that *"the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*. Hence, the freedom from discrimination is considered as one of the intrinsic principles of human rights, and the impugned order is clearly against the international obligation of the Indian state to respect and protect the rights and values enshrined in the treaty.

66. That therefore, the impugned order is biased and preferential in its treatment of individuals and hence goes against the international obligations and duties of the state of India, and is a gross violation of Human Rights. It is also blatantly evident that the impugned action of the Respondents is going against the Constitutional

enshrined value of 'secularism' in the treatment of people, and it is in furtherance of discrimination on the basis of Religion.

C. ADDITIONAL GROUNDS

67. That the impugned order will establish a legal precedent for 'religion' as a benchmark for education, claiming to protect persecuted all other religions except the Muslim religion.

68. That the impugned order has relied upon three authorities in reaching the erroneous conclusion as to the effect that 'any direction issued to not wear *HIJAB* in the educational institution will not attract the violation of Article 25 of Indian Constitution'. The said three authorities are not at all relevant to the subject matter on which the conclusion is reached and are based on different set of facts and reasoning. Hence, the impugned order is based on erroneous reasoning and thereby, fails the necessary tests of a valid law.

69. That the Article 13(1) of the Constitution of India states that *"laws inconsistent with or in derogation*

of the fundamental rights: All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void." The impugned order is inconsistent with the provisions of the Part III of the Constitution of India. It goes against the rights guaranteed under Article 14 and 15 of the Constitution, it thus, stands to be declared void and unconstitutional.

70. That the Hon'ble Supreme Court in Navtej Johar v Union of India (2018) 10 SCC 1 noted that *"we are aware that the legislature is fully competent to enact laws which are applicable only to a particular class or group. But, for the classification to be valid, it must be founded on an intelligible differentia and the differentia must have a rational nexus with the object sought to be achieved by a particular provision of law."* The impugned order fails the test of rational nexus, as it is under-inclusive in its selection of students.

71. That the Hon'ble Supreme Court in the above case categorically warned about potential discrimination

against "discrete or insular minorities" The reason for this is that such "discrete or insular minorities" are particularly powerless to protect themselves through the normal channels of the political process. For this reason, their only protection lies in the constitutional courts, and before this Hon'ble Court.

72. That India is a secular State and secularism is its constitutional goal. Secularism is part of the basic structure of the Constitution. That in Kesavananda Bharati v State of Kerala (1973) 4 SCC 225, the Hon'ble Supreme Court affirmed that secularism is part of the basic structure of the Indian Constitution. The Hon'ble Court reiterated this view in SR Bommai v. Union of India (1994) 3 SCC 1 as well. However, the impugned order is a straight attack to this principal as it creates discrimination solely on the basis of the religion and, therefore, deserves to be set aside.

73. That the incidents of lynching, ban on cow slaughter, '*bulli bai*' apps wherein a particular religion is being targeted are nothing but the social sanctions which attacks the most intricate aspect of

multiculturalism and Secularism which is the basic pillar of Indian constitution. This 'manufactured' concept of multiculturalism entails only those people who are willing to denounce and demonize their own cultures by surrendering to the irrational & hatred based whims & wishes of the majority group. This is done in various ways, and one such manner in the instant case is that of comparing the *HIJAB* to the saffron shawl. This comparison does not have any nexus whatsoever, be it religious or rational but is solely based on eradication and discrimination policy. The practice of wearing the saffron shawl is not the essential practice and is discardable practice unlike the practice of wearing *HIJAB* by Muslim Women. The practice of wearing *HIJAB* is not only the express way of professing the religion but also that of preserving the heritage & modesty. This practice of wearing *HIJAB* encapsulates not only the construct for spiritual practice and thought, but a way of living and hence, forms an essential religious practice in Islamic religion.

74. That the dress code prescribed by the Bar Council of India in as follows:

"1. ADVOCATES

(a) A black buttoned up coat, chapkan, achkan, black sherwani and white bands with Advocates' Gowns.

(b) A black open breast coat. white shirt, white collar, stiff or soft, and white bands with Advocates' Gowns. In either case wear long trousers (white, black striped or grey) Dhoti excluding jeans. Provided further that in courts other than the Supreme Court, High Courts, District Courts, Sessions Courts or City Civil Courts, a black tie may be worn instead of bands.

II. LADY ADVOCATES

(a) Black full sleeve jacket or blouse, white collar stiff or soft, with white bands and Advocates' Gowns. White blouse, with or without collar, with white bands and with a black open breast coat. Or

(b) Sarees or long skirts (white or black or any mellow or subdued colour without any print or design) or flare (white, black or black stripped or grey) or Punjabi dress Churidar Kurta or Salwar-Kurta with or without dupatta (white or black) or traditional dress with black coat and bands."

The Bar Council of India rules which are strict in a manner to follow a dress code are also inclusive of the religious attire as basic wear for the Courts by the Advocates of both gender, thereby providing the freedom to the advocates to choose the most comfortable attire for themselves while following the demarcated line of decency and morality. Even though there is no express clause for the headgear for various religions, it also does not expressly bar the same and the people from different faith practicing in the various courts of law across the country to follow their faith while following the basic rules without offending any aspect of the institution.

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75. That the Muslim women carry with them their faith - a faith that encapsulates not just a construct for spiritual practice and thought, but a way of living. Therefore, it follows that a faithful Muslim, regardless of where she lives would continue to adhere to the precepts established in the Koran, which include a prescription for dress.

76. That by directing and forcing the Muslim women to shed their *HIJAB*, the Respondent authorities are not only making the Muslim women to act in contradiction to their essential Religious principles and prescribed behavior but is also dictating and enforcing a new conduct or behavior to act as an individual without any due consideration to their basic human rights and freedom.

77. That the action of the Respondents is an indirect interference with the personal affairs of a Muslim community as the decision making unit in their culture is not the person, but the family. Consequently, the impugned action of the Respondent will most likely create tension and emotional strife for the women resulting in them being prevented from pursuing their education and

career as they will be made to choose between pursuing the education by compromising on their religious principles or to abandon their education and career aspirations in order to stay true to their faith.

78. That as rightly stated by one Yemeni Nobal Peace prize Laureate, Tawakkai Karman that "*Man in early times was almost naked and as his intellect evolve he started wearing clothes. What I am today and what I'm wearing represents the highest level of thought and civilization that man has achieved and is not regressive. It's the removal of clothes again that is regressive back to ancient times*".

79. That the Petitioner has filed this Petition seeking a declaration that the impugned Government Order is illegal and unlawful, being violative of Articles 14, 15, 19, 21 and 25 of the Constitution, since the Petitioner has no alternate efficacious remedy but to approach this Hon'ble Court under Article 32 of the Constitution of India for the reliefs prayed for herein.

80. That the Petitioner has not filed any other Petition before this Hon'ble Court or before any other Court

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seeking the same relief.

81. That this Hon'ble Court has the jurisdiction to entertain and try this Petition.

82. THAT it is humbly submitted the present issue is a fit case to be entertained as a public interest litigation as the persons directly affected by the operation of the impugned order belongs to the minority religion of this country and all the affected persons may not be able to approach this Hon'ble Court to seek the required reliefs.

Grounds for Interim Prayer

That the due to the impugned order, the Muslim Women wearing *HIJAB* are being denied the entry in the educational institutions across the State and it will result into a huge drop out by the Muslim Women from the educational institutions as they will be put in detrimental circumstances to either choose religion or education.

PRAYER

The Petitioner most humbly pray that this Hon'ble Court may be pleased to:

a) Issue a writ in the nature of Certiorari or any

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other appropriate writ, direction or order declaring the impugned Government Order No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022 vide ANNEXURE-A, as being unconstitutional, illegal and void, and/or

b) 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, 15, 19, 21 and 25 of the Indian Constitution and is an essential part of the Islam religion.

c) Pass any other orders as may be deemed fit in the facts and circumstances of this case.

INTERIM PRAYER

During the pendency of the present Public Interest Litigation for final Adjudication, the Petitioner most respectfully prayed that this Hon'ble Court be pleased to stay the operation of impugned Government Order No. EP 14 SHH 2022 Bengaluru, Dated 05.02.2022 vide ANNEXURE-A, in the interest of justice and equity.

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Bengaluru (Rahamathulla Kothwal)

Date: 07.02.2022

Advocate for the Petitioner

Address for Service:

Rahamathulla Kothwal

R. Kothwal & Co.

o/a #4/1, 1st Floor, 'A' Wing

Shamshuddin Memorial Building

H.H.S. Complex, Cubbonpet Main Road

Bangalore – 560 002.

-True copy-

Annexure-P-3

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF FEBRUARY, 2022 229

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. 3148/2022(GM-RES- PIL)

BETWEEN:

MOHAMED ARIF JAMEEL,
S/O LATE ABDUL RASHID,
AGED ABOUT 50 YEARS,
R/O NO.179, 2ND FLOOR,
6TH CROSS, 8TH MAIN,
3RD STAGE, PILLANNA GARDEN,
BENGALURU-560 045.

... PETITIONER

(BY SRI.RAHAMATHULLA KOTHWAL, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
   REPRESENTED BY THE CHIEF SECRETARY,
   VIDHANA SOUDHA,
   DR B R AMBEDKAR VEEDHI,
   BANGALORE-560001.

2. STATE OF KARNATAKA,
   REPRESENTED BY THE PRINCIPAL SECRETARY,
   PRIMARY AND HIGHER EDUCATION,
   DEPARTMENT OF EDUCATION,
   KARNATAKA GOVERNMENT MINISTRY ,
   MS BUILDING,
   BANGALORE-560001.

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3. STATE OF KARNATAKA,
REPRESENTED BY THE UNDER-SECRETARY,
PRIMARY AND HIGHER EDUCATION,
DEPARTMENT OF EDUCATION,
KARNATAKA GOVERNMENT MINISTRY,
MS BUILDING,
BANGALORE-560001.

4. STATE OF KARNATAKA,
REPRESENTED BY THE DIRECTOR,
STATE DEPARTMENT OF PRE-UNIVERSITY,
18TH CROSS, SAMPIGE ROAD,
MALLESHWARAM,
BANGALORE-560012.

5. STATE OF KARNATAKA
REPRESENTED BY THE SECRETARY,
PRIMARY AND SECONDARY EDUCATION,
DEPARTMENT OF EDUCATION,
6TH FLOOR, MS BUILDING,
DR B R AMBEDKAR VIDHI,
BANGALORE-560001.

... RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO a)ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION OR ORDER DECLARING THE IMPUGNED GOVERNMENT ORDER NO. EP 14 SHH 2022 BENGALURU, DATED 05/02/2022 VIDE ANENXURE-A, AS BEING UNCONSTITUTIONAL, ILLEGAL AND VOID, AND/OR AND ETC.,

THIS PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCE THIS DAY, ***CHIEF JUSTICE*** MADE THE FOLLOWING:

ORDER

This public interest litigation has been filed seeking following reliefs:

> *"a) Issue a writ in the nature of Certiorari or any other appropriate writ, direction or order declaring the impugned Government Order No.EP 14 SHH 2022 Bengaluru, dated 05.02.2022 vide*

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Annexure-A, as being unconstitutional, illegal and void, and/or

b) 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, 15, 19, 21 and 25 of the Indian Constitution and is an essential part of the Islam religion".

2. The Apex Court has time and again reiterated that abuse of the noble concept of PIL has been increasing day by day and to curb this, there should be explicit and broad guidelines for entertaining petitions as PILs, vide **STATE OF UTTARANCHAL vs. BALWANT SINGH CHAUFAL & OTHERS,** (2010) 3 SCC 402. The High Court of Karnataka (PIL) Rules, 2018 have been accordingly promulgated under Articles 225 & 226 of the Constitution of India. These Rules having been duly published vide Gazette Notification dated 11.07.2019 are now in force. Rule 14 contains instructions for filing Public Interest Litigations. Sub-rule (1) provides for what all a writ petition intended to be a Public Interest Litigation shall contain. On perusal of the petition averments, we are satisfied that the requirement of this Rule has not been substantially complied with. No plausible explanation is offered by the petitioner for such non-compliance, either. The contention

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of petitioner's counsel that strict adherence should not be expected if countenanced, may result in the gradual degeneration of the very prescription, and this would not augur well to the adjudication of social action litigations of the kind.

3. There is yet another reason as to why we are not inclined to grant indulgence in the matter: the very concept of PIL adjudication was conceived by the Apex Court in respect of worthy causes affecting the public at large but not being brought before the Court by the aggrieved. The issues concerning socially or economically disabled people may go unaddressed or are not effectively responded to, owing to their lack of organization, representation or for the for want of any particular forum for working out their grievances. Ordinarily, in such circumstances, relaxed rules of standing will be due.

4. What the Apex Court observed in **S.P.GUPTA Vs. UNION OF INDIA**, AIR 1982 SC 149, at paragraph 17 is instructive:

> *"It may, therefore, now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a*

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determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons..."

5. The petitioner in this PIL seeks to lay a challenge to the Government Order dated 05.02.2022 whereby the dress code / school uniform is sought to be provided for with the formation of College Development Committees. The very same order has been put in challenge by the aggrieved students in a batch of writ petitions. They are represented by a battery of lawyers and Senior Advocates. This Special Bench comprising three judges has been hearing those cases since last five days and thus, the hearing is half way through. Thus, it is not that in a worthy cause like this, the aggrieved are not before this Court nor that, the important questions are not

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raised and debated in the said petitions. Nothing has been averred as to why, the petitioner despite all this should be permitted to maintain this PIL. No person in the name of Public Interest Litigation can claim an automatic hearing and such hearing cannot be provided by the Court unless the PIL litigant demonstrates the *bona fide*.

In the above said circumstances, this writ petition filed in the form of a PIL being not maintainable and otherwise devoid of merits, is dismissed.

No costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

Snb/

True Copy

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I. A. NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF: -

Mohamed Arif Jameel ...Petitioner

Versus

State of Karnataka & Ors. Respondents

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER

To
The Hon'ble Chief Justice of India
And His Companion Justices of the
Hon'ble Supreme Court of India.

The humble petition of the Petitioner above-named;

MOST RESPECTFULLY SHOWETH: -

1. That the petitioner have filed the accompanying Special Leave Petitions before this Hon'ble Court. against the impugned and final order dated 15th of March, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP 2347/2022(GM-RESC/W.

2. That the facts and circumstances have been set out in the aforesaid Special Leave Petitions. The petitioner craves leave of this Hon'ble Court to refer to and rely upon the contents of the same for the sake of brevity.

3. It is submitted that the certified copy of the impugned judgment is not readily available with the petitioner since the Petitioner has only applied for certified copies and the same has not yet been furnished by the Registry of the Hon'ble High Court. The petitioner undertakes to file certified copy of the impugned order in due course.

PRAYER

It is, therefore, in the facts and circumstances of the case and in the interest of justice, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(i) exempt the petitioner from filing certified copy of the against the impugned and final order dated 15th of March, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP 2347/2022(GM-RES); and

(ii) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

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

DRAWN BY :
Rahamatullah Kothwal
Drawn on :- 15.03.2022
Filed on :- 16.03.2022

FILED BY

(ADEEL AHMED)
Advocate for the petitioner

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I. A. NO. OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF: -

Mohamed Arif Jameel ...Petitioner

Versus

State of Karnataka & Ors. ...Respondents.

APPLICATION FOR PERMISSIOIN TO FILE SLP

To

The Hon'ble Chief Justice of India

And His Companion Justices of the

Hon'ble Supreme Court of India.

The humble petition of the Petitioner above-named;

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MOST RESPECTFULLY SHOWETH: -

1. That the petitioner have filed the accompanying Special Leave Petitions before this Hon'ble Court against the impugned and final order dated 15th of March, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP 2347/2022(GM-RES)

2. That the facts and circumstances have been set out in the aforesaid Special Leave Petition. The petitioner crave leave of this Hon'ble Court to refer to and rely upon the contents of the same for the sake of brevity.

3. It is submitted that the Petitioner is a public spirited individual and had preferred a public interest litigation by way of Writ Petition No 3148 of 2022 before the Hon'ble High Court of Karnataka at Bengaluru, which was also permitted to be listed alongside the main matters numbered as WP 2347/2022, during the course of the Hon'ble Court's proceedings on 10-02-2022. That

prior to the same, the Petitioner herein had also filed an Application for impleadment numbered as IA No.1 of 2022, and which was listed along with WP 2347/2022.

4. Being highly aggrieved by the dismissal of the Public Interest Litigation filed by the Petitioner on the ground of maintainability vide Order dated 17.02.2022, the Petitioner is constrained to prefer the present Application.

5. It is submitted that the Petitioner being a citizen of India has a definite locus to file Public Interest Litigation. It is pertinent to note that, the Petitioner has filed the Public Interest Litigation as per the High Court of Karnataka (Public Interest Litigation) Rules, 2018 and Petitioner has made declaration as per the rules prescribed. The Petitioner has also affixed the Proforma-A as per Rule 14(2) of 'The High Court of Karnataka (Practice and Procedure for Public Interest Litigation

Rules, 2018'. The Proforma-A is annexed to the main WP No. 3148 of 2022 (hereinafter referred to as the "said Writ Petition") which is annexed herewith as Annexure P-2.

6. Further it is submitted that the Registry of the Hon'ble High Court did not raise any office objection regarding non-filing of Proforma-A as per Rule 14(2) of 'The High Court of Karnataka (Practice and Procedure for Public Interest Litigation Rules, 2018' and the matter was posted for Preliminary Hearing. This fact itself shows that the said Writ Petition filed by the Petitioner was not a defective one as per the observation made by the Hon'ble High Court at the time of hearing the Writ Petition.

7. It is submitted that the Advocate for the Petitioner appeared through Video Conference while representing the matter and since there was a minor error in the

pagination in the office copy of the Petition, at the time of arguments, the Advocate for the Petitioner mentioned different page Numbers to draw the attention of the Court to find the Proforma-A as per Rule 14(2) of 'The High Court of Karnataka (Practice and Procedure for Public Interest Litigation Rules, 2018 which was already attached in the said Writ Petition. Resultantly, the Hon'ble High Court without considering the fact that, the Petitioner has already complied Rule 14(2) of 'The Hon'ble High Court of Karnataka (Practice and Procedure for Public Interest Litigation Rules, 2018; embarked into finding that the Petitioner has not filed the Proforma-A as per Rule and dismissed the Petition.

8. It is significant to state that, the learned single judge of the Hon'ble High Court while referring the matter to the Larger Bench of the Hon'ble High Court in controversial Hijab validity had opined that, *"regard*

being had to enormous public importance of the question involved". When this being the case, it is inapt to question the petitioner on his locus to maintain the Public Interest Litigation.

9. The Petitioner had many fundamental and significant grounds in support of his case and he had contributed his time and efforts to assist the Hon'ble High Court with the legal and factual position of Law including international covenants to substantiate his case and to seek justice. If the Hon'ble High Court had permitted the Petitioner Counsel to argue the matter, it would have render great justice to all the aggrieved persons/public at large. Resultantly, all the PILs filed with this regard would have culminated fairly and the controversy of wearing Hijab was reaching quietus.

10. The dismissal order is capricious as the significant factor of compliance with respect to questioning the *locus*

in PIL matters is unjust. The petition was filed only in the interest of public at large and not for any personal gain, nonetheless, the Hon'ble High Court had inheritance power to exempt the minor crept if any, but despite there being no errors and there being only an error in indicating the page number at the time of arguments, the entire petition was dismissed.

11. The observation made in the dismissal order is highly unjust as the Hon'ble High Court has not assigned justifiable reasons while dismissing the PIL filed by the Petitioner. It is well settled that, the High Courts of the State are bound to ensure the Constitutional rights of the individuals are protected and the Rule of Law is balanced and exercised but the Petition was not tantamount to other PILs filed on Hijab issue, the Petitioner had bonafides and substantial material to maintain his case on merits. The Petition was dismissed

without giving reasonable opportunity of being heard, as a result principle of natural justice is violated.

12. The Petitioner being highly aggrieved by the dismissal order passed by the Hon'ble High Court in W.P. No. 3148/2022 (PIL), the Petitioner without there being any alternatives left, was constrained to knock the doors of the Hon'ble High Court by filing a Review Petition which has also been dismissed.

13. In light of the above submissions, it is prayed that this Hon'ble Court maybe pleased allow the Applicant herein to prefer the instant SLP against the impugned Order dated 15.03.2022

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PRAYER

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

(i) Permit the petitioner to file Special Leave Petition against the impugned and final order dated 15th of March, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru in WP 2347/2022(GM-RES) ; and/or

(ii) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

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

DRAWN BY :
Rahamatullah Kothwal
Drawn on :- 15.03.2022
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(ADEEL AHMED)
Advocate for the petitioner