IN THE SUPREME COURT OF INDIA

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

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 15416 OF 2022

[Against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.]

WITH
PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

WITH

I.A. NO. OF 2022 : Application for permission to file Special Leave Petition.

AND WITH

I.A. NO. OF 2022 : Application for exemption from filing certified copy of the Impugned Judgment and Final Order dated 15.03.2022.

AND WITH

I.A. NO. OF 2022 : Application for exemption from filing Official Translation.

PAPER BOOK
(PLEASE SEE INDEX INSIDE)

FILED BY: -
EJAZ MAQBOOL, ADVOCATE FOR THE PETITIONERS

RECORD OF PROCEEDINGS

S. NO.	DESCRIPTION	PAGES
1.	A copy of the order dated	
2.	A copy of the order dated	
3.	A copy of the order dated	
4.	A copy of the order dated	
5.	A copy of the order dated	
6.	A copy of the order dated	
7.	A copy of the order dated	
8.	A copy of the order dated	
9.	A copy of the order dated	
10.	A copy of the order dated	
11.	A copy of the order dated	
12.	A copy of the order dated	
13.	A copy of the order dated	
14.	A copy of the order dated	
15.	A copy of the order dated	
16.	A copy of the order dated	
17.	A copy of the order dated	
18.	A copy of the order dated	
19.	A copy of the order dated	
20.	A copy of the order dated	

INDEX

Sl. No.	Particulars of Document	Page No. of part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court Fees			
2.	Office Report on Limitation	A	A	
3.	Listing Proforma	A1 - A2	A1 - A2	
4.	Cover Page of Paper Book		A-3	
5.	Index of Record of Proceedings		A-4	
6.	Limitation Report prepared by the Registry		A-5	
7.	Defect List		A-6	
8.	Note Sheet		NS1 to.	
9.	Synopsis and List of Dates.	B - N		
10.	A copy of the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.	1 - 129		
11.	Special Leave Petition with Affidavit.	130 - 171		

12.	**Appendix of relevant statutory provisions** (i) A copy of the Articles 14, 15, 19, 21, 25, 26, 29, 30, 39(f), 51(A), 226 & 227 of the Constitution of India, 1949. (ii) A copy of the Sections 7, 133, 142 & 143 of the Karnataka Education Act, 1983. (iii) A copy of the Rule 11 of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995.	172 - 180 181 - 186 187		
13.	**ANNEXURE P–1** A true copy of the registration certificate of the Petitioner No.1 Society dated 06.04.2016.	188		
14.	**ANNEXURE P–2** A note on the essentiality of the practice of *Hijab* by Muslim Women professing the Islamic faith, in the light of the Holy Qur'an and the Hadith (sayings and practices) of the Prophet, peace be upon him, dated Nil.	189 - 208		
15.	**ANNEXURE P–3** A true and translated copy of the Govt. Order dated 05.02.2022 issued by the Government of Karnataka.	209 - 212		

16.	**I.A. NO. _____ OF 2022** Application for permission to file Special Leave Petition.	213 - 215		
17.	**I.A. NO. _____ OF 2022** Application for exemption from filing certified copy of the Impugned Judgment and Final Order dated 15.3.2022.	216 - 218		
18.	**I.A. NO. _____ OF 2022** Application for exemption from filing Official Translation.	219 - 220		
19.	F/M		221	
20.	Vakalatnama along with Board Resolution		222 - 223	

A

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … PETITIONERS

-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 delay of _____ days in filing the same against the order/judgment dated 15.03.2022 and Petition for Condonation of _____ days delay has been filed.

3. There is delay of _____ day in refilling the Petition and Petition for Condonation of _____ days delay in refilling has been filed.

BRANCH OFFICER

New Delhi
Dated: 07.04.2022

A1

LISTING PROFORMA
IN THE SUPREME COURT OF INDIA

SECTION: (IV-A)

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

☐ Central Act: **The Constitution of India, 1949**

☐ Sections: **Articles 14, 15, 19, 21, 25, 26, 29, 30, 39(f), 51(A), 226 & 227**

☐ Central Rule: **NA**

☐ Rule No(s) : **NA**

☐ State Act : **The Karnataka Education Act, 1983**

☐ Sections : **7, 133, 142 & 143 of the Karnataka Education Act, 1983**

☐ State Rule : **The Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula, etc.) Rules, 1995 (hereafter '1995 Curricula Rules')**

☐ Rule No(s) : **Rule 11**

☐ Impugned Interim order: **NA**

☐ Impugned Final Order: **Dated: 15.03.2022**

☐ High Court: **Hon'ble High Court of Karnataka at Bengaluru**

☐ Names of Judges: **Hon'ble Mr. Ritu Raj Awasthi, Chief Justice**
Hon'ble Mr. Justice Krishna S. Dixit
Hon'ble Ms. Justice J. M. Khazi

☐ Tribunal/Authority: **NA**

---

1. Nature of matter : **Civil Matter**

2. (a) Petitioner No.1 : **Sharia Committee for Women**
   (b) e-mail ID: **NA**
   (c) Mobile phone number: **NA**

3. (a) Respondent No.1: **State of Karnataka**
   (b) e-mail ID: **NA**
   (c) Mobile phone number: **NA**

4. (a) Main category classification: **18 - Ordinary Civil Matters**

   (b) Sub classification: **1807 - Others**

5. Not to be listed before: **NA**

6. (a) Similar disposed of matter with citation, if any, & case details: **No Similar matter is disposed of.**

   (b) Similar pending matter with case details: **Diary No. 9098 of 2022.**

7. **Criminal Matters:**– **NA**

   (a) Whether accused/convict has surrendered: ❑Yes ❑No

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

   (c) Police Station: – **NA**

   (d) Sentence Awarded: – **NA**

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

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

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

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

   (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**

EJAZ MAQBOOL
Advocate for the Petitioners
CODE NO.: 180
E-mail ID: emaqbool@gmail.com

New Delhi
Dated: 07.04.2022

SYNOPSIS

This Petition along with an application seeking leave to file this Special Leave Petition is being filed to challenge the judgement and order dated 15th March 2022 of the full Bench of the Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 2347 of 2022 ("**the impugned judgment**") and other connected petitions which were dismissed by the Hon'ble High Court of Karnataka. While dismissing the Writ Petitions challenging the Government Order dated 05th February 2022 issued by the Government of Karnataka prohibiting Muslim girl students from the use of Hijab as part of the school uniform while attending school. This was the Government Order which was impugned before the Hon'ble High Court. The impugned judgement and order fails to uphold constitutional guarantees while trampling upon the fundamental rights of the Muslim girl students under Articles 14, 15, 19(1)(a), 21, 25(1) & 29 of the Constitution of India and principles as enunciated by this Hon'ble Court. The impugned judgement and order passed by the Hon'ble High Court of Karnataka is in flagrant violation of the fundamental duties enshrined under Article 51-A and is therefore is an exercise of judicial power in breach of fundamental duties. Since all the Hon'ble Judges at different levels of judicial hierarchy are citizens of India, they are also equally bound by the obligatory fundamental duties imposed on them under Article 51-A. Therefore, the judiciary as a whole in our country cannot pass any verdict / judgement ignoring or misapplying the fundamental duties; such verdict / judgment being void is liable to be set aside.

The Full Bench of the Hon'ble High Court of Karnataka unanimously dismissed the said Writ Petitions on the basis of four Questions for consideration which *ab initio* were erroneously framed while also going above and beyond the context of the issue in dispute as well as the submissions and arguments made by the counsel of the respective Petitioners.

Education being a National priority, more particularly the education of the girl child, **t**he Hon'ble High Court of Karnataka, vide the impugned judgment and order failed to consider the absence of the doctrine of reasonable accommodation; an approach that ought to have been adopted qua the Government Order. The Government Order is null and void because it is ex - facie drafted with a partisan motive to target Muslim women and the impugned judgment and order lends legitimacy to it by glossing over such communal overtones in the Government Order.

The Hon'ble High Court has erred in equating the issue of wearing a *Hijab* to being an issue of public order, more so when the Respondent State brought this up as an afterthought and was not part of its pleadings and statement of objections before the Hon'ble High Court. It is ironical that the acts of hecklers and anti-*Hijab* fundamentalists who had threatened the Muslim girl students were not considered as the source of public disorder which the State was within its duty to control and take action against. Rather, the Hon'ble High Court of Karnataka erroneously accepted the State's contention of the *Hijab* issue being

the source for creating public disorder. Considering the various judgements of this Hon'ble Court which have time and again acted as a protector of fundamental rights while dealing sternly with perpetrators of fundamental rights, the Hon'ble High Court of Karnataka being a Constitutional Court failed in its mandate and in fact acted in support of the perpetrators and transgressed the well settled positions of law protecting the fundamental rights of the citizens of India, more specifically that of minorities in India. Under the guise of it being an issue of public order, the *Hijab* itself has been weaponized to deny young Muslim women their basic Right to Education.

The impugned judgement and order completely ignores the constitutional principle laid down by this Hon'ble Court that any State action undertaken by the State must pass the test of the proportionality *viz.* the Doctrine of Proportionality. The impugned judgement and order fails to appreciate the principle of reasonable accommodation without which national consciousness and democratic values cannot be realized. *The educational system and likewise the educational institutions, in turn, have a responsibility to reasonable accommodate the needs of students in bringing them together and grouping students from varied backgrounds and different social classes and thus promote the emergence of an egalitarian and integrated society*. Such reasonable accommodation has a direct relevance for applying the Doctrine of Proportionality and the spirit of accommodation in the matter.

The impugned judgment and order denies education to Muslim girl students exercising their fundamental right of choice and conscience by choosing to wear a *Hijab.* The choice of dress is directly linked with a woman's autonomy and her right to exercise her independent judgment in matters personal to her. The Hon'ble High Court of Karnataka has given priority to uniformity and homogeneity under a misplaced sense of reform over education that is based on the false assumption that every Muslim woman who wears the *Hijab* is a victim of compulsion.

It has been the consistent practice for Muslim girl students from different States of India to wear the *Hijab* as part of their school uniform since time immemorial and such practice is at par with the unrestricted practice of the use of symbols identifiable with other religious identities attending school in secular India. Until now, educational institutions across the country have recognized the *Hijab* in different colors as an acceptable part of uniform. The Muslim girl students in particular were wearing their *Hijab* for the past 2 years and since the time of their admission into the College in as much the same manner as did their seniors and alumni from previous years in the history of the educational institutions.

The Petitioners submit that though while dismissing the Writ Petitions, the Hon'ble High Court of Karnataka has held that no case was made out by the Petitioners justifying the use of *Hijab* as part of the school uniform, it is apparent from a careful reading of the Government Order

that the Hon'ble High Court of Karnataka erred in its application of the law and set precedents in denying the petitioners in the dismissed Writ Petitions the exercise of their fundamental rights guaranteed by the Constitution.

The impugned judgment and order gives the committees set up in educational institutions a free hand to impose restrictions on the fundamental rights of individual students under the guise of implementing their own set of rules. The Hon'ble High Court of Karnataka has ignored, or rather confirmed the arbitrary and unjust actions of the College Development Committee (CDC) which are not only violative of Article 14 of the Constitution but also contrary to the education and school culture that seeks to achieve equity and inclusion in enabling individual students belonging to any socially and economically disadvantaged group. The Hon'ble High Court of Karnataka fails to recognize that in allowing for college committees CDC to enjoy arbitrary powers and unrestricted freedom to take decisions on matters involving a woman autonomy, in the instant case the matter of the young Muslim girl students decision to wear the *Hijab*, the Hon'ble High Court of Karnataka has erroneously only deepened the gender divide prevalent in the country.

The dispute before the Hon'ble High Court of Karnataka was in respect of the unreasonable restriction imposed by the Government Order which violated the fundamental right of the Muslim girl students to wear a *Hijab* in consonance with their conscience and belief of

religious practice. The Hon'ble High Court of Karnataka erroneously framed an issue which attributed the dispute raised by the Petitioners in the Writ Petitions filed before the Hon'ble High Court as a challenge to the prescription of school uniform which was never in dispute by the Petitioners before the Hon'ble High Court. The Petitioners before the Hon'ble High Court had merely objected to the prohibition of the school authorities to their wearing of *Hijab* along with the school uniform, which was historically in continuous practice until the Government Order was issued targeting only the Muslim girl students while remaining silent on the use of other symbols attributable to other religions, especially usage of *Turbans* and *Bindis* by Sikh students.

The doctrine of essential practice of religion has no place and no relevance in the mater of an individual's right to freedom of conscience under Article 25(1) and inter alia plays no part in determination of the rights guaranteed under this Article. Even otherwise, and without prejudice to the averments and contentions made in this Petition, *Hijab* is an essential religious practice and integral to the faith of a practicing Muslim Woman.

Vide the impugned judgment and order, the Hon'ble High Court of Karnataka has turned a blind eye to the fact that women, and more particularly Muslim women, belong to a special class of SDEGs that are deserving, or rather more deserving of accommodation in order for them to reach their full human potential to serve the country. The impugned judgment and order negates the positive and progressive

results achieved by the Petitioners who have been working at the grass root level to empower Muslim women and young Muslim girls in particular, through the medium of education. That in addition to defeating the purpose of the Act, the objectives of the State and in turn that of the Centre which make Education a National Priority, the impugned judgment and order also serves to defeat the objectives of the Petitioners *viz.*, to uplift and improve the conditions of Muslim women in India by enabling them, through the medium of education, to overcome the vulnerabilities and weaknesses they suffer from in being a disadvantaged lot of the community and, instead, empowering themselves to become a valuable contributor to the Country.

Lastly, the *Hijab* is a symbol of empowerment for a practicing Muslim woman who exercises her right to individual freedom of conscience and expression in cherishing what she holds valuable *viz.* her honor, dignity and more importantly her autonomy to decide for herself her identity. It is representative of her gender, identity, faith, choice and liberation all at once.

The Petitioners crave leave to refer to and rely upon the various citations referred to by them in the Special Leave Petition.

LIST OF DATES

06.04.2016	The Petitioner No.1 Society is a registered Society, working for the cause of Women's Rights, safety, education, empowerment and social justice issues

	relating to women across India. One of the aims and objective of the Society is - *'to encourage girls and women to seek higher education and achieve economic empowerment'* For that last two decades, the Petitioner No.1 Society has organized several programs/conferences with the objective of facilitating the education of the girl child and especially encouraging them to pursue higher education. The President of the Petitioner No.1 Society, Dr. Asma Zehra Tabiya was also invited for the round table consultation on Muslims in India - A gender perspective conducted by the PM's High Level Committee at New Delhi on April 10, 2016. The Petitioner No.1 Society and their members are directly aggrieved by the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022 and therefore the present Special Leave Petition is being filed with permission to file a Special Leave Petition because they were not parties before the Hon'ble High Court. A true copy of the registration certificate of the Petitioner No.1 Society dated 06.04.2016 is

	annexed hereto and marked as **ANNEXURE P-1 [PAGE NO. 188].**
December, 2021	Six Muslim girl students were denied permission to enter classrooms at the Pre-University College (P.U College) for Girls, Udupi as they were wearing Hijab. It is submitted that such a denial is violative of fundamental rights guaranteed under Articles 14, 15, 19(1)(a), 21, 25(1) & 29 of the Constitution of India. Further, it is submitted that *Hijab* is an Essential Religious Practice, which is integral to the faith practicing Muslim women. A note on the essentiality of the practice of *Hijab* by Muslim Women professing the Islamic faith, in the light of the Holy Qur'an and the Hadith (sayings and practices) of the Prophet, peace be upon him, dated Nil is annexed hereto and marked as **ANNEXURE P-2 [PAGE NOS. 189 TO 208].**
January, 2022	A state-run college in Balagadi village in Karnataka's Chikkamagaluru district banned the practice of hijabs, despite the fact that the same was being observed by Muslim girl students since

	inception as it was essential and integral to the faith of these girls.
February, 2022	Due to ban of Hijab across several educational institutions in Karnataka, the situation in the state became tense and several cases of harassment (including by way of heckling, threatening and even attacking) of young Muslim girls came to light. Meanwhile, despite the sensitive situation in the state, more and more educational institutions continued to prohibit the practice of Hijab. For instance:- • Muslim girl students were denied entry in the P.U College, Udupi. • Visvesvaraya Government College in Bhadravathi town, Shivamogga district, Karnataka told girl students who wear hijab to remove it in the waiting rooms and attend classes without it. • Muslim girl students were barred entry in hijab in Bhandarkars' Arts and Science College, Kundapura, Udupi.

	• Twelve students wearing hijab were barred from entering the classrooms of Government PU College, Byndoor. • Muslim girl students were barred entry in hijab in B. B. Hegde College, Kundapura. • Muslim girl students were barred from entering the college premises in RN Shetty Composite PU College in Kundapur in Udupi district. • Government PU College, Naunda imposed hijab ban on Muslim girl students. • Sarasvati Vidyalaya PU College, Gangolli imposed hijab ban on Muslim girl students. Apart from the above, several incidents were highlighted by the media, wherein even teachers professing Islam were asked to remove *Hijab* before entering the educational institutions.
05.02.2022	It is relevant to note that all the above actions taken by the Educational Institutions, were unilateral in the absence of any Government Order. However, subsequently on February 5, 2022, the State

	Government issued a Government Order in exercise of its powers under Section 133 of the Karnataka Education Act, 1983, *inter-alia* directing the College Development Committees (CDCs) to prescribe uniforms to be worn by students emphasizing that wearing of a headscarf does not form a part of Right to Freedom of Religion guaranteed under Article 25 of the Constitution of India. A true and translated copy of the Govt. Order dated 05.02.2022 issued by the Government of Karnataka is annexed hereto and marked as **ANNEXURE P-3 [PAGE NOS. 209 TO 212].**
07.02.2022	The constitutional validity of the Government Order dated 05.02.2022 was challenged before the Hon'ble High Court of Karnataka at Bengaluru in a batch of Writ Petitions including W.P. No. 2347 of 2022. After an elaborate hearing on 08.02.2022 and 09.02.2022, the Learned Single Judge referred the matter to be heard by a Larger Bench.

09.02.2022	The Chief Minister of Karnataka directed all educational institutions to be shut for three days so as to control the sensitive situation and to maintain peace and harmony in the State.
14.02.2022	Muslim students, teachers and staff were forced to take off their hijabs before entering educational institutions in Karnataka.
15.03.2022	A Full Bench of the Hon'ble High Court of Karnataka at Bengaluru passed the Impugned Judgment and Final Order dismissing the Writ Petitions including W.P. No. 2347 of 2022 upholding the constitutional validity of Government Order dated 05.03.2022. It was erroneously held that *Hijab* is not a part of the Essential Religious Practice in Islamic faith and is therefore not protected under Article 25 of the Constitution of India. It was further held that prescription of school uniform is only a reasonable restriction, constitutionally permissible which students cannot be object to.
07.04.2022	Hence, this Special Leave to Petition.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF MARCH, 2022

PRESENT

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

AND

THE HON'BLE MR.JUSTICE KRISHNA S. DIXIT

AND

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

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

IN W.P. NO.2347 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.2146 OF 2022

BETWEEN:

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

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

3 . ALIYA ASSADI
AGED ABOUT 17 YEARS,

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

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

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

... PETITIONERS

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

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

AND:

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

2 . DIRECTOR
PU EDUCATION DEPARTMENT
MALLESHWARAM
EDUCATION DEPARTMENT
BANGALORE 560012

3 . DEPUTY DIRECTOR
PRE UNIVERSITY COLLEGE
UDUPI DIST UDUPI 576101

4 . DEPUTY COMMISSIONER
DC OFFICE UDUPI
CITY UDUPI 576101

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

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

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

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

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.2880 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

... RESPONDENTS

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

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

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

IN W.P. NO.3038 OF 2022

BETWEEN:

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

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

... PETITIONERS

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

AND:

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

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

BANGALORE-560001.

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.3424 OF 2022

BETWEEN:

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

... PETITIONER

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

AND:

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4309 OF 2022

BETWEEN:

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

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

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

... PETITIONERS

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

AND:

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

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

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

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

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

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

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

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

... RESPONDENTS

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

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

IN W.P. NO.4338 OF 2022

BETWEEN:

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

… PETITIONER

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

AND:

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

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

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

4 . THE DIRECTOR
CENTRAL BUREAU OF INVESTIGATION,
KARNATAKA

5 . NATIONAL INVESTIGATION AGENCY
BENGALURU,
KARNATAKA
REPRESENTED BY DIRECTOR

... RESPONDENTS

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

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

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

ORDER

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

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

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

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

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

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

I. PETITIONERS' GRIEVANCES & PRAYERS BRIEFLY STATED:

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

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

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

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

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

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

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

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

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

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

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

College Development Committee or *College Supervision Committee; and*

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

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

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

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

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

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

II. BROAD CONTENTIONS OF PETITIONERS:

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

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

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

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

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

---

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

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

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

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

---

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

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

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

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

---

[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.

---

[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

---

[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*

---

[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

---

[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

---

[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

---

[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.

---

[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

---

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

have broadly framed the following questions for consideration:

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

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

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

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

[60] (1959) 1 SCR 996

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

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

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

---

[61] (1975) Supp. SCC 1

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

VI. CONSTITUTIONAL RIGHT TO RELIGION AND RESTRICTIONS THEREON:

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

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

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

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

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

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

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

[62] (1889) 133 US 333

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

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

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

[63] AIR 1954 MAD 385

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

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

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

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

---

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

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

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

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

---

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

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

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

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

[66] 354 US 436 (1957)

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

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

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

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

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

[67] 1971 SCR (2) 446

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

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

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

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

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

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

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

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

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

ESSENTIAL RELIGIOUS PRACTICE SHOULD ASSOCIATE WITH CONSTITUTIONAL VALUES:

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sūra xxiv (Nūr):

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

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

(xxiv. 27 – 34, and C. 158)

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

(xxiv. 58 – 64, and C. 160).

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

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

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

Sūra xxxiii (Ahzāb)

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

Is *hijab* Islam-specific?

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

[*] *Id*

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

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

66

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

***Sūra xxiv* (*Nūr*)**

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

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

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

Sūra xxxiii (Ahzāb)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[70] 2004 (1) JKJ 418

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

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

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

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

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

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

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

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

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

[71] (2016) SCC Online Ker 487

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

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

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

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

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

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

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

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

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

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

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

---

[72] 1973 SCC OnLine All 333

80

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

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

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

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

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

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

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

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

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

---

[73] (1901) A.C. 495

83

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

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

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

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

---

[74] (1909) 33 BOM. 122

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

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

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

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

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

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

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

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

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

---

[75] AIR 1957 SC 133

89

> *'…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..."

94

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

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

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

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

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

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

---

[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

99

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

100

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*

102

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

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

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

---

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

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

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

---

[83] (1985) 1 SCC 641

105

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

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

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

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

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

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

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

108

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

---

[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

109

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

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

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

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

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

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

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

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

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

[86] AIR 1992 SC 111

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

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

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

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

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

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

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

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

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

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

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

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

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

[87] AIR 1952 SC 16

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

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

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

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

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

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

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

120

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.

122

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 …"*

124

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

125

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

[89] AIR 1965 SC 491

126

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

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

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

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

XIX. THE PUBLIC INTEREST LITIGATIONS:

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

[90] AIR 1986 CAL. 104

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

129

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

// TRUE COPY //

IN THE SUPREME COURT OF INDIA

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

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

WITH
PRAYERS FOR INTERIM RELIEFS

POSITION OF PARTIES

	IN THE HIGH COURT	IN THIS COURT
BETWEEN		
1. SHARIA COMMITTEE FOR WOMEN, through its Joint Secretary, Ms. Atherunnisa, Registered Office at 10-2-249/1/1, Flat No.301, Mahmud Apartments, Shantinagar, Hyderabad, Telangana - 500028	Not a Party	Petitioner No.1
2. MRS. SABERA AIJAZ, Treasurer, Sharia Committee for Women, Registered Office at 10-2-249/1/1, Flat No.301, Mahmud Apartments, Shantinagar, Hyderabad, Telangana - 500028	Not a Party	Petitioner No.2
-VERSUS-		
1. STATE OF KARNATAKA, represented by the Principal Secretary, Department of Primary and Secondary Education, 2nd Gate, 6th Flour, M. S. Building, Bengaluru - 560001	Respondent No.1	Contesting Respondent No.1

2. GOVERNMENT PU COLLEGE FOR GIRLS, Behind Syndicate Bank, Near Harsha Store, Udupi, Karnataka - 576101, represented by its Principal	Respondent No.2	Contesting Respondent No.2
3. DISTRICT COMMISSIONER, Udupi District, Manipal, Agumbe - Udupi Highway, Eshwar Nagar, Manipal, Karnataka - 576104	Respondent No.3	Contesting Respondent No.3
4. THE DIRECTOR, Karnataka Pre-University Board, Department of Pre-University Education, Karnataka, 18th Cross Road, Sampige Road, Maleswaram, Bengaluru - 560012	Respondent No.4	Contesting Respondent No.4
5. SMT. RESHAM, D/o. Mr. K. Faruk, aged about 17 years, through next friend, Sri Mubarak, S/o. Mr. 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	Proforma Respondent No.5

PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA

To,

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

This humble Petition of the above-named Petitioners

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners above named are filing the present Special Leave Petition in this Hon'ble Court under Article 136 of the

Constitution of India against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022, whereby the Hon'ble High Court has dismissed the Writ Petition and has upheld the constitutional validity of the Government Order dated 05.02.2022 which was Impugned before the Hon'ble High Court in relation to the right of female Muslim students to the practice of wearing *Hijab* along with the school uniform in educational institutions of the State of Karnataka. The Hon'ble High Court held that that *Hijab* is not a part of the Essential Religious Practice in Islamic faith and is therefore not protected under Article 25(1) of the Constitution of India. It was further held that prescription of school uniform is only a reasonable restriction, constitutionally permissible which students cannot object to.

1A. It is submitted that no Letters Patent Appeal would lie against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.

2. **QUESTIONS OF LAW**

The following questions of law of general public importance arise for consideration by this Hon'ble Court: -

(i) **WHETHER** the impugned judgment and order of the Hon'ble High Court of Karnataka correctly interprets the scope of Art. 25(1) and 19(1)(a) of the Constitution and is correct in reading down one Fundamental Right *vis - a - vis* another Fundamental Right?

(ii) **WHETHER** the State action gives rise to an interplay of different Fundamental Rights viz. should they be read in the manner to complement each other and avoid the reading of the Fundamental Rights in question to denude one or the other?

(iii) **WHETHER** a judicial order / judgment / direction passed in breach of the Fundamental Duties under Article 51-A is void?

(iv) **WHETHER** the fundamental duties enshrined under Article 51-A can be said to be *non pertinet* and *non ligare* in the discharge of judicial duties of the Hon'ble Judges of the Hon'ble High Court to the extent of disregarding the obligations cast on every citizen of the country under Article 51-A?

(v) **WHETHER** the doctrine of essential religious practice is attracted to the expression of conscientious religious belief in the form of dress or other manifestations in exercise of right under Article 19(1)(a)?

(vi) **WHETHER** while considering the validity of the impugned state action on 05.02.2022, the Hon'ble High Court of Karnataka has correctly applied the Doctrine of Proportionality as the impugned judgment and order has completely ignored the basic values of the Constitution contained in the preamble, Article 51-A and the provisions of Part III of the Constitution?

(vii) **WHETHER** the Government Order dated 05.02.2022 is violative of the Fundamental Rights guaranteed to Muslim Women under Articles 14 and 15; the right to education under Article 21, the right to freedom of expression under Article 19(1)(a) and the right to freedom of conscience under Article 25 (1) and the religio - cultural identity under Article 29 of the Constitution?

(viii) **WHETHER** the right to education can be subjected to arbitrary restrictions imposed by authorities exercising delegated powers contrary to the provisions of Article 14 of the Constitution and to the parent statute?

(ix) **WHETHER** when examining an individual's right to freedom of conscience under Article 25(1), the doctrine of essential religious practice is required to be considered?

(x) **WHETHER:**

(a) The correct concept of Constitutional Secularism has been applied by the Hon'ble High Court of Karnataka?

(b) In applying the doctrine of proportionality and spirit of accommodation to a religious minority, Constitutional secularism is violated?

(xi) **WHETER** the personal choice of Muslim girl students wearing a *Hijab* can be restricted on the grounds of public order in

contradistinction to personal choice in matter of apparels connected with students of other religions in the light of the preambular value of secularism?

(xii) **WHETHER** the restriction on the right to personal liberty and freedom of expression can be applied selectively to Muslim girls to the extent of their choice of wearing a *Hijab*?

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

The Petitioners state that they have not filed any other petition seeking Leave to Appeal in this Hon'ble Court against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.

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

That Annexures P-1 to P-3 produced along with the Special Leave Petition are true and correct copies of the pleadings/documents which form part of the record of the case in the Court/Tribunal below against whose order, leave to appeal is sought for in this petition.

5. **GROUNDS:**

That being aggrieved by the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022, the Petitioners herein are filing the present Special Leave Petition on the following,

amongst other grounds which are being raised in the alternative and are without prejudice to one another: -

A. For that the impugned judgement and order fails to uphold constitutional guarantees and deliver justice. While trampling upon the fundamental rights guaranteed under Articles 14, 15, 19(1)(a), 21, 25(1) & 29 of the Constitution of India and principles as enunciated by this Hon'ble Court, the impugned judgment and order denies education to Muslim girl students exercising their fundamental right of choice and conscience by choosing to wear a *Hijab*. Accordingly, the same is liable to be set aside in terms of the prayer made in the instant Petition.

B. For that the practice of wearing a *Hijab* and its usage by Muslim Women and girls in India has been the mandate for centuries. It has been the consistent practice for Muslim girl students from different States of India to wear the *Hijab* as part of their school uniform since time immemorial and such practice is at par with the unrestricted practice of the use of symbols identifiable with other religious identities attending school in secular India. Such harmless practice of wearing a *Hijab* has never been considered a violation of the rule of common uniform in schools and colleges across India but is rather reflective of the unique religio - cultural diversity of India.

C. For that the freedom of choice and a woman's autonomy are an expression of her right to a meaningful life with dignity. The two rights flowing alongside each other, such right to dignity cannot be compromised at the cost of education and vice - versa;

D. For that the impugned judgment and order gives the committees set up in educational institutions a free hand to impose restrictions on the fundamental rights of individual students under the guise of implementing their own set of rules. While College authorities ae free to decide their own rules, these cannot violate the Fundamental Rights and Duties of the citizens enshrined in the Constitution of India, including the fundamental duty cast upon members of such College committees who are responsible for promoting education.

E. For that Education is a National Priority, more particularly the education of the girl child. The Hon'ble High Court of Karnataka, *vide* the impugned judgment and order failed to consider the absence of the doctrine of reasonable accommodation; an approach that ought to have been adopted qua the Government Order dated 05.02.2022.

F. For that the impugned judgment and order failed to recognize the manifest communal flavor with which the Government Order was drafted and implemented, ab initio having the effect of

depriving Muslim girl students of their right to education on the one hand, while imposing no similar restriction or prohibition on the use of *Turbans* and *Bindis* by students belonging to other religious identities on the other.

G. For that the impugned judgement and order is in violation of the principles of equity, social inclusion and national integration as espoused in the Constitution which are relevant for the purpose of explaining the manifestly erroneous approach of the Hon'ble High Court in its impugned judgement and order in validating the act of the Government of Karnataka qua the Government Order in encroaching upon the fundamental rights of the Muslim girl student.

H. For that constitutional values and various judgments of this Hon'ble Court have emphasized and affirmed the importance of education and promotion of religious tolerance, social and national integration. That the role of schools in imbibing the spirit of unity in diversity and promoting national solidarity by transcending narrower loyalties, using education to promote the right to pursue religious beliefs, in turn promotes cohesiveness amongst different religious groups by inculcating the spirit of religious tolerance and respect for all religions.

I. For that under the guise of it being an issue of public order, the *Hijab* itself has been weaponized to deny young Muslim women their basic Right to Education.

J. For that the Hon'ble High Court of Karnataka has, under the pretext of reform, given priority to a misplaced sense of uniformity over education that is based on the false assumption that every Muslim woman who wears the *Hijab* is a victim of compulsion.

K. For that when examining an individual's right to freedom of conscience, the doctrine of essential religious practice plays no part in and has no relevance whatsoever to determine the same. Even otherwise, and without prejudice to the averments and contentions made in this Petition, *Hijab* is an essential religious practice and integral to the faith of a practicing Muslim Woman.

L. For that the *Hijab* is representative of the gender, identity, faith, choice and liberation of a practicing Muslim all at once.

Re: ***<u>In violation of Article 14 of the Constitution of India</u>***

M. For that the impugned judgment and order fails to recognize that women in general and Muslim women in particular cut across all under - represented and socio - economically and disadvantaged Groups of our country; more so in terms of being victims of gender bias. The impugned judgment and order is in direct

violation of Article 14 of the Constitution, only serves to enhance the existing gender - bias by failing to extend the same reasonable accommodation to allow for Muslim women who to wear the *Hijab* as part of their freedom of conscience, belief and expression as has been given to members of the Sikh community enjoy such freedoms when donning the *Turban*.

N. For that the impugned judgment and order fails to recognize education as being the basic and single most potent instrument for women who are a socio-economically disadvantaged group of our society, to break the shackles that obstruct their path to empowerment in achieving maximum human potential but also provides for an inclusive school culture that seeks to attain social justice in the society. The Hon'ble High Court of Karnataka, vide the impugned judgment and order has failed to appreciate the fact that women, and more particularly Muslim women, belong to a special class of a disadvantaged group that are deserving, or rather more deserving, of accommodation in order for them to reach their full human potential to serve the country.

O. For that the impugned judgment and order suffers from manifest arbitrariness for want of a rational and reasonable classification that fails the test as laid down by this Hon'ble Court in the case of ***R. K. Garg v. Union of India*** **(1981) 4 SCC 675**. In the instant case, where even the procedure as laid down in Section 7 of the

Karnataka Education Act, 1983 (the Act) r / w Rules 11 and 12 has not been followed, the Hon'ble High Court of Karnataka has ignored, or rather confirmed the arbitrary and unjust actions of the College Development Committee (**CDC**) which violate of Article 14 of the Constitution.

P. For that the action of the State, in its capacity as an authority under Article 12, is not only manifestly arbitrary and unreasonable vide ***Ajay Hasia & Ors. V. Khalid Mujib Sehravardi & Ors.*** **(1981) 1 SCC 722** but also is violative of Article 14 for negating the principle of equality as enumerated in ***Deepak Sibal v. State of Punjab University & Anr.*** **(1989) 2 SCC 145**. The Hon'ble High Court of Karnataka fails to recognize that in allowing for the CDC to enjoy arbitrary powers and unrestricted freedom to take decisions on matters involving a woman autonomy, in the instant case the matter of the young Muslim girl students decision to wear the *Hijab*, the Hon'ble High Court of Karnataka has erroneously only deepened the gender divide prevalent in the country.

Q. For that the Government Order being vague and, for want of a better word, poorly drafted allows for and gives sanctity to the actions of the CDC to deprive women, and in particular, young Muslim women, from being treated fairly and at par with their male counterparts qua ***Shreya Singhal v. Union of India*** **(2015)**

5 SCC 1. While College authorities ae free to decide their own rules, this freedom cannot come at the cost of gender bias in violation of the Muslim girl students Fundamental Right of Equality under Article 14 of the Constitution of India. The Government Order being contrary to the spirit of harmony and common brotherhood, in the instant case sisterhood, that was meant to transcend all diversities viz. religion, linguistic, regional, etc., is in fragrant violation of sections 6 and 7 of the Act by giving in to the tantrums thrown by an oppressive and majoritarian group over the fundamental rights enjoyed by a vulnerable group, in the instant case, the Muslim girl students.

R. For that until now, educational institutions across the country have recognized the *Hijab* in different colors as an acceptable part of uniform. In the instant case, the Muslim girl students in particular were wearing their *Hijab* for the past 2 years and since the time of their admission into the College in as much the same manner as did their seniors and alumni from previous years in the history of the college. From a plain reading of the situation, it is clear that the tenacity with which the State (the Respondent No. 1) passed the Government Order right in the middle of the ongoing academic year is not only reflective of the manifest arbitrariness with which the Government Order specifically targets the Muslim girls but also the communal flavor that is

reflected in the various recitals of the Government Order which gives its unwarranted and uncalled - for opinion on the essentiality of *Hijab* as a religious practice for Muslim women, in the instant case the Muslim girl students. That the prima facie right of the Muslim girl students to wear their *Hijab* and attend the College being established, the balance of convenience will also lie in favor of the Petitioners as the rights of Muslim female students have been trampled upon. That vide the principles laid down in the case of ***Shayara Bano v. Union of India*** **(2017) 9 SCC 1**, the State action *qua* the Government Order is manifestly arbitrary and violative of Article 14 of the Constitution.

Re: ***In violation of Article 15 of the Constitution of India***

S. For that Government Order has the effect of excluding women, and in particular Muslim women from mainstream education due to their identity as Women and more particularly Muslim women. Such discrimination based on religion and gender is violative of Article 15 of the Constitution which seeks to, inter alia, protect from both forms of discrimination by means of Affirmative action of the State through advancement of educationally backward women.

T. For that data, in terms of the Sachar Committee Report of India as well as other reports from well - established bodies like United

Nations Educational, Scientific and Cultural Organization (UNESCO) clearly suggest that literacy and educational backwardness among Muslim women is more than for most other religious communities; same is the case with Muslim women in higher education and professional courses, as compared to the rest of the population. Discriminating against Muslim women by denying them access to education simply because they chose to wear the *Hijab* will only serve to increase the statistical figures in these reports and worsen the sorry state of affairs prevalent in the community. The impugned judgement and order erred in not holding that the Government Order dated 15.02.2022 was also violative of Article 15 as it was clearly targeted towards and discriminated against the Muslim girl students on the ground of religion. At the cost of repetition, the Petitioners submit that even by this error, the Hon'ble High Court has acquiesced to the communal tone of the Government Order which the Hon'ble Judges, as citizens of the country were bound to prevent as a part of their fundamental duties under Article 51-A.

U. For that in the instant case Muslim women are being excluded and discriminated against on account of their religion and gender. The Government Order being manifestly communal and

gender - biased, infringes upon the rights of the Muslim girl students guaranteed under Article 15 of the Constitution.

V. For that the impugned judgment and order is in complete conflict with the Doctrine of direct Discrimination recognized by this Hon'ble Court in the case of ***Nitisha v. Union of India,*** **2021 SCC OnLine SC 261**.

Re: ***<u>In violation of Article 19 of the Constitution of India</u>***

W. For that wearing of *Hijab* is not only a question of religious belief but also a matter of personal choice and freedom of expression which are fundamental rights of every citizen of India and therefore need to be protected and respected. That the Hon'ble High Court of Karnataka, being a Constitutional Court, ought to have considered its bounden duty to protect citizens from violation of their fundamental rights. That Article 19(1)(a) along with the freedom of conscience under Article 25(1) were doubly violated by the Government Order dated 05.02.2022 issued by the State of Karnataka, to which the impugned judgement and order accorded validity by not holding it in violation of the fundamental rights of the aggrieved female students.

X. For that in the case of ***National Legal Services Authority (NALSA) v. Union of India*** **(2014) 5 SCC 438**, this Hon'ble

Court has already held that the right to dress as per one's choice is an integral part of the rights enjoyed under Article 19(1)(a). In adopting the test of reasonable accommodation, the impugned judgement and order ought to have relied upon the law laid down by this Hon'ble Court in deciding upon the lack of test of reasonable accommodation which was required before the issuance of the Government Order dated 05.02.2022. The Government Order on this ground also is bad, manifestly erroneous and in violation of the law as laid down by this Hon'ble Court and therefore deserves to be set aside. In the instant case and in view of the fact that education is a national priority, more particularly the education of the girl child, the Hon'ble Court of Karnataka should have given precedence to education of the Muslim girl child belonging to a marginalized and backward community *vis-a-vis* the make belief idea of achieving homogeneity through a false sense of uniformity.

Y. For that in the case of ***Regina v. Headteacher and Governors of Denbigh High School*** **[U2006] UKHL 15**, the *Hijab* was never the concern of the UK House of Lords in as much as it was not of concern to the school authorities at Denbigh High School. On the contrary, the facts of the case clearly point to the efforts made by the school management to allow for a conducive and inclusive environment of learning which included the *Hijab*

practiced by the girl students of Denbigh High School. The bone of contention in Regina's case was with respect to the wearing of a *Jilbab* (a loose piece of clothing that covers the body from head to toe). The Hon'ble High Court of Karnataka has erred in its appreciation of this judgement and has thus misapplied it to justify its erroneous finding on the *Hijab* in the instant case of the Muslim girls exercising their freedom of choice and expression in wearing the *Hijab*.

Z. For that a Muslim woman's choice of dress is an expression of her understanding and level of comfort coupled with privacy in what should not be exposed of herself to another being in as much as it is the freedom of another woman's choice of dress to express her understanding and level of comfort alongside privacy to expose or want to expose of herself to another being. Both rights being a matter of choice, to have to restrict the former right in the name or maintaining a false sense of uniformity, homogeneity, equality and public order while allowing the latter to be expressed devoid of any such restriction is yet another form of discrimination on an individual's freedom of choice and expression that also take from his / her dignity.

AA. For that a harmless piece of cloth worn for centuries by young girls belonging to a marginalized and educationally backward group, has in it of itself, the potency to suddenly create social

unrest, chaos, division and disunity that threatens the very fabric of unity of the society, is nothing short of a far - fetched and deliberate attempt on the part of the State to create social unrest amongst the people along communal lines.

BB. For that the choice of dress is directly linked with a woman's autonomy and her right to exercise her independent judgment in matters personal to her. What the constituent elements of privacy are has been enunciated clearly by this Hon'ble Court in the case of ***K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1** at para 248 hereinbelow whereas in the same citation, Chelameshwar, J very clearly recognizes the *choice of appearance and apparel* to be a facet and *aspect of the right to privacy* at 373 which are reproduced hereinbelow:

> *"248. Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. [Bhairav Acharya, "The Four Parts of Privacy in India", Economic & Political Weekly (2015), Vol. 50 Issue 22, at p. 32.] Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or* ***modes of dress****..."*
>
> *(emphasis supplied)*

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

(emphasis supplied)

In the instant case, while depriving the Muslim girl students of their right to choice of dress, the impugned judgment and order inadvertently also robs them of their autonomy and likewise their dignity which is a natural corollary to autonomy.

Re: ***In violation of Article 21 of the Constitution of India***

CC. For that this Hon'ble Court has, in a catena of decisions rendered under Article 21 of the Constitution, including ***Unni Krishnan, J.P. v. State of A.P.,*** **(1993) 1 SCC 645**, firmly laid down the principle that Article 21 guarantees to every person the right to live a meaningful life with dignity and further that Article 21 does not guarantee animal - like life to every citizen. To lead a meaningful life, one must educate himself / herself. Therefore, the choice of an individual to educate himself / herself is part of

Article 21 of the Constitution and the State cannot throw obstacles in the path of an individual for acquiring education.

DD. For that the Hon'ble High Court of Karnataka vide the impugned judgment and order erroneously observed at para XIV (ii) that: *"the school regulations prescribing the dress code for all the students as one homogeneous class, serve constitutional secularism"*. While holding this, the Hon'ble High Court of Karnataka has ignored the practice of wearing a *Turban* or putting a *Bindi* which has also been in traditional use as an expression of religious identity. The Hon'ble High Court of Karnataka has adopted an arbitrary approach to emphasize that Constitutional secularism will be affected only by the wearing of a *Hijab* which is merely a gear covering the head and does not in any manner affect or reflect any image denting the concept of constitutional secularism. In the instant case, the Muslim girl students were merely wearing a *Hijab* which was in consonance with the color scheme of the uniform of the respective Colleges, which in the view of this Hon'ble Court violated Constitutional secularism.

EE. For that the impugned judgment and order fails to appreciate the *doctrine of a right existing within the penumbra of other fundamental rights*. The right to education is concomitant to fundamental rights and draws inspiration from the preamble and

directive prikнciples of the Constitution. This Hon'ble Court in the *Puttaswamy's* case has already laid down the principles on which an individual's basic right to freedom and equality has to be examined *vis-a-vis* public order. At para 108 of the *Puttaswamy* judgment this Hon'ble Court states:

> *"Over the last four decades, our constitutional jurisprudence has recognized the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realization of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realization of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21)."*

The Hon'ble High Court of Karnataka has failed to appreciate that the fundamental rights including the right to freedom of

speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated; while not only being conscious of his individual dignity but also of being assured protection of the same under Article 21.

FF. For that forcing Muslim women to choose education over faith and their level of comfort *vis-a-vis* privacy is not only a violation of their Right to Education but also their Right to Personal Liberty. In the case of ***Mohini Jain v. State of Karnataka*** **1992 SCC (3) 666**, this Hon'ble Court stated at paras 12, 13, 14 and 19 that:

> *"12. "Right to life" is the compendium expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from the right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education."*
>
> *"14. ... The Preamble promises to secure justice "social, economic and political" for the citizens. ..... The objectives flowing from the Preamble cannot be achieved and shall remain on paper unless the people in this country are educated. ..... It is only education which equips a citizen to participate in*

achieving the objectives enshrined in the Preamble. The Preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The Directive Principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primary education which brings forth the dignity of a man."

"19. ... The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of a large majority which is illiterate."

That in the instant case, the Hon'ble Hight Court of Karnataka instead of quashing the Government Order dated 05.02.2022 and directing the State of Karnataka to ensure protection of the fundamental rights of the Muslim girl students, including their right to wear their *Hijab* and attend College, has erroneously confirmed the unreasoned and unsubstantiated issue of maintaining law and order to confirm the illegal act of the State

of imposing unreasonable regulation and restrictions qua the impugned judgment and order that also violates the rights of the Muslim girl students under Article 21.

GG. For that without prejudice to the contentions and averments made in this Petition, to compel Muslim girl students in the instant case to stop doing what they feel strongly about as being an essential part of their religious practice is not only a violation of their individual right to freedom of conscience and belief and freedom of expression but also their right to life, or rather, their right to live a meaningful life with dignity; which, in the instant case, cannot be achieved without realizing their right to education. The Hon'ble High Court of Karnataka has failed to appreciate the precedent laid down by this Hon'ble Court in Mohini Jain's case, where it has interpreted Article 21 of the Constitution of India to include the right to live with human dignity and all that goes along with it.

Re: ***<u>In violation of Article 25 of the Constitution of India</u>***

HH. For that the Muslim Women who choose to adhere to the tenets of Islam in their individual capacity have the freedom to manifest their identity through their rights that flow from a conjoint reading of Articles 25(1) and 19(1)(a) as has been held

in the case of ***Nadha Raheem v. Central Board of Secondary Education,*** **2015 SCC OnLine Ker 21660**.

II. For that in the case of ***Amnah Bint Basheer v. CBSE,*** **2016 SCC OnLine Ker 41117**, this Hon'ble has held at para 4 that:

> *"4. ... it cannot be ignored that in our country with its varied and diverse religions and customs, it cannot be insisted that a particular dress code be followed failing which a student would be prohibited from sitting for the examinations. This Court is of the opinion that no blanket orders are required in the writ petitions filed by two students, apprehending that they would be prohibited in writing the examination for reason of their wearing a dress conducive to their religious customs and beliefs."*

This Hon'ble Court has, in the above case, observed that the fundamental right for women to choose their attire based on their individual religious beliefs and convictions is protected under Article 25(1) of the Constitution of India and hence, no dress code can be enforced that is against their belief system. The Hon'ble High Court of Karnataka vide the impugned judgment and order however, has given preference to uniformity and homogeneity over education, under a misplaced sense of reform, which is contrary to the precedent set by this Hon'ble Court in a catena of decisions that has always held education in general, and that of the girl child in particular, to be the focal point of

their attention and consideration *vis-a-vis* the attire worn by the student to pursue that education.

JJ. For that in the instant case, the Muslim girl students wearing *Hijab* is an expression of their religio - cultural identity which forms an important contributor to both, their individual as well as societal well - being Under both the articles, it is not necessary for an individual or any citizen of the country for that matter, to prove that to entertain their conscientious belief and put the same into practice he / she should justify the same on the ground that it is an integral part of his / her religion. That such expression does not require an individual woman who, as a citizen of this country, in exercising her autonomy to decide for herself has also to prove or justify that her conscientious belief to wear the *Hijab*, that stems from her individual understanding of its practice, is actually an essential part of the religion. Hence, the doctrine of essential practice of religion has no place and no relevance in the mater of an individual's right to freedom of conscience under Article 25(1) and inter alia plays no part in determination of the rights guaranteed under this Article.

KK. For that the question of essential religious practice, if at all, can be considered in a situation where, in the name of reform of religion under Article 25(2), a law is made or any rule having the

force of law is made and not otherwise. Be that as it may, even otherwise, and without prejudice to the averments and contentions made in this Petition, *Hijab* is an essential religious practice and integral to the faith of a practicing Muslim Woman. In light thereof, hereto annexed and marked as Annexure P-2, is a note on the essentiality of the practice of *Hijab* by Muslim Women professing the Islamic faith, in the light of the Holy Qur'an and the Hadith (sayings and practices) of the Prophet, peace be upon him.

LL. For that Article 25(1) of the Constitution, guarantees freedom of conscience and freedom to profess, practice and propagate religion subject to public order, morality and health and to the other provisions of Part-III of the Constitution. That such freedom can be restrained only by law and such restraint on the rights guaranteed under Article 25(1) must be reasonable. In the instant case, there is no enacted law on the subject. The Government Order which does not prescribe any uniform but directs the CDC to prescribe uniform has no force of law. Such direction can, at best, be described as mere executive instructions. However, the Hon'ble High Court of Karnataka vide the impugned judgment and order, has erroneously equated such executive instructions to having the force of law.

Re: ***<u>In Violation of the Doctrine of Proportionality</u>***

MM. For that when the rights under Articles 19(1)(a), 21 and 25 are exercised, the test of proportionality comes into play in view of certain restrictions / regulations that the rights under these Articles are subject to. The impugned judgement and order fails to take into account that the principle of reasonable accommodation has a direct relevance for applying the Doctrine of Proportionality in the bringing about the spirit off accommodation in this matter.

NN. For that as stated in the aforesaid paragraphs, the doctrine of proportionality and the principle of accommodation shall enable education to be a great leveler and the best tool to achieve economic and social mobility, inclusion and equality for all. That it enjoins that any education policy adopted by the State must incorporate the local and global needs of the country with respect for and deference to the rich diversity in culture prevalent in India. That the education policy must aim at producing engaged, productive and contributing citizens for building an equitable, inclusive and plural society as envisaged by the Constitution by imbibing in students the respect for diversity. While applying the doctrine of proportionality, the same cannot be ignored by Judiciary.

OO. For that the Hon'ble High Court of Karnataka in examining the rights of the Muslim girl students under Articles 19(1)(a), 21 and 25(1) has ignored or rather failed to strike a proper balance between the Fundamental Rights of the Muslim girl students under Articles 19(1)(a), 21 and 25(1) and Fundamental Duties under Article 51-A while imposing restrictions on them. In lieu of the fact that education is a national priority, more so the education of the girl child, the Hon'ble High Court of Karnataka could have easily accommodated the wearing of *Hijab*, especially since the wearing of *Hijab* by Muslim Women was and always has been the practice prevailing in educational institutions across various States of India. Even in the instant case, the Muslim girl students had been wearing the *Hijab* since the time of their admission, as was and has been the case with their fellow seniors and alumni from the College.

Re: ***In violation of Article 29 of the Constitution of India***

PP. For that without prejudice to the above averments, the Hon'ble High Court of Karnataka at Pg. IX (vi) of the impugned Judgment and order in stating that *"at the most the practice of wearing this apparel may have something to do with culture but certainly not with religion."*, has given little or no significance to the importance of culture, its link with religion and the role it plays in shaping the identity and personality of an individual

student. The observation made by the Hon'ble Court of Karnataka qua the impugned judgment and order is totally inconsistent with Constitution provisions that provide for preservation of diverse culture that bind the unique fabric of India.

QQ. For that this Hon'ble Court has, in the case of ***Jagdev Singh Sidhanti v. Pratap Singh Daulta, AIR 1965 SC 183***, held that the right under Article 29(1) of the Constitution that provides for Protection of the Interests of Minorities is an absolute right and is not subject to any restrictions whatsoever. That the *Hijab* worn by Muslim women is also protected under Article 29(1) of the Constitution.

RR. For that the Hon'ble High Court of Karnataka failed to recognize that Muslim Women and in the instant case the Muslim girl students need special protection of their religio-cultural rights on account of the fact that they are subject to dual discrimination that stems from their religious identity as well as the gender bias they face as women.

SS. For that Article 29(2) of the Constitution of India states *"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them"*.

In the present case, the Muslim girl students are being denied admission in educational institutions solely on the ground of them practicing *Hijab* as per their religion which is in complete derogation of Article 29(2).

Re: ***<u>In violation of the Fundamental Duties under Article 51-A</u>***

TT. For that the impugned judgement and order passed by the Hon'ble High Court of Karnataka is contrary to the constitutional principles enshrined in Article 51-A of the constitution that is reflective of the ethos set forth in its preamble. That the fundamental duties under Article 51-A are not merely platitudes but are binding on all the citizens of the country. Since all the Hon'ble Judges at different levels of judicial hierarchy are citizens of India, they are also equally bound by the obligatory fundamental duties imposed on them under Article 51-A. Therefore, the judiciary as a whole in our country cannot pass any verdict / judgement ignoring or misapplying the fundamental duties. Any judicial power exercised by the judicial or quasi - judicial officer that is in conflict with his fundamental duty, is necessarily void. The impugned judgement and order passed by the Hon'ble High Court of Karnataka is in flagrant violation of the fundamental duties enshrined under Article 51-A and is therefore is an exercise of judicial power in breach of fundamental duties; such

impugned judgment and order is void and is liable to be set aside by this Hon'ble Court.

UU. For that the Hon'ble High Court of Karnataka, has turned a blind eye to the harassment faced by the Muslim girl students, whose only fault is that they chose to not act against what they hold onto strongly and asserted their right to have a meaningful life that flows from their freedom of conscience and dignity and the autonomy to express and shape their identity for themselves.

VV. For that the culture adopted at the school through its participants including the principal, teachers, administrators, counsellors and students are not sensitized to the requirements of all students in terms of the notions of inclusion and equity, and the respect, dignity, and privacy of all persons. That adoption of such an educational culture is necessary to provide students with the best pathway to empower themselves at in individual level and, in turn, be an instrument of change in enabling the transformation of the society to act responsibly towards its most vulnerable citizens, in the instant case the Muslim girl students. That the Hon'ble High Court of Karnataka, vide page 123 and 124 of the impugned judgment and order, has made certain irrelevant and unwarranted observations that derogates the identity of a woman in general and Muslim women in particular. That the Hon'ble High Court of Karnataka, under a misplaced sense of reform, has

wrongly assumed that women who wear the *Hijab* do so out of compulsion rather than of their own free will. That such an assumption stems from the false propaganda started by the ill - informed feminist movements wearing the label of liberalism. That the dignity of a woman, her capacity to work as well as her individual accomplishments have no connection whatsoever with the attire she chooses to wear. That however, the propaganda launched by such ill - informed feminist movements is picked up by vested interests who want to spread Islamophobia. That in the process, Muslim women wearing *Hijab* are judged and subjected to slanders and lies, in exactly the same way as the Muslim girl students in the instant have been subjected to.

That based on this misplaced assumption, the Hon'ble High Court of Karnataka qua the impugned judgment and order has, with due respect, taken it upon themselves to spearhead a reform that can enable Muslim women to break away from the imaginary shackles of this so - called regressive practice. That such an assumption on the part of the Hon'ble High Court of Karnataka, in it of itself speaks of their lack of understanding of a Muslim woman's idea of empowerment and liberty, over and above their lack of appreciation for how a Muslim woman identifies with and expresses herself through the *Hijab*.

Re: ***The Impugned Judgment* and Order *is regressive in mind, thought and future implication***

WW. For that the impugned judgment and order is regressive in its approach towards the issue of *Hijab* and such impugned judgment and order would only further marginalize and push young Muslim Women away from educational institutions. That the education of the Muslim girl students in the instant case, and the likes thereof, is bound to suffer, leaving hundreds, if not thousands of Muslim Women in a state of emergency. The impugned judgment and order is not only an assault on the protection of a Muslim woman's right to equality, freedom of conscience and expression and dignity that are enjoyed by Muslim women who practice the *Hijab* but also a huge setback for Muslim women's right to education and empowerment.

XX. For that the Government Order tramples upon and negates the already existing rights enjoyed by Muslim Women. That women in general, and Muslim Women in particular, are under - represented in society and their exclusion only gets amplified further when faced with other inequities such as those faced by the Muslim girl students in the instant case. That women in general make up for a major portion of a disadvantaged group in society suffering from socio - economic disparity that clearly reflects in their inability to access education easily. That Muslim

women in particular are in double jeopardy on account of the additional discrimination they face due to their religious identity; education thus becoming even more inaccessible for them.

YY. For that the Hon'ble High Court of Karnataka has failed to take into consideration the progressive constitutional principles of equity and inclusion. That in the instant case, the entire College administration led by the principal himself have set a very sorry example for their students as to what a good and safe school culture ought to be, by taking upon themselves the responsibility to discriminate against, insult and humiliate the vulnerable Muslim girl students who naively looked to their Principal, teachers and other seniors as mentors responsible to guide them as well as other fellow students in shaping their personality and overall development as responsible citizens of this country.

ZZ. For that the *Hijab* is a symbol of empowerment for a practicing Muslim woman who exercises her right to individual freedom of conscience and expression in cherishing what she holds valuable viz. her honor, dignity and more importantly her autonomy to decide for herself her identity. Qua the actions of College administration through the CDC, the Government Order and thereafter the impugned judgment and order, the *Hijab* has been weaponized to deny young Muslim women their very basic right to education under the guise of a misplaced sense of reform. The

immediate effect of the impugned judgment and order however is not only regressive for women in general but also strives to wash away any and every bit of effort that the Petitioners have made over the last few decades, in their struggle for reform within the Muslim community; Muslim women being the direct beneficiaries of such reforms. That the impugned judgment and order negates the positive and progressive results achieved by the Petitioners who have been working at the grass root level to empower Muslim women and young Muslim girls in particular, through the medium of education. That in addition to defeating the purpose of the Act, the objectives of the State and in turn that of the Centre which make Education a National Priority, the impugned judgment and order also serves to defeat the objectives of the Petitioners *viz.*, to uplift and improve the conditions of Muslim women in society by enabling and empowering them *through the medium of education*, to break away from the shackles that were holding them down and making them vulnerable, weak and a disadvantaged lot with little or no contribution to society.

6. **GROUNDS FOR INTERIM RELIEF**

FOR THAT the Petitioners have demonstrated that the Petitioners submit that the Petitioners have a good case on merits and are likely to succeed before this Hon'ble Court. Therefore, it is humbly submitted

that the Petitioners be granted interim relief, pending the adjudication of the present Special Leave Petition.

7. **MAIN PRAYER**

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

a) grant Special Leave to appeal against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022; and/or

b) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF**

a) grant *ex-parte ad-interim* stay of the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022; and/or

b) grant *ex-parte ad-interim* stay of the Government Order dated 05.02.2022 issued by the Government of Karnataka; and/or

c) direct the Respondents to permit the girl students to wear their Hijab inside the school/college complex; and/or

d) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Petitioners

DRAWN BY: -
Mr. Ejaz Maqbool, Advocate
Ms. Rashda S. Ainapore, Advocate
Ms. Akriti Chaubey, Advocate
Mr. Mohammed Nawaz Haindaday, Advocate
Mr. Muhammad Isa M. Hakim, Advocate
Mr. Saif Zia, Advocate

Drafted on: 04.04.2022

New Delhi
Filed on: 07.04.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon 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 the questions of law raised in the Petition. This certificate is given on the basis of the instructions given by the Petitioners/person authorized by the Petitioners whose affidavit is filed in support of the Special Leave Petition.

EJAZ MAQBOOL
Advocate for the Petitioners

New Delhi
Dated: 07.04.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. ...PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Atherunnisa, aged about 50 years, D/o. K. Masood Ahmed, having my registered office at: 10-2-249/1/1, Flat No. 301, Mahmud Apartments, Shantinagar, Hyderabad, Telangana-500028 do hereby solemnly affirm and state as under:-

1. That I am the Joint Secretary and duly authorized signatory of the Petitioner No.1 in the above-mentioned Special Leave Petition and as such I am well conversant with the facts and circumstances of the case and competent to swear the present affidavit on behalf of both the Petitioners.

2. That I have gone through a copy of the Synopsis and List of Dates running from pages B to N and a copy of the Special Leave Petition from paragraphs 1 to 8 running from pages 130

Mohd. Muzibulla Baig
NOTARY APPOINTED BY GOVT. OF A.P. INDIA GOMS NO. 1479/2010
Hyderabad, T.S.
04/04/2022

to 168 and I state that the contents thereof are true and correct to my knowledge and belief.

3. That I have gone through copies of the Interlocutory Applications and state that the contents thereof are true and correct to the best of my knowledge and belief.

4. That the annexures annexed to the present Special Leave Petition are true and correct copies of their respective originals.

DEPONENT

VERIFICATION

Verified at Hyderabad, Telangana on this 04th day of April, 2022 that the contents of the above Affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

Mohd. Muzibulla Baig NOTARY APPOINTED BY GOVT. OF A.P. INDIA GOMS NO: 1479/2010 Hyderabad, T.S. NOTARIAL

ATTESTED
Mohd. Muzibulla Baig
ADVOCATE
HIGH COURT OF A. P.
NOTARY
(Appointed by Govt. of A. P)
GOMS NO: 1479/2010
Tolichowki, Hyderabad - 500 00
04/04/2022

APPENDIX – (I)

THE CONSTITUTION OF INDIA, 1949

Article 14. Equality before law.

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to;

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 19. Protection of certain rights regarding freedom of speech etc.

(1) All citizens shall have the right,

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted;

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and

integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Article 21. Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 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.

Article 26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right;

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law

Article 29. Protection of interests of minorities.

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30. Right of minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is

under the management of a minority, whether based on religion or language.

Article 39(f). Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing.

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 51A. Fundamental duties.

It shall be the duty of every citizen of India

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

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

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

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

(e) 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;

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

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

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

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

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement PART V THE UNION CHAPTER I THE EXECUTIVE The President and Vice President.

---

226. Power of High Courts to issue certain writs. -

---

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or , as the case may be, the expiry of the aid next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32.

Article 227. Power of superintendence over all courts by the High Court. –

---

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may: -

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

// TRUE COPY //

APPENDIX – (II)

THE KARNATAKA EDUCATION ACT, 1983

Section 7. Government to prescribe curricula, etc.-

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

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

(b) the duration of such course;

(c) the medium of instruction;

(d) the scheme of examinations and evaluation;

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

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

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

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

(i) such other matters as are considered necessary.

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

(a) moral and ethical education;

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

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

(d) innovative, creative and research activities;

(e) promotion of national integration;

(f) promotion of civic sense; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) promotion of values including moral values; and

(v) development of good attitudes towards further learning.

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

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

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

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

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

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

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

(5) In every recognised educational institution,-

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

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

Section 133. Powers of Government to give directions.-

---

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

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

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

Section 142. Removal of difficulties.-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such provisions not inconsistent with the said provisions as appear to them to be necessary or expedient to remove the difficulty.

Section 143. Delegation.-

The State Government may by notification in the official gazette, delegate all or any powers exercisable by it under this Act or rules made thereunder, in relation to such matter and subject to such conditions, if any as may be specified in the direction, to be exercised also by such officer or authority subordinate to the State Government as may be specified in the notification.

// TRUE COPY //

APPENDIX – (III)

THE KARNATAKA EDUCATIONAL INSTITUTIONS (CLASSIFICATION, REGULATION AND PRESCRIPTION OF CURRICULA, ETC.) RULES, 1995

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

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

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

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

// TRUE COPY //

ANNEXURE P–1

TS00AA 01448226

GOVERNMENT OF TELANGANA

REGISTRATION AND STAMPS DEPARTMENT

THE REGISTRAR OF SOCIETIES

HYDERABAD (SOUTH)

Certificate of Registration

(No : 350 of 2016)

I hereby certify that 'SHARIA COMMITTEE FOR WOMEN' , 10-2-249/1/1 Flat No 301/ Mahmud Apts/ Shantinagar/ Hyderabad/ Telangana/ India/ on this day registered under the Andhra Pradesh Societies Registration Act., 2001

SEAL OF REGISTRAR OF SOCIETIES HYDERABAD (SOUTH) REGISTRATION DISTRICT TELANGANA

REGISTRAR OF SOCIETIES

HYDERABAD (SOUTH)

HYDERABAD (SOUTH)

Date : 6/Apr/2016

Signature valid

Digitally signed by A RAGHU BABU Date: 2016.04.06 16:45:35 IST

// TRUE COPY //

ANNEXURE P–2

NOTE ON *HIJAB* BEING AN ESSENTIAL RELIGIOUS PRACTICE INTEGRAL TO ISLAM FOR MUSLIM WOMEN IN GENERAL AND IN THE INSTANT CASE, THE MUSLIM GIRL - STUDENTS.

Without prejudice to all the contentions raised and averments made in the Petition, the following note summarizes the relevant religious texts from the Holy Qur'an and Ahadith [Sunnah (the precepts, actions and sayings) of the Prophet Muhammad *peace be upon him*] that provide for the Hijab being an essential religious practice integral to Islam and believed upon by the Muslims:

I seek refuge in Allah from the Shaitan the accursed.
In the Name of Allah Most Beneficent Most Merciful.

1. The judicially known, recognized and accepted sources of Islam / Muslim Law are as follows:

   (i) The Qur'an (the revealed word of Allah (Sub-haanahu-Wa-Taala) (SWT for short),

   (ii) The Hadith / Sunnah (the precepts, actions and sayings of the Prophet Muhammad, peace be upon him (p.b.u.h.),

   (iii) The Ijma (the concurrence and consensus) of the Muslim Ummah (Community) at all times particularly that of the Sahaabas (Companions of the Prophet p.b.u.h.) (May Allah (SWT) be pleased with them all) of the Prophet

p.b.u.h., the first generation and thereafter of the learned Imams and Religious Scholars; and

(iv) The Qiyas (the analogical deductions made by the learned Imams and Religious Scholars).

2. The said sources of Islam are also the sources to understand Islam, the essentials of Islam and the essentials to Islam.

3. The first source is **the Holy Qur'an, the word of Allah (SWT) as revealed upon Prophet p.b.u.h.**, particularly to explain religion and religious beliefs, practices, acts, laws, etc. to the believers (Muslims).

4. **Though the Ahadith is considered to be the second and separate source,** for the believers, the Qur'an and the Ahadith are inseparable since both are revealed by Allah (SWT) and have to be read conjointly i.e., the Ayah / verses of the Holy Qur'an being read in light of the Ahadith of the Prophet p.b.u.h. The references for the Ahadith also being revealed from the Holy Qur'an are the following verses and there are many such other and similar verses:

(i) Had not the Grace of Allah and His Mercy been upon you (O Muhammad (p.b.u.h.)), a party of them would certainly have made a decision to mislead you, but (in fact) they mislead none except their own selves, and no harm can they do to you in the least. ***Allah has sent down to you the***

Book (The Qur'an), and Al-hikmah (Islamic laws, knowledge of legal and illegal things i.e., the Prophet's Sunnah - legal ways), and taught you that which you knew not. *And Ever Great is the Grace of Allah unto you (O Muhammad (p.b.u.h.)). (An-Nisaa, Chapter #4, Verse #113)*

(ii) *This is (part) of* ***Al-hikmah (wisdom, good manners and high character) which <u>your Lord has revealed to you</u> (O Muhammad (p.b.u.h.))****. And set not up with Allah any other ilah (god) lest you should be thrown into Hell, blameworthy and rejected, (from Allah's Mercy). (Al-Israa, Chapter #17, Verse #39)*

(iii) ***He it is Who sent among the unlettered ones a Messenger (Muhammad (p.b.u.h.))*** *from among themselves, reciting to them His Verses, purifying them (from the filth of disbelief and polytheism),* ***and teaching them the Book*** *(this Qur'an, Islamic laws and Islamic jurisprudence)* ***and Al-hikmah*** *(As-Sunnah: legal ways, orders, acts of worship of Prophet Muhammad (p.b.u.h.)). And verily, they had been before in manifest error; (Al-Jumu'a, Chapter #62, Verse #2)*

5. Al-hikmah as mentioned in Qur’an is what is Hadith and Sunnah, i.e., second source of Islam and Muslim Law. Therefore, for the believers, both the Qur’an and the Ahadith are revealed words of Allah (SWT) and the adherence and following

of both is mandatory whereas non - adherence and not following both is forbidden, and sinful.

6. Further, the Qur'an also ordains that whatever is revealed, is as desired by Allah (SWT) and not as desired by the Prophet Muhammad (p.b.u.h.) and the Prophet Muhammad (p.b.u.h.) also cannot change it and the Prophet Muhammad (p.b.u.h.) explains it as inspired by Allah (SWT) and follows it as ordained by Allah (SWT). The same is as revealed in the following verses of the Qur'an:

(i) *And when Our clear Verses are recited unto them, those who hope not for their meeting with Us, say: "Bring us a Qur'an other than this, or change it." Say (O Muhammad): **"It is not for me to change it on my own accord; I only follow that which is revealed unto me**. Verily, I fear the torment of the Great Day (i.e., the Day of Resurrection) if I were to disobey my Lord."* ***(Yunus, Chapter #10, Verse #15)***

(ii) *With clear signs and Books (We sent the Messengers). And We have also **sent down unto you** (O Prophet Muhammad (PBUH)) the Dhikr [reminder and the advice (i.e., the Qur'an)], **that you may explain clearly to men what is sent down to them**, and that they may give thought.* ***(An-Nahl, Chapter #16, Verse #44)***

(iii) *Say (O Muhammad (p.b.u.h.)): "I am not a new thing among the messengers (of Allah i.e. I am not the first messenger) nor do I know what will be done with me or with you.* ***I only follow that which is revealed to me****, and I am but a plain warner".* ***(Al-Ahqaf, Chapter #46, Verse #9)***

(iv) *By the star when it goes down (or vanishes). Your companion (Muhammad (p.b.u.h.)) has neither gone astray nor has erred.* ***Nor does he speak of (his own) desire. It is only a Revelation revealed. (Al- Najam, Chapter #53, Verse #1-4)***

7. The aforesaid is the basis on which the believers believe that both the Qur'an and the Ahadith are revealed and therefore the adherence and following of them is mandatory, whereas non - adherence and not following them is forbidden and sinful.

8. In furtherance to the aforesaid it is also the command in **the Holy Qur'an to take Prophet Muhammad (p.b.u.h.) as an example to follow (p.b.u.h.).**

(i) *Say, [O Muhammad (p.b.u.h.)], "****If you should love Allah, then follow me****, [so] Allah will love you and forgive you your sins. And Allah is Forgiving and Merciful.*" **(Aali Imran Chapter #3, Verse #31)**

(ii) ***Indeed, in the Messenger of Allah (Muhammad (p.b.u.h.)), you have a good example to follow*** *for him who hopes for (the Meeting with) Allah and the Last Day, and remembers Allah much*. (**Al-Ahzaab, Chapter #33, Verse #21**)

9. Further it is also command in **Qur'an to take what the Prophet Muhammad (p.b.u.h.) gives, i.e., to accept, follow and act accordingly and to refrain from what the Prophet Muhammad (p.b.u.h.) commands to refrain from, i.e., to avoid the same.**

(i) *And **whatsoever** the Messenger (Muhammad p.b.u.h.) **gives you, take it**, and **whatsoever** he **forbids you, abstain (from it)**, and fear Allah. Verily, Allah is Severe in punishment.* ***(Al-Hashr Chapter #59, Verse #7)***

10. Further the Qur'an also ordains that both Allah (SWT) and **the Prophet Muhammad (p.b.u.h.) have to be obeyed**.

(i) *O you who believe! **Obey Allah and obey the messenger (Muhammad (p.b.u.h.))**, and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (Muhammad (p.b.u.h.), if you believe in Allah and in the Last Day. That is better and more suitable for final determination*. (**An-Nisaa, Chapter #4, Verse #59**)

(ii) ***He who obeys the Messenger (Muhammad (p.b.u.h.)), has indeed obeyed Allah***, *but he who turns away, then we have not sent you (O Muhammad (p.b.u.h.)) as a watcher over them.* (**An-Nisaa, Chapter #4, Verse #80**)

(iii) ***And obey Allah and the Messenger (Muhammad (p.b.u.h.))*** *and beware (of even coming near to drinking or gambling or Al-Ansab, or Al-Azlam, etc.) and fear Allah. Then if you turn away, you should know that it is Our Messenger's duty to convey (the Message) in the clearest way.* **(Al-Maaida, Chapter #5, Verse #92)**

(iv) *They ask you (O Muhammad (p.b.u.h.)) about the spoils of war. Say: "The spoils are for Allah and the Messenger." So fear Allah and adjust all matters of difference among you, and* ***obey Allah and His Messenger (Muhammad (p.b.u.h.)), if you are believers***. (**Al-Anfaal, Chapter #8, Verse #1**)

(v) ***O you who believe! Obey Allah and His Messenger***, *and turn not away from him (i.e., the Messenger Muhammad (PBUH)) while you are hearing*. (**Al-Anfaal, Chapter #8, Verse #20**)

(vi) *And* ***obey Allah and His Messenger***, *and do not dispute (with one another) lest you lose courage and your strength departs, and be patient. Surely, Allah is with those who*

are As-Sabirun (the patient). (**Al-Anfaal, Chapter #8, Verse #46**)

(vii) And stay in your houses, and do not display yourselves like that of the times of ignorance, and perform As-Salat (Iqamat-as-Salat), and give Zakat and ***obey Allah and His Messenger (Muhammad p.b.u.h.)****. Allah wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet Muhammad (p.b.u.h.)), and to purify you with a thorough purification.* (**Al-Ahzaab, Chapter #33, Verse #33**)

(viii) ***Obey Allah, and obey the Messenger (Muhammad (p.b.u.h.)****; but if you turn away, then the duty of Our Messenger is only to convey (the Message) clearly.* (**At-Taghaabun, Chapter #64, Verse #12**)

11. Further it is also command in **Qur'an to obey Allah (SWT) and the Prophet Muhammad (p.b.u.h.)** and **it is also revealed** that the same will be **rewarded.**

(i) ***And obey Allah and the Messenger (Muhammad (p.b.u.h.))*** *that you may* ***obtain mercy****.* (**Aal-i-Imraan, Chapter #3, Verse #132**)

(ii) These are the limits (set by) Allah (or ordainments as regards laws of inheritance), and ***whosoever obeys Allah and His Messenger (Muhammad (p.b.u.h.)) will be***

admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success. (**An-Nisaa, Chapter #4, Verse #13**)

(iii) ***And whoso obey Allah and the Messenger (Muhammad (p.b.u.h.)), then they will be in the company of those on whom Allah has bestowed His Grace, of the Prophets, the Siddiqun (those followers of the Prophets who were first and foremost to believe in them, like Abu Bakr As-Siddiq (May Allah SWT be pleased with him), the martyrs, and the righteous. And how excellent these companions are****!* (**An-Nisaa, Chapter #4, Verse #69**)

(iv) The believers, men and women, are Auliya' (helpers, supporters, friends, protectors) of one another; they enjoin (on the people) Al-Ma'ruf (i.e. Islamic Monotheism and all that Islam orders one to do), and forbid (people) from Al-Munkar (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden); they perform As-Salat (Iqamat-as-Salat), and give the Zakat, ***and obey Allah and His messenger. Allah will have His Mercy on them.*** *Surely Allah is All-Mighty, All-Wise.* (**At-Tawba, Chapter #9, Verse #71**)

*(v) Say: "****obey Allah and obey the Messenger****, but if you turn away, he (****Messenger*** *Muhammad (p.b.u.h.)) is only*

responsible for the duty placed on him (i.e., to convey Allah's Message) and you for that placed on you. ***If you obey him, you shall be on the right guidance****. The Messenger's duty is only to convey (the message) in a clear way (i.e., to preach in a plain way)."* (**An-Noor, Chapter #24, Verse #54**)

(vi) *And* ***whosoever obeys Allah and His Messenger (Muhammad (p.b.u.h.))****, fears Allah, and keeps his duty (to Him),* ***such are the successful****.* (**An-Noor, Chapter #24, Verse #52**)

(vii) *And perform As-Salat (Iqamat-as-Salat), and give Zakat and* ***obey the Messenger (Muhammad (p.b.u.h.)) that you may receive mercy (from Allah)****.* (**An-Noor, Chapter #24, Verse #56**)

(viii) *He will direct you to do righteous good deeds and will forgive you your sins. And* ***whosoever obeys Allah and His Messenger (p.b.u.h.)), he has indeed achieved a great achievement*** *(i.e., he will be saved from the Hell-fire and will be admitted to Paradise).* (**Al-Ahzaab, Chapter #33, Verse #71**).

(ix) *O you who believe!* ***Obey Allah, and obey the messenger (Muhammad (p.b.u.h.))*** *and* ***render not vain your deeds.*** (**Muhammad, Chapter #47, Verse #33**)

(x) *No blame or sin is there upon the blind, nor is there blame or sin upon the lame, nor is there blame or sin upon the sick (that they go not for fighting). And* ***whosoever obeys Allah and His messenger (Muhammad (p.b.u.h.)), He will admit him to Gardens beneath which rivers flow (Paradise)****; and whosoever turns back, He will punish him with a painful torment.* (**Al-Fath, Chapter #48, Verse #17**)

(xi) *The bedouins say: "We believe." Say: "You believe not but you only say, 'We have surrendered (in Islam),' for Faith has not yet entered your hearts. But* ***if you obey Allah and His messenger (p.b.u.h.), He will not decrease anything in reward for your deeds****. Verily, Allah is Oft-Forgiving, Most Merciful."* (**Al-Hujuraat, Chapter #49, Verse #14**).

12. As against the aforesaid it is also command in **Qur'an to avoid disobedience of Allah SWT and the Prophet Muhammad (p.b.u.h.) and the punishment for the same.**

(i) *Say (O Muhammad (Peace be Upon Him)): "****Obey Allah and the messenger (Muhammad (p.b.u.h.))****." **But if they turn away, then Allah does not like the disbelievers.*** (**Aal-i-Imraan, Chapter #3, Verse #32**)

(ii) *And* ***whosoever disobeys Allah and His messenger (Muhammad (p.b.u.h.))****, and transgresses His limits,* ***He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment****.* (**An-Nisaa, Chapter #4, Verse #14**)

(iii) *On that day those who disbelieved and* ***disobeyed the Messenger (Muhammad (p.b.u.h.)) will wish that they were buried in the earth****, but they will never be able to hide a single fact from Allah.* (**An-Nisaa, Chapter #4, Verse #42**)

(iv) ***And whoever contradicts and opposes the Messenger (Muhammad (p.b.u.h.))*** *after the right path has been shown clearly to him,* ***and follows other than the believers' way****, We shall keep him in the path he has chosen,* ***and burn him in Hell - what an evil destination!*** (**An-Nisaa, Chapter #4, Verse #115**).

(v) *This is because they defied and disobeyed Allah and His Messenger. And* ***whoever defies and disobeys Allah and His Messenger, then verily, Allah is Severe in punishment****.* (**Al-Anfaal, Chapter #8, Verse #13**)

(vi) ***On the Day when their faces will be turned over in the Fire****, they will say: "****Oh, would that we had obeyed Allah***

and obeyed the messenger (Muhammad (p.b.u.h.))." (**Al-Ahzaab, Chapter #33, Verse #66**)

(vii) *No blame or sin is there upon the blind, nor is there blame or sin upon the lame, nor is there blame or sin upon the sick (that they go not for fighting). And* ***whosoever obeys Allah and His messenger (Muhammad (p.b.u.h.)),*** *He will admit him to Gardens beneath which rivers flow (Paradise); and* ***whosoever turns back, He will punish him with a painful torment***. (**Al-Fath, Chapter #48, Verse #17**)

(viii) *"(Mine is) but conveyance (of the truth) from Allah and His Messages (of Islamic Monotheism), and* ***whosoever disobeys Allah and His messenger, then Verily, for him is the Fire of Hell, he shall dwell therein forever***." (**Al-Jinn, Chapter #72, Verse #23**).

13. Further, it is also command in **Qur'an to act only as per the decree/judgment of the Allah and Prophet Muhammad (p.b.u.h.) and not otherwise.**

(i) ***But no, by your Lord, they can have no Faith, until they make you (O Muhammad (p.b.u.h.)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.*** (**An-Nisaa, Chapter #4, Verse #65**)

(ii) ***The only saying of the faithful believers, when they are called to Allah (His Words, the Qur'an) and His Messenger (Muhammad (p.b.u.h.)), to judge between them****, is that they say: "We hear and we obey."* ***And such are the successful (who will live forever in Paradise)****.* (**An-Noor, Chapter #24, Verse #51**)

(iii) ***It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed into a plain error.*** (**Al-Ahzaab, Chapter #33, Verse #36**)

14. Therefore, from the aforesaid commandments, it is ex-facie evident and apparent that as per the Qur'an the believers (Muslims) are repeatedly commanded to obey Allah (SWT) and the Prophet Muhammad (p.b.u.h.) avoid any disobedience to either of them. The said repetition and re - emphasizing are to ordain for the believer the utmost significance of the same and simultaneous perils of the same. Consequently, it is an essential and integral article of faith for believers (Muslims) to do so for his/her salvation and success in this life and the hereafter. It is also pertinent to state and mention that the said understanding, interpretation and exegesis of the aforesaid commandments and other such commandments is unanimous, continuous, and

consistent belief of Muslim Ummah (Community), without any difference of opinion.

15. Furthermore, the third source of Islamic / Muslim Law is "Ijma" that is consensus and concurrence of the Muslim Ummah. The best Ijma is of the Sahaabas i.e., Companions of the Prophet Muhammad (p.b.u.h.). The same is because of the following command of Qur'an:

(i) ***And whoever contradicts and opposes the Messenger (Muhammad (p.b.u.h.))*** *after the right path has been shown clearly to him,* ***and follows other than the believers' way****, We shall keep him in the path he has chosen,* ***and burn him in Hell - what an evil destination*****!** (**An-Nisaa, Chapter #4, Verse #115**).

(ii) *And the foremost to embrace Islam of the Muhajirun (those who migrated from Makkah to Al-Madinah) and the Ansar (the citizens of Al-Madinah who helped and gave aid to the Muhajirun) and* ***also those who followed them exactly (in Faith)****. Allah is well-pleased with them as they are well-pleased with Him. He has prepared for them Gardens under which rivers flow (Paradise), to dwell therein forever. That is the supreme success.* (At-Tauba, Chapter 9, Verse 100).

16. In the aforesaid backdrop, i.e., the commandments of the Allah (SWT) in Qur'an, Hadith of the Prophet Muhammad (p.b.u.h.) as recorded in the form of precepts, sayings and actions of Prophet Muhammad (p.b.u.h.) and the *Ijma* of the Sahaabas- the Companions of the Prophet Muhammad (p.b.u.h.), the issue of *Hijab* is mentioned hereinafter.

17. As mentioned in the **verses of the Qur'an:**

(i) *And stay in your houses,* ***and do not display yourselves like that of the times of ignorance,*** *and perform As-Salat (Iqamat-as-Salat), and give Zakat and obey Allah and His messenger. Allah wishes only to remove Ar-Rijs (evil deeds and sins) from you, O members of the family (of the Prophet Muhammad (p.b.u.h.)), and to purify you with a thorough purification.* (**Al-Ahzaab, Chapter #33, Verse #33**)

(ii) *O Prophet! Tell your wives and your daughters and* ***the women of the believers to draw their cloaks(veils) all over their bodies*** *(i.e., screen themselves completely). That will be better,* ***that they should be known*** *(as free respectable women) so as not to be annoyed. And Allah is Ever Oft-Forgiving, Most Merciful. (Al-Ahzaab, Chapter #33, Verse #59)*

(iii) *And* ***tell the believing women*** *to lower their gaze (from looking at forbidden things), and protect their private*

parts (from illegal sexual acts) ***and not to show off their adornment except only that which is apparent*** *(like both eyes for necessity to see the way, or outer palms of hands or one eye or dress like veil, gloves, head-cover, apron, etc.),* ***and to draw their veils all over Juyubihinna*** *(i.e. their bodies, necks and bosoms)* ***and not to reveal their adornment*** *except to their husbands, or their fathers, or their husband's fathers, or their sons, or their husband's sons, or their brothers or their brother's sons, or their sister's sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children who have no sense of feminine sex.* ***And let them not stamp their feet so as to reveal what they hide of their adornment****. And all of you beg Allah to forgive you all, O believers, that you may be successful. (An-Noor, Chapter#24, Verse#31)*

18. The above verses of the Qur'an are **explained by the injunctions of Prophet Muhammad (p.b.u.h.)** as follows **in Ahadith**:

(i) *Aisha (may Allah SWT be pleased with her) reported: Asma' bint Abi Bakr entered the house of the Messenger of Allah, peace and blessings be upon him, while she was wearing a thin garment and she showed it to him. The Prophet said, "**O Asma, when a woman reaches the age***

of maturity, it is not proper for her to show anything but this and this, *" and the Prophet pointed to his face and hands*.

Source: Sunan Abī Dāwūd 4104

(ii) *Umm Salamah reported: While we were with the Messenger of Allah, peace and blessings be upon him, Ibn Maktum was given permission to enter. He entered and* ***that was after the command to veil***. *The Prophet said, "****Veil yourselves from him****." I said, "O Messenger of Allah, is he not blind? He cannot see or recognize us." The Prophet said, "****Are you blind such that you cannot see him****?"*

Source: Sunan al-Tirmidhī 2278

(iii) *Anas ibn Malik reported: The Messenger of Allah, peace and blessings be upon him, said, "****Were a woman among the women of Paradise to gaze upon the earth,*** *she would light up the space between them and fill it with the scent of perfume.* ***Her veil is better than the world and everything in it****."*

Source: Ṣaḥīḥ al-Bukhārī 6199

(iv) *Aisha (RA) reported: The believing women would pray the dawn prayer with the Prophet, peace and blessings be upon him. Then, they would return home* ***wrapped in their mantles; they would not be recognized by anyone.***

Source: Ṣaḥīḥ al-Bukhārī 365, Ṣaḥīḥ Muslim 645

(v) *Abu Udhaynah reported: The Messenger of Allah, peace and blessings be upon him, said, "The best of your women are loving, fertile, suitable, and comforting, if they fear Allah.* ***The worst of your women unveil their beauty, take pride in their appearance, and they are hypocrites. None of them will enter Paradise except as rarely as you see a red-beaked crow.****"*

Source: al-Sunan al-Kubrá 12480

(vi) *Aisha (RA) reported: The Prophet, peace and blessings be upon him, said, "****The prayer of a menstruating woman is not accepted unless she wears a veil,****" by which he meant an adult woman.*

Source: Sunan al-Tirmidhī 377

19. Based upon the aforesaid verses of the Holy Qur'an and the Ahadith of the Prophet Muhammad (p.b.u.h.) the understanding and *Ijma* of the Sahaabas - the Companions of the Prophet Muhammad (p.b.u.h.) and their implementation by actions is recorded in the following to Hadith and exegesis (Tafsir) of the Holy Qur'an.

(i) 'Urwah reported: Aisha, (may Allah SWT be pleased with her) said, "May Allah have mercy on the foremost women of the Muhajirun. When Allah revealed the verse, '**Let them draw their cloaks over their bodies**,' (24:31) they cut their sheets and veiled themselves with them."

Source: Ṣaḥīḥ al-Bukhārī 4758

(ii) Ibn Kathir said, “It is possible that Ibn Abbas (may Allah SWT be pleased with him) and those who followed him intended by the explanation of the verse, “**Except for what is apparent**” (24:31) to mean the face and the hands, and this is the well-known opinion among the majority.”

Source: Tafsīr Ibn Kathīr 24:31 (Ibn Abbas (may Allah SWT be pleased with him) was the cousin of Prophet Muhammad (p.b.u.h.) and considered to be the greatest exegetist of the Holy Qur’an.)

ANNEXURE P–3

PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

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

Refer - 1) Karnataka Education Act, 1983
2) Government Circular : 509 SHH 2013, Date: 31.01.2014

Preamble: -

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

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

Any such supervisory committee in schools and colleges (SDMC in Government Institutions and Parents–Teacher's Associations and the Management in Private Institutions) should strive to provide a conducive academic environment and enforce a suitable code of conduct in accordance with Government Regulations. Such a code of conduct would pertain to that particular school or college.

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

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

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

> *"9. The Apex Court in Asha Renjan and others v/s State of Bihar and Ors. [(2017) 4 SCC 397] accepted that 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 to remain, to hold such relationship between institution and students."

2) In the case of Fatima Hussain Syed Vs. Bharat Education Society and Ors. (AIR 2003 Bom 75), in a similar incident regarding the dress code, when a controversy occurred at Kartik High School, Mumbai, The Bombay High Court appraised the matter, and ruled that it was not a violation of Article 25 of the Constitution for the principal to prohibit the wearing of head scarf or head covering in the school.

3) Subsequent to the Hon'ble Supreme Court's above-mentioned ruling, the Hon'ble Madras High Court, in V. Kamalamma V/s Dr. MGR Medical University, Tamil Nadu and Ors. upheld the modified dress code mandated by the university. A similar issue has been considered by the Madras High Court in the Shri. M. Venkatasubbarao Matriculation Higher Secondary School Staff Association V/s Shri M. Venkatasubbarao Matriculation Higher Secondary School (2004) 2 MLJ 653 case.

As mentioned in the abovementioned rulings of the Hon'ble Supreme Court and various High Courts, since the prohibition of a

headscarf or a garment covering the head is not a violation of Article 25 of the Constitution. Additionally, in terms of the Karnataka Education Act 1983 and it rules, the government has decreed as below-

Government Order No.: EP14 SHH 2022 Bengaluru,

Dated : 05.02.2022

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

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

By the order of the Governor of Karnataka,
And in his name
Padmini SN
Joint Secretary to the Government
Education Department (Pre-University)

// TRUE AND TRANSLATED COPY //

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I. A. NO. _____ OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … APPLICANTS/ PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

APPLICATION FOR PERMISSION TO FILE SPECIAL LEAVE PETITION

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India.

The humble application of the above named Applicants/Petitioners

MOST RESPECTFULLY SHOWETH:

1. That the Applicants/Petitioners above named are filing the present Special Leave Petition in this Hon'ble Court under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022, whereby the Hon'ble High Court has dismissed the Writ Petitions and has upheld the constitutional validity of the Government Order dated 05.02.2022 in relation to right of female Muslim students to the

practice of wearing *Hijab* along with the school uniform in educational institutions of the State of Karnataka. The Hon'ble High Court held that that *Hijab* is not a part of the Essential Religious Practice in Islamic faith and is therefore not protected under Article 25(1) of the Constitution of India. It was further held that prescription of school uniform is only a reasonable restriction, constitutionally permissible which students cannot object to.

2. The Applicant/Petitioner No.1 Society is a registered Society, working for the cause of Women's Rights, safety, education, empowerment and social justice issues relating to women across India. One of the aims and objective of the Society is – *'to encourage girls and women to seek higher education and achieve economic empowerment'* For that last two decades, the Petitioner No.1 Society has organized several programs/conferences with the objective of facilitating the education of the girl child and especially encouraging them to pursue higher education. The President of the Petitioner No.1 Society, Dr. Asma Zehra Tabiya was also invited for the round table consultation on Muslims in India- A gender perspective conducted by the PM's High Level Committee at New Delhi on April 10, 2016. The Applicant/Petitioner No.1 Society and their members are directly aggrieved by the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022 and therefore the present Special Leave Petition is being filed with permission to file a Special

Leave Petition because they were not parties before the Hon'ble High Court.

3. The Applicants/Petitioners state that the present Application is being filed *bona fide* and in the interests of justice.

4. In the aforesaid premises and in the interests of justice, the Applicants/Petitioners most respectfully prays that this Hon'ble Court may be graciously pleased to:-

PRAYER

(a) permit the Applicants/Petitioners to file the present Special Leave Petitions against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022; and/or

b) pass such other and further order(s) as this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Applicants/Petitioners

New Delhi
Dated: 07.04.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I. A. NO. _____ OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … APPLICANTS/ PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED JUDGMENT AND FINAL ORDER DATED 15.03.2022

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India.

The humble application of the above named Applicants/Petitioners

MOST RESPECTFULLY SHOWETH:-

1. That the Applicants/Petitioners above named are filing the present Special Leave Petition in this Hon'ble Court under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.

2. That the Applicants/Petitioners crave leave to this Hon'ble Court to rely upon and refer to the facts, circumstances and grounds mentioned in the accompanying Special Leave Petition which are not reproduced herein for the sake of brevity.

3. That the Applicants/Petitioners are filing the accompanying Special Leave Petition alongwith a downloaded copy of the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.

4. The Applicants/Petitioners state that the present Application is being filed *bona fide* and in the interests of justice.

5. In the above-mentioned facts and circumstances, the Applicants/Petitioners would humbly pray that this Hon'ble Court maybe pleased to:-

PRAYER

a) exempt the Applicants/Petitioners from filing certified copy of the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022; and/or

b) pass such other and further order(s) as this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Applicants/Petitioners

New Delhi
Dated : 07.04.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I. A. NO. _____ OF 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … APPLICANTS/ PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

APPLICATION FOR EXEMPTION FROM FILING OFFICIAL TRANSLATION

To,

Hon'ble the Chief Justice of India
and his companion judges of the
Supreme Court of India.

The humble application of the above named Applicants/Petitioners

MOST RESPECTFULLY SHOWETH:-

1. That the Applicants/Petitioners above named are filing the present Special Leave Petition in this Hon'ble Court under Article 136 of the Constitution of India against the Impugned Judgment and Final Order dated March 15, 2022 passed by the Hon'ble High Court of Karnataka at Bengaluru rendered in Writ Petition No. 2347 of 2022.

2. That the Applicants/Petitioners submit that Annexure P-3 which is being filed along with the present Special Leave Petition was

originally in Kannada and the Applicants/Petitioners have got it translated into English privately as the official translation would have taken a long time.

3. The Applicants/Petitioners state that the present Application is being filed *bona fide* and in the interests of justice.

4. That the Applicants/Petitioners therefore, most respectfully prayed that this Hon'ble Court maybe pleased to:-

PRAYER

(a) exempt the Applicants/Petitioners from filing official translation of Annexure P-3; and/or

(b) pass such other and further order(s) as this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Applicants/Petitioners

New Delhi
Dated: 07.04.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2022

IN THE MATTER OF:-

SHARIA COMMITTEE FOR WOMEN & ANR. … PETITIONERS

-VERSUS-

STATE OF KARNATAKA & ORS. … RESPONDENTS

I N D E X

S.NO.	PARTICULARS	COPIES	COURT FEE
1.	Copy of the Impugned Judgment.	1+3	
2.	SLP with Affidavit.	1+3	
3.	Annexures P-1 to P-3	1+3	
4.	Application for permission to file Special Leave Petition.	1+3	
5.	Application for exemption from filing certified copy of the Impugned Judgment and Final Order dated 15.03.2022.	1+3	
6.	Application for exemption from filing Official Translation.	1+3	
7.	V/A	1	

Certified that the copies are correct
Filed on: 07.04.2022

Ch.: 319, C.K. Dafatary
Tilak Lane, New Delhi

EJAZ MAQBOOL
Advocate for the Petitioners
C-13, Sector-20, Noida-201301
Ph: 0120-2558881, 2552334
CODE NO. 180
I. Card No.3220 - Bijender Kumar – 8882209063
I. Card No. 3192 - Sultan Ahmad - 9873247310

VAKALATNAMA

IN THE SUPREME COURT OF INDIA
CIVIL / CRIMINAL / ORIGINAL / APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL)/CRIMINAL) NO……..……OF 2022
WRIT PETITION (CIVIL) / (CRIMINAL) NO. …… OF 2022
CIVIL/CRIMINAL APPEAL NO……..OF 2022
TRANSFER PETITION (CIVIL / CRIMINAL) NO……. OF 2022

SHARIA COMMITTEE FOR WOMEN & ANR. …… APPLICANT(S) / PETITIONER(S) APPELLANT(S)

-VERSUS-

STATE OF KARNATAKA & ORS. …… RESPONDENT(S) / DEFENDANT(S)

I/We, **Atherunnisa, Joint Secretary of Petitioner No.1 and Sabera Aijaz, Petitioner No.2** Petitioner(s)/Respondent(s) in the above Petition Suit/Appeal/Reference do hereby appoint and retain

EJAZ MAQBOOL, ADVOCATE

To act and appear for me/us in the above Petition/Suit/Appeal/Reference and on my/our behalf to conduct and prosecute or defend the same and all proceedings that may be taken in respect of my application/petition connected with the same or any decree or order passed therein, including proceedings in taxation and applications for review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the said Suit/Appeal/Petition/Reference and applications of Review and to represent me/us and to take all necessary steps on my/our behalf in the above matter. I/We agree to ratify acts done by the aforesaid advocate in pursuance of this authority.

Dated this the **4th** day of **April** 2022

ACCEPTED & IDENTIFIED

For SHARIA COMMITTEE FOR WOMEN

(Ms. Atherunnisa)
Authorised Signatory **(P-1)**

(**EJAZ MAQBOOL**)
Advocate

Applicant(s)/Petitioner(s)/Respondent(s)
Appellant(s)

MEMO OF APPEARANCE

Mrs. Sabera Aijaz
(P-2)

To,
The Registrar,
Supreme Court of India,
New Delhi -110001

Dear Sir,

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

Dated : 07.04.2022

EJAZ MAQBOOL
Advocate, Supreme Court

The address of service of the said Advocate is as under:-
C-13, Sector – 20,
Noida – 201301
Phone Nos.: 0120-2558881, 0120-2530486, Fax No. : 0120-2552334, Mobile : 098-110-52710
E-mail IDs: emaqbool@gmail.com, emaqbool@yahoo.com

SHARIA COMMITTEE For women شریعت کمیٹی برائے خواتین

Regd. No. 350/16

Ref.: Date :

DATED: 17-03-2022

RESOLUTION

At a meeting convened on **17th March 2022** at Office Shanti Nagar Hyderabad it has been decided that, the Hijab issue is an important issue affecting large sections of women, therefore it is important to appeal before the Hon'ble Supreme Court to get constitutional Rights.

Sharia Committee for Women shall file a case in Supreme Court to get relief from Karnataka High Court verdict. Ms.AtherUnnisa and Mrs.Sabera Aijaz shall represent the Sharia Committee for Women.

SL. NO	DESIGNATION	NAME	DETAILS	SIGN
1	PRESIDENT	DR.ZEHRA TAYIBA	DOCTOR MBBS MD FEM	
2	VICE PRESIDENT	ZAKIA BEGUM	LLB Lawyer	
3	GEN SECRETARY	PROF.RAFEEQ MOHIUDDIN	PROFESSOR (O.U) MSC. PhD	
4	JOINT.SECRETARY	ATHERUNNISA	PROFESSOR MA MPhil	
5	TREASURER	SABERA AIJAZ	RETD, Scientist Govt of India. MSC. BHO Retd.	
6	EXECUTIVE MEMBER	DR.TASNEEM AHMED	DOCTOR Pediatrician	

SHARIA COMMITTEE FOR WOMEN شریعہ کمیٹی

301, Mahmud Apts., Shantinagar, Hyderabad, Telangana, India. Ph: 66632672, 9948909657