14734/22

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IN THE SUPREME COURT OF INDIA

[Under ORDER XXI, RULE 3 (1) (a) of the S.C. Rules]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

[Arising out of the impugned judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in W.P. (C) No. 2347/2022]

[With prayer of Interim Relief]

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-VERSUS-

STATE OF KARNATAKA & ORS. ... RESPONDENTS

WITH

IA No. _____ OF 2022	Application seeking permission to file Special Leave Petition.
IA No. _____ OF 2022	Application seeking exemption from filing certified copy of the impugned order.
IA No._____OF 2022	Application seeking exemption from filing official translation of Annexure.

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITONER: DR. ANINDITA PUJARI

A 3

RECORD OF PROCEEDINGS

Sr. No.	Date of Record of Proceedings	Pages

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IN THE SUPREME COURT OF INDIA

[Under ORDER XXI, RULE 3 (1) (a) of the S.C. Rules]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-VERSUS-

STATE OF KARNATAKA & ORS. ... RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is/are within time.
2. The Petition is barred by time and there is delay of ____days in filing the same against final judgement and order dated 15.03.2022 and petition for condonation of _____ days has been filed.
3. There is delay of _____ day in re-filing the petition and the petition for condonation of _____days delay in refilling has been filed.

NEW DELHI

DATED: 07.05.2022 BRANCH OFFICE

A 1

PROFORMA FOR FIRST LISTING

Section- IV-A

Central Act: (Title) – Constitution of India, 1950
Section: –
Central Rule: (Title) : - N/A
Rule No (s) – N/A
State Act (Title) --
Section: – N/A
State Rule (Title):
Rule No (s) : –
Impugned Interim Order: N/A
Impugned Final Order/Decree: (Date) 15.03.2022 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022
High Court: (Name): Hon'ble High Court of Karnataka
Names of Judges: HMJ Ritu Raj Awasthi, Chief Justice, HMJ Krishna S. Dixit, HMJ J.M. Khazi
Tribunal/Authority: – N/A

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1. Nature of matter: Civil
2. (a) Petitioner/Appellant: WOMEN'S VOICE
   (b) e-mail ID: – N/A
   (c) Mobile Phone Number: – N/A
3. (a) Respondent: STATE OF KARNATAKA & ORS.
   (b) e-mail ID: – N/A
   (c) Mobile Phone Number: – N/A
4. (a) Main category classification: 15
   (b) Sub classification : 1502
5. Not to be listed before: – N/A
6. (a) Similar disposed of matter with citation, if any, & case details:: – No Similar matter disposed off
   (b) Similar pending matter with case details: Similar matter pending:
   i) Manal v. State of Karnataka (Diary No. 8343 - 2022)
   ii) Aishat Shifa v. State of Karnataka (Diary No 8344 - 2022)
   iii) Mohammed Arif Jameel v. State of Karnataka (D. No. 8346 2022)
   iv) Shafa v. Chief Secretary (D. No. 9024 - 2022)
   v) Sajeeda Begum v. State of Karnataka (D. No. 8561 - 2022)
   vi) X v. State of Karnataka (D. No. 9241 - 2022)
7. Criminal Matters:
   (a) Whether accused/convict has surrendered: N/A
   (b) FIR No. N/A
   (c) Police Station: N/A

(d) Sentenced Awarded : – N/A

(e) Sentence Undergone: N/A

8. Land Acquisition Matters: N/A

(a) Date of Section 4 Notification: – N/A

(b) Date of Section 6 Notification: – N/A

(c) Date of Section 17 Notification: – N/A

9. Tax Matters: State the tax effect: – N/A

10. Special Category (first petitioner/appellant only– N/A

Senior Citizen >65 years SC/ST Women/child Disabled

Legal Aid case N/A

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

Date: 07 .05.2022

AOR for petitioner(s)/appellant(s)

[ANINDITA PUJARI]

C.C. No. – 2087

aninditapujari@gmail.com

B

SYNOPSIS

That the present Special Leave Petition is filed against the impugned judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022.

This petition arises from the action on the part of the State government and Pre-university colleges in Karnataka which have been prohibiting Muslim female students from wearing the headscarf / hijab. This started from September 2021. Thereafter, in December 2021, Muslim students wearing the hijab were barred from entering the Government Pre-University College, Udupi. Following this, some Muslim girl students filed Writ Petition W.P No.2347 of 2022, titled as *Resham v State of Karnataka & Ors.* before the Hon'ble High Court of Karnataka seeking to direct the Respondent No. 2 not to interfere with the Petitioners' fundamental right to wear the hijab which was argued as their essential religious practice while attending classes, freedom of speech and expression and a violation of their right to education. On 05.02.2022, the Respondent Government issued a Notification under Karnataka Education Act,1983 and the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula) Rules, 1995 directing College Development Committees across the State to prescribe a uniform for students. The Government Order (GO), issued on February 5th 2022, did not allow students to wear the hijab, or customary Islamic headscarf to educational institutions. Subsequently, several other Writ Petitions were filed seeking similar prayers

and the same were taken up together. The matter was referred to a full Bench of the Hon'ble High Court of Karnataka.

The Petitioner Organization herein is Women's Voice, a registered charitable trust working for women's rights in Karnataka and the country. Among the rights of women, the Petitioner organization is also working specifically on the rights of marginalized women, including women from Dalit and Adivasi communities, minority religions, rural women, migrant women and marginalized backgrounds. The Petitioner Organization herein had filed intervention/ impleadment application I.A No.17 of 2022 in W.P No. 2347 of 2022. The Hon'ble High Court declined to entertain applications for impleadment and intervention in any of the Writ Petitions. However, the Hon'ble High Court adverted to the written submissions/supplements filed by the Petitioner herein.

The Hon'ble High Court dismissed the said Writ Petitions, holding not only that the wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, but also that the prescription of school uniforms which prohibit head scarves is a reasonable restriction and such restrictions do not violate Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and that the Government Order dated 05.02.2022 which prohibits head scarves in universities is valid.

The Hon'ble High Court failed to recognise indirect discrimination and the violation of substantive equality under Article 14 of the Constitution of

India which were recognised by this Hon'ble Court in ***Nitisha v. Union of India*, 2021 SCC OnLine 261**. The Hon'ble High Court failed to recognise that the conduct of the Respondents has violated the fundamental rights guaranteed under Article 15 of the Constitution, on grounds of sex and gender, and that this intersectionality leads to multiple discrimination against female Muslim students. In the entire impugned judgement passed by the Hon'ble Full Bench, there has been no mention of a violation of the right to equality and discrimination on the basis of 'sex' under Articles 14 and 15 of the Constitution, and only religion as a ground for discrimination has been considered and rejected despite the glaring fact that this prohibition of headscarves has impacted Muslim women and girls and hence non-recognition of sex as a ground for discrimination is serious error on the part of the Hon'ble Full bench. Further, the Hon'ble Full Bench failed to consider that the prohibition on women wearing Hijab / headscarves and preventing them to entering college with headscarves would violate their fundamental right to education which has been recognized to be a part of Article 21 of the Constitution of India.

The Hon'ble High Court also failed to appreciate the recognised principle of freedom of expression and privacy rights enunciated by the Hon'ble Supreme Court in **National Legal Services Authority v. Union of India , (2014) 5 SCC 438** and **K.S Puttusamy v Union of India (2017) 10 SCC 1** under Article 19(1)(a) and Article 21 of the Constitution of India.

The Hon'ble High Court failed to appreciate the fact that the ban of head scarves and subsequent reprimand of barring female Muslim students from entering universities violate the principles laid down in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which under Article 2 and 3 obligates State Parties to prohibit all forms of discrimination against women and to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation and to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms. In the present case, the Respondents, instead of prescribing practices requiring the removal of hijab or headscarves and prohibiting Muslim women from attending college for wearing the headscarf should eliminate such practices whether by State authorities or private educational institutions as they discriminate against women and prevent them from enjoying their full right to the right to education and ensure that they are not denied these rights.

Hence, the present Special Leave Petition.

LIST OF DATES

1993	The Convention on the Elimination of All

F

Forms of Discrimination against Women ('CEDAW') was adopted by the United Nations General Assembly in 1979. State Parties pledged to make equality between men and women a reality by providing equal opportunities in all fields, whether political, civil, economic, social or cultural, as well as in family life. India ratified the Convention on 09.07.1993.

Article 2 of CEDAW requires States Parties to condemn discrimination against women in all its forms and to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women and to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; To take all appropriate measures to eliminate discrimination against

women by any person, organization or enterprise in particular in the political, social, economic and cultural fields.

Article 3 requires that State parties shall take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

A true copy of the relevant provisions of the Convention on Elimination of Discrimination against Women ("CEDAW") as on 7.05.2022 is annexed hereto and marked as **Annexure-P- 1 (Pages** 153 to 163 **)**

September, 2021

Muslim women students at a Government Pre-University College in Udupi, Karnataka, were instructed not to wear their hijabs or

headscarves to college.

December, 2021

Female students wearing the hijab were barred from entering the college premises of several pre-university colleges in Karnataka.

January 2022

Some Muslim girl students filed Writ Petition W.P No.2347 of 2022, titled as *Resham v State of Karnataka & Ors.* before the Hon'ble High Court of Karnataka seeking to direct the Respondent No. 2 not to interfere with the Petitioners' fundamental right to wear the hijab which was argued as their essential religious practice while attending classes, freedom of speech and expression and a violation of their right to education. Subsequently, several other Writ Petitions were filed seeking similar prayers and the same were taken up together. The matter was referred to a full Bench of the Hon'ble High Court of Karnataka.

A true copy of the W.P No.2347 of 2022,

I

Resham V. State of Karnataka and Others dated nil filed in 2022 is annexed hereto and marked as **Annexure P-2 (Pages** 164 to 186 **)**

05.02.2022

The Respondent State Government issued a Government Order under the Karnataka Education Act, 1983 and the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula) Rules, 1995. This Order directed students of all government schools to wear the uniform prescribed by the State and students of private schools may wear uniforms prescribed by the management committees of the school. It also direceted that for colleges that fall under the Karnataka Board of Pre-University Education, a dress code prescribed by the College development Committee or the administrative supervisory committee must be followed and if the administration does not fix a dress code,

J

the clothes worn should not threaten equality, unity and public order.

Following this Order, many pre-university colleges issued orders prescribing uniforms and prohibiting the wearing of the hijab or headscarves and other religious wear by students.

A true copy of the G.O. dated 05.02.2022 along with the true translated copy are annexed hereto and marked as **Annexure-P-3 (Pages** 187 to 192 **)**.

10.02.2022

The Hon'ble High Court *vide* interim order dated 10.02.2022 observed that pending consideration of all these Petitions, all students regardless of their religion or faith are restrained from wearing saffron shawls (Bhagwa), and connected matters scarfs, hijab, religious flags or the like within the classroom, until further orders.

A true copy of the Interim Order dated

K

10.02.2022 in W.P No. 2347 of 2022 is annexed hereto and marked as **Annexure-P-4** (**Pages** 193 .to 199)

21.02.2022

The Petitioner herein filed an intervention/ impleadment application I.A No.17 of 2022 in W.P No. 2347 of 2022.

The Petitioner Organisation is Women's Voice, a registered charitable trust working for women's rights in Karnataka and the country. The Petitioner organization is also working specifically on the rights of marginalized women, including women from Dalit and Adivasi communities, minority religions, rural women, migrant women and marginalized backgrounds.

Since the Petitioner herein is an organization working on securing the rights of women in the country and especially in Karnataka sought to implead/intervene in the proceedings in W.P No.2347 of 2022 before the Hon'ble High

L

Court of Karnataka.

A true copy of the I.A No.17 of 2022 in W.P No.2347 of 2022 filed by the Petitioner herein on 21.02.2022 is annexed hereto and is marked as **Annexure P-5 (Pages** 200 to 211)

15.03.2022

The Full Bench of the Hon'ble High Court of Karnataka heard all the Petitioners and Respondents, but refused to hear the intervenors and applicants who had filed intervention / impleadment applications despite the issues raised in the writ petitions having wide public impact for minority female students not only in Karnataka but the entire country as it would have an impact on the rights of Muslim girl students.

The Hon'ble High Court of Karnataka passed final judgment and order dated 15.03.2022 dismissing the said Writ Petition holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in

M

Islamic faith, and that prescription of school uniform banning head scarves is only a reasonable restriction which the students cannot object to, and that proscription of head scarves do not violate the Articles 14,15,19(1)(a), and 21 of the Constitution of India, and that the impugned G.O. dated 05.02.2022 which prohibits head scarves in universities is valid.

07.05.2022

Hence the present Special Leave 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

ND

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.

1ℓ 2

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)

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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 ARTERMATH 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. CONTENTIONS OF RESPONDENT – STATE & COLLEGE AUTHORITIES:

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

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

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

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

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

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

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

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

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

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

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

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

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

[47] (1985) 2 SCC 556

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

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

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

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

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

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

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

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

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

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

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

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

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

have broadly framed the following questions for consideration:

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

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

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

SECULARISM AS A *BASIC FEATURE* OF OUR CONSTITUTION:

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

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

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

[60] (1959) 1 SCR 996

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

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

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[63] AIR 1954 MAD 385

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

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

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

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

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

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

(iii) It is relevant to quote what BERTRAND RUSSELL in his '*EDUCATION AND SOCIAL ORDER*' (1932) at page 69 wrote: '*Religion is a complex phenomenon, having both an individual and a social aspect ...throughout history, increase of civilization has been correlated with decrease of religiosity.*' The free exercise of religion under Article 25 is subject to restrictions imposed by the State on the grounds of public order, morality and health. Further it is made subordinate to other provisions of Part III. Article 25(2)(a) reserves the power of State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice. Article 25(2)(b) empowers the State to legislate for social welfare and reform even though by so doing, it might interfere with religious practice.

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

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

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

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

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

[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 precepts of the Prophet Mahomed should be taken literally so as to deduce from them new rules of law, especially when such proposed rules do not conduce to substantial justice..."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sūra xxiv (Nūr):

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

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

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

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

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

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

Sūra xxxiii (Ahzāb)

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

Is *hijab* Islam-specific?

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

[*] *Id*

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

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

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

Sūra xxiv (Nūr)

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

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

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

Sūra xxxiii (Ahzāb)

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

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

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

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

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

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

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

> *"The object was not to restrict the liberty of women, but to protect them from harm and molestation under the conditions then existing in Medina. In the East and in the West a distinctive public dress of some sort or another has always been a badge of honour or distinction, both among men and women. This can be traced back to the earliest civilizations. Assyrian Law in its palmist days (say, 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: "*Formerly Director, University Hospital, Islamic University, Al-Madina, Al-Munawwara (Kingdom of Saudi Arabia).* By this, credentials required for a commentator cannot be assumed. He has held a prominent position in the field of medicine, is beside the point. We found reference to this author in a decision of Jammu & Kashmir High Court in *LUBNA MEHRAJ VS. MEHRAJ-UD-DIN KANTH*[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.

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[72] 1973 SCC OnLine All 333

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

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

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

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

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

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

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

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

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

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[73] (1901) A.C. 495

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

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

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

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

[74] (1909) 33 BOM. 122.

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

XII. PLEADINGS AND PROOF AS TO ESSENTIAL RELIGIOUS PRACTICE:

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

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

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

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

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

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

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

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[75] AIR 1957 SC 133

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

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

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

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

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

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

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

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

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

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

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

[76] (1929) 2 KB 416

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[80] (2020) 10 SCC 274

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

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

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

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

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

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

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

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

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

[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

(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,*

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

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

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

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

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

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

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

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

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

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

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[86] AIR 1992 SC 111

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

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

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

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

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

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

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

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

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

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

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

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

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

[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 *religious clothing and personal*

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

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

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

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

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

XVII. INTERNATIONAL CONVENTIONS AND EMANCIPATION OF WOMEN:

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

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

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

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

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

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

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

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

[89] AIR 1965 SC 491

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

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

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

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

XIX. THE PUBLIC INTEREST LITIGATIONS:

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

[90] AIR 1986 CAL. 104

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

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

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

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

Costs made easy.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

SJ/CBC

IN THE SUPREME COURT OF INDIA

[Under ORDER XXI, RULE 3 (1) (a) of the S.C. Rules]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

[Arising out of the impugned judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in W.P. (C) No. 2347/2022]

IN THE MATTER OF:-

BETWEEN

	HIGH COURT	SUPREME COURT
WOMEN'S VOICE		
HAVING ITS OFFICE AT:		
MAIDAS STERCH, 2ND FLOOR,		
NO. 1319, 32F CROSS,		
JAYANAGARA 4T BLOCK		
BANGALORE-560041		
REPRESENTED BY ITS		
GENERAL SECRETARY		
DR. RUTH MANORAMA		
	Not a Party	Petitioner

VERSUS

1. STATE OF KARNATAKA

REPRESENTED BY THE

PRINCIPAL SECRETARY,

DEPARTMENT OF PRIMARY

AND SECONDARY EDUCATION

Respondent No. 1 | Respondent No. 1

2. GOVERNMENT PU COLLEGE

FOR GIRLS

BEHIND SYNDICATE BANK

NEAR HARSHA STORE

UDUPI, KARNATAKA-576101

REP. 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 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

Proforma Respondent

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

SUPREME COURT OF INDIA, NEW DELHI

THE SPECIAL LEAVE PETITION OF

THE ABOVE-NAMED PETITIONER

MOST RESPECTFULLY SHOWETH

1. That the present Special Leave Petition is being filed against the impugned common judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022 whereby the Hon'ble High Court has erroneously dismissed the Writ Petition on merits, holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, and gave a finding that colleges

can prescribe a uniform to exclude the hijab or bhagwa or such other religious symbols and the same would be a reasonable restriction which the students cannot object to, and such a prohibition on the wearing of the hijab does not violate the Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and that the impugned Government Order dated 05.02.2022 which prohibits head scarves in universities is valid.

2. QUESTIONS OF LAW

The present Special Leave Petition raises the following substantial questions of law for consideration by this Hon'ble Court:

I. WHETHER the Hon'ble the High Court did not err in holding that the wearing of the Hijab or the headscarf is not an essential religious practice for Muslim women, and is only recommendatory or directory, despite holding that this apparel is a means to gain access to public places and the action on the part of the Respondents in prohibiting female students from wearing the hijab to college would not amount to a violation of the right to freedom of religion under Article 25 of the constitution?

II. WHETHER the Hon'ble High Court did not err in holding that no material or evidence was placed before the Court to show that the Petitioners chose to wear the headscarf or the hijab as a means of

conveying any thought or belief on their part or as a means of symbolic expression, or that it is an essential religious practice, without taking into consideration that for the protection of fundamental rights in writ proceedings there is no strict requirement to place evidence on record and in view of the affidavits of the Petitioners, such a reasoning would not be sustainable?

III. WHETHER the Hon'ble High Court did not err in not appreciating that the impugned Government order dated 5.2.2022 and the orders of the Pre-university Colleges prescribing a uniform which prohibits the hijab and headscarves have an unequal impact on Muslim women as they were in reality the only affected group which would be prohibited from attending college due to such uniform restrictions and hence the Hon'ble High Court erred in failing to apply the constitutional principles of indirect discrimination and substantive equality under Article 14 of the Constitution of India?

IV. WHETHER the Hon'ble High Court did not fail in not considering that Article 14 does not look at merely formal equality which looks at treating of all persons similarly and holding that since religious gear of all kinds was prohibited, the same was a reasonable restriction, without applying the principles of substantive equality which is based not just likes are

treated alike, but to see how the law actually impacts different persons and in this case how it impacts Muslim girls who were unable to attend college unless they removed their headscarves, and did not affect other students?

V. WHETHER the Hon'ble High Court did not err in not appreciating that denying Muslim women entry to universities for wearing head scarves is violative of Article 15(1) of the Constitution of India under the grounds of sex and religion, apart from ground of freedom of religion?

VI. WHETHER the Hon'ble High Court did not err in holding that the action on the part of the Respondents and the impugned orders which prohibited Muslim girls from wearing the headscarf in college did not violate the right to freedom of speech and expression under Article 19 (1) (a) or the right to privacy under Article 21 of the Constitution on the ground that these are 'derivative rights' and not 'substantive rights' despite the fact that these are core fundamental rights and hence any violation of these rights would be a violation of substantive rights of the Petitioners?

VII. WHETHER the Hon'ble High Court did not err in holding that such imposition of a ban on the headscarf in uniforms which prevented Muslim girls from attending college would not amount to a violation of Article 14 and 15 of the Constitution as there was no '*manifest*

arbitrariness or *discrimination* only because such a dress code or uniform was equally applicable to all students, regardless of religion, language, gender or the like, without taking into account that despite such a uniform being universal, and applicable to all, its negative impact was only on Muslim girls who wore the headscarf and were prevented from attending college and no other persons including boys of other religious communities or girls of other religious communities were impacted on a similar manner in the implementation of the uniform prescribed and hence the same amounts to discrimination and manifest arbitrariness under Articles 14 and 15 of the Constitution?

VIII. WHETHER the Hon'ble High Court did not fail to appreciate that such prescription of uniform was a violation of the Petitioner's right to privacy and autonomy, despite holding that what one desires to wear is a facet of one's autonomy and that one's attire is one's expression, but these fundamental rights are subject to reasonable restrictions and hence there was no violation of Article 19 (1) (a) and Article 21?

IX. WHETHER the Hon'ble High Court did not err by failing to appreciate that prohibition on women wearing Hijabs from entering colleges also violates the right to education which has been recognized to be a part of Article 21 of Constitution of India?

X. Whether the Hon'ble High Court did not err by failing to appreciate the recognised principle of freedom of expression and privacy rights enunciated by the Hon'ble Supreme Court in **National Legal Services Authority v. Union of India, (AIR 2014 SC 1863) and K.S Puttusamy (2017) 10 SCC 1** respectively?

XI. WHETHER the Hon'ble High Court did not err in holding that permitting Muslim girls to wear the Hijab, would be required as a principle of reasonable accommodation to enable equality, on the ground that such accommodation cannot be said to be reasonable because uniforms should be applicable to all students alike and that there cannot be any relaxation of such requirements?

XII. WHETHER the Hon'ble High Court did not fail to appreciate that the International Conventions such as the Universal Declaration of Human Rights and The UN Convention on the Elimination of all forms of Discrimination ("CEDAW") are to be followed under Article 51 of the Constitution, but the impugned government orders prohibiting headscarves for women would violate CEDAW which India is requirement to follow as a signatory to the said convention and would also amount to a violation of Article 51 of the Constitution?

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

The Petitioner states that it has not filed any other special leave petition against the impugned common judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka W.P. (C) No. 2347 of 2022.

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

That the Annexure P-__ to P- __ produced along with the present Special Leave Petition are true copies of their respective originals and Annexure P-__ is true translated copy of its respective original and they form part of the pleadings and the records of the case in the Court below against whose order leave to appeal is sought for in the present Special Leave Petition.

5. **GROUNDS:**

Leave to appeal is sought for on the following amongst other grounds:

I. BECAUSE the Hon'ble High Court erred in holding that the wearing of the Hijab or the headscarf is not an essential religious practice for Muslim women, and is only recommendatory or directory, despite holding that this apparel is a means to gain access to public places and the action on the part of the Respondents in prohibiting female students from wearing the hijab

to college would not amount to a violation of the right to freedom of religion under Article 25 of the Constitution.

II. BECAUSE the Hon'ble High Court erred in holding that no material or evidence was placed before the Court to show that the Petitioners chose to wear the headscarf or the hijab as a means of conveying any thought or belief on their part of as a means of symbolic expression, or that it is an essential religious practice, without taking into consideration that for the protection of fundamental rights in writ proceedings there is no strict requirement to place evidence on record and in view of the affidavits of the Petitioners, such a reasoning would not be sustainable.

III. BECAUSE the Hon'ble High Court failed to appreciate that the impugned Government order dated 5.2.2022 and the orders of the Pre-university Colleges prescribing a uniform which prohibits the hijab and headscarves have an unequal impact on Muslim women as they were in reality the only affected group which would be prohibited from attending college due to such uniform restrictions and hence the Hon'ble High Court erred in failing to apply the constitutional principles of indirect discrimination and substantive

equality under Article 14 of the Constitution of India. Substantive equality embraces a wide range of concepts such as equality of results. Deviations from the formal equal treatment principle are justified by reference to the pursuit of goals such as equality of results. The ultimate result should ensure that no one is impacted differently or discriminated. Equality of Results as a part of substantive equality recognizes that there are positive obligations on the State to promote equality rather than obstructing it by accommodating differences.

IV. BECAUSE the Hon'ble High Court failed to consider that Article 14 does not look at merely formal equality which looks at treating of all persons similarly and holding that since religious gear of all kinds was prohibited, the same was a reasonable restriction, without applying the principles of substantive equality which is based not just likes are treated alike, but to see how the law actually impacts different persons and in this case how it impacts Muslim girls who were unable to attend college unless they removed their headscarves, and did not affect other students. That as held by this Hon'ble Court in **Nitisha v. Union of India, 2021 SC 26,** it was held that : "*The focus in antidiscrimination enquiry, has switched from looking at the intentions or motive of the*

discriminator to examining whether a rule, formally or substantively, "contributes to the subordination of a disadvantaged group of individuals" .....We must clarify here that the use of the term 'indirect discrimination' is not to refer to discrimination which is remote, but is, instead, as real as any other form of discrimination. Indirect discrimination is caused by facially neutral criteria by not taking into consideration the underlying effects of a provision, practice or a criterion."

V. BECAUSE the Hon'ble High Court failed to appreciate that denying Muslim women entry to universities for wearing head scarves is violative of Article 15(1) of the Constitution of India under the grounds of sex and religion and based its decision only on the ground that it did not discriminate on the ground of religion alone.

VI. BECAUSE the Hon'ble High Court erred in holding that the action on the part of the Respondents and the impugned orders which prohibited Muslim girls from wearing the headscarf in college did not violate the right to freedom of speech and expression under Article 19 (1) (a) or the right to privacy under Article 21 of the Constitution on the ground that these are 'derivative rights' and not 'substantive rights' despite the fact that these are core

fundamental rights and hence an violation of these would be violation of substantive rights of the Petitioners.

VII. Because the Hon'ble High Court ought to have appreciated the law laid down in **Ashok Kumar Gupta vs. State of U.P.(1997) 5 SCC 201** with regard to importance of equality in opportunity for the marginalised where this Hon'ble Court held, *"In order to bridge the gap between inequality in results and equality in fact, protective discrimination provides equality of opportunity. Those who are unequals cannot be treated by identical standards. Equality in law certainly would not be real equality. In the circumstances, equality of opportunity depends not merely on the absence of disparities but on the presence of abilities and opportunities. De jure equality must ultimately find its raison d'etre in de-fact equality. The State must, therefore, resort to protective discrimination for the purpose of making people, who are factually unequal, equal in specific areas."*

VIII. BECAUSE the Hon'ble High Court erred in holding that such imposition of a ban on the headscarf in uniforms which prevented Muslim girls from attending college would not amount to a violation of Article 14 and 15 of the Constitution as there was no

'manifest arbitrariness' or discrimination only because such a dress code or uniform was equally applicable to all students, regardless of religion, language, gender or the like, without taking into account that despite such a uniform being universal, and applicable to all, its negative impact was only on Muslim girls who wore the headscarf who were unable from attending college and no other persons including boys of other religious communities or girls of other religious communities were impacted on a similar manner in the implementation of the uniform prescribed and hence the same amounts to discrimination and manifest arbitrariness under Articles 14 and 15 of the Constitution.

IX. BECAUSE the Hon'ble High Court ought to have appreciated that the present case at hand involves intersectionality of gender and sex and that there is multiple discrimination as the Petitioners are women students hailing from a minority community. Therefore, the general interpretation for giving a finding of discrimination under Article 15 (1) has been only if there was any discrimination shown only on one of the grounds mentioned. Such a rigid interpretation has meant that where discrimination has been experienced on multiple grounds of sex and religion, and that this Hon'ble High Court has recognized multiple grounds of

discrimination. The recognition of intersectionality has begun from 2018 onwards. In **Navtej Johar v. Union of India, (2018) 10 SCC 1** wherein this Hon'ble Court observed that "*This narrow view of Article 15 strips the prohibition on discrimination of its essential content. This fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context.*"

X. BECAUSE the Hon'ble High Court failed to appreciate that such prescription of uniform was a violation of the Petitioner's right to privacy and autonomy, despite holding that what one desires to wear is a facet of one's autonomy and that one's attire is one's expression, but that these fundamental rights are subject to reasonable restrictions and hence there was no violation of Article 19 (1) (a) and Article 21.

XI. BECAUSE the Hon'ble High Court erred by failing to appreciate that prohibition on women wearing Hijabs from entering colleges also violates the right to education which has been recognized to be a part of Article 21 of Constitution of India as held by this Hon'ble Court in **Unni Krishnan, J.P. v. State Of Andhra Pradesh and Others, 1993 SCR (1) 594 and Mohini Jain v. State of**

Karnataka, 1992 SCR (3) 658, where it held that: *"The Right to life" is the compendious expression for all those rights which the Court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which theindividual 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. The State Government is under an obligation to make endeavours to provide educational facilities at all levels to its citizens."*

XII. BECAUSE the Hon'ble High Court erred by failing to appreciate the recognised principle of freedom of expression and privacy rights enunciated by the Hon'ble Supreme Court in **National Legal Services Authority v. Union of India, (AIR 2014 SC 1863) and K.S Puttusamy (2017) 10 SCC 1** respectively. As held by this Hon'ble Court in **National Legal Services Authority of India, AIR 2014 SC 1863**, that: *"Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity. This includes the expression of identity or personhood through speech, deportment, dress, bodily characteristics, choice of name, or any other means, as well as the*

freedom to seek, receive and impart information and ideas of all kinds, including with regard to human rights, sexual orientation and gender identity, through any medium and regardless of frontiers."

XIII. BECAUSE the Hon'ble High Court erred in holding that permitting Muslim girls to wear the Hijab, would be required as a principle of reasonable accommodation to enable equality, on the ground that such accommodation cannot be said to be reasonable because uniforms should be applicable to all students alike and that there cannot be any relaxation of such requirements.

XIV. BECAUSE the Hon'ble High Court failed to appreciate that the international conventions such as The UN Convention on the Elimination of all forms of Discrimination ("CEDAW") in Article 2 of CEDAW requires State Parties to condemn discrimination against women in all its forms and to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women and to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; To take all appropriate measures to eliminate discrimination against women by any person,

organisation or enterprise in particular in the political, social, economic and cultural fields. Article 3 requires that States parties shall take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purposes of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. In the present case, the Hon'ble High Court failed to appreciate that the prescription of prohibiting head scarves actively discriminates against women, which prevents them from enjoying rights ensured to them under CEDAW and the same would also amount to a violation of Article 51 of the Constitution.

6. **GROUNDS FOR INTERIM RELIEF:**

That vide impugned judgment and final order dated 15.03.2022 in W.P.(C) No. 2347 of 2022 the Hon'ble High Court of Karnataka has dismissed the Writ Petition filed by the Petitioner therein and has erroneously disposed the Writ Petition holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, and that prescription of school uniform is only a reasonable restriction which the students cannot object to, and that proscription of head scarves do not violate the Articles 14, 15, 19(1)(a), and 21 of the Constitution of India, and that the impugned Order dated 05.02.2022 which prohibits head scarves in universities is valid.

The ban on head scarves directly and indirectly discriminates against Muslim women and is violative of Article 14 and Article 15(1). Denial of entry to universities is an infringement of right to education under Article 21. Further, the Hon'ble High court has failed to take into consideration the duty of the State to fulfil obligations under international conventions such as CEDAW. The Hon'ble High Court has failed to apply important precedents laid down by this Hon'ble Court to the present case, nor were the act of the State adjudicated based on established constitutional tests to hold that the proscription of head scarves were reasonable restrictions prescribed under the Constitution of India. That the Petitioners have a good case on merits and no prejudice shall be caused to the Respondents herein, if the interim relief as prayed for is granted.

7. **MAIN PRAYER (S)**

It is most 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 15.03.2022 passed by the Hon'ble High Court of Karnataka W.P.(C) No. 2347 of 2022; and

b) Pass such other or further order(s) as this Hon'ble Court may deem fit, just and proper in the facts and circumstances.

8. **PRAYER FOR INTERIM RELIEF:**

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

a) Grant ad interim ex-parte stay of the impugned Judgment and final Order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in W.P.(C) No. 2347 of 2022: and

b) Pass any order(s) which this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

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

SETTLED BY

JAYNA KOTHARI

SENIOR ADVOCATE

FILED BY

[ANINDITA PUJARI]

Counsel for the Petitioner

PLACE: NEW DELHI

Dated : 07.05.2022

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-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 documents relied upon in those proceedings. No additional facts, documents or grounds have been taken 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 or to make out grounds urged in the Special Leave Petition for the consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner(s)/ person authorized by the Petitioner(s) whose affidavit is filed in support of the Special Leave Petition.

PLACE: NEW DELHI

Date:

FILED BY

[ANINDITA PUJARI]

ADVOCATE FOR THE PETITIONER

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

Women's Voice ...Petitioner

Versus

State of Karnataka & Ors. ...Respondents

AFFIDAVIT

I, Dr. Ruth Manorama, W/o N. Pakkirisamy, aged about 69 years, residing at #84/2, 2nd Cross, 8th Main Road, 3rd Block Jayanagar East, Bangalore – 560011 do hereby solemnly affirm and states as under:

1. That, I am the General Secretary and authorised signatory of the Petitioner organisation and I am fully conversant with the facts of the present case and have been authorized to swear this affidavit and as such competent to swear the present affidavit.

2. That, I say that I have read and understood the contents of the Synopsis and List of Dates at pages B to M and contents of Special Leave Petition as contained in Para 01 to 8 at pages 130 to 151 and state that the averments of fact made therein are true to my knowledge and information derived from the record of the case and those of submission of law made in question of law, grounds, prayer, certificate and interlocutory applications are true and correct to the best of my knowledge and belief.

3. That, the Annexure P-1 to P-5 at pages 154 to 213 filed along with the Special Leave Petition are true copies of their respective originals.

4. That, the contents of the above affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom.

NOTARY C.V. EARAPPA B.COM, LLB. Reg.No. 7881 Expiry Date 12-07-2025 GOVT. OF INDIA

Ruth Manorama
DEPONENT

Myeo-Pun.

WOMEN'S VOICE BANGALORE

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VERIFICATION

Verified at Bengaluru on this 28th day of March, 2022 that the contents of the above affidavit are true to the best of my knowledge as derived from the records of the case as well as official record. No part of this affidavit is false and nothing material has been concealed there from.

Ruth Manorama
DEPONENT

WOMEN'S VOICE ★ BANGALORE ★

SWORN TO BEFORE ME

C.V. EARAPPA B.COM, LLB,
ADVOCATE
No. 8, V.B. Complex, Budigere Cro
H.A. Road, Bangalore - 560 04

NOTARY
C.V. EARAPPA
B.COM, LLB.
Reg. No. 7881
Expiry Date
12-07-2025
GOVT. OF INDIA

28 MAR 2022

Effect on Other Treaties (Article 23)
Commitment of States Parties (Article 24)
Administration of the Convention (Articles 25-30)

INTRODUCTION

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity,v and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made o.1 the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"(article 3).

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions, therefore, are restated in article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity "shall be deemed null and void". Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health core or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4). "The Convention also affirms women's right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (article I O.h) and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to hove access to the information, education and means to enable them to exercise these rights" (article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (article 5). And Article 1O.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals "of high moral standing and competence in the field covered by the Convention".

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

The full text of the Convention is set out herein

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

> Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of: retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women

play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons

elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of

the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

True Copy

Annexure P-2-164 OK

FR. No. 2453 /2022

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

IN **PRESENTATION FORM**

WP No. /2022 (GM)

Serial No. 15/0/19
Advocate

Bangalore District

Between

Shathabish Shivanna
Arnav A. Bagalwadi
Abhishek Janardhan
Ph.no: 9741763660
Emai id: shathabish95@gmail.com

Smt- Resham

And

the state of Karnataka &Ors

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No._____/2022

BETWEEN:

Smt. Resham — **Petitioner**

AND,

The State of Karnataka & others — **Respondents**

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Place: Bangalore.
Date: 31-01-22

Advocate for Petitioner
(Shathabish Shivanna)

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

W.P.No._____/2022

BETWEEN:

Smt. Resham — Petitioner

AND,

The State of Karnataka & others — Respondents

SYNOPSIS

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

BRIEF FACTS OF THE CASE

The Petitioner is a Students studying in the Respondent, Government-run Pre-University College. On 28/12/2021 the Petitioner herein along with other female students who profess the Islamic faith were denied entry into the college premises and have been barred from attending the classes held in the Respondent College. The Respondent College has denied entry and access to the Petitioners herein and other students, on the ground that they were wearing a Hijab (headscarf). It is the contention of the Respondent College that the Petitioners and the other similarly placed students have violated the dress code of the college by merely wearing a Hijab, and for that reason, they have been denied entry into

the Respondent College premises and are restricted from attending their classes therefore also infringing on the right to education. The Respondent College has not allowed the Petitioner and the other female students from entering the college premises and to attend classes, till date.

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

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

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

Place: Bangalore
Date: 31-01-22

Advocate for Petitioner
(Shathabish Sivanna)

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIJINAL JURISDICTION)
W.P.No._____/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

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,
   Maleshwaram, Bengaluru - 560 012.

RESPONDENTS

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

The Petitioners above named begs to submit as follows:

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

BRIEF FACTS

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

in the Udupi District, hence would come under the ambit of article 12 of the constitution of India.

3. It is submitted that on 28/12/2021 the Petitioner herein along with other female students who profess the Islamic faith were denied entry into the college premises and have been barred from attending the classes held in the Respondent College. The Respondent College has denied entry and access to the Petitioners herein and other students, on the ground that they were wearing a Hijab (headscarf). It is the contention of the Respondent College that the Petitioners and the other similarly placed students have violated the dress code of the college by merely wearing a Hijab, and for that reason, they have been denied entry into the Respondent College premises and are restricted from attending their classes therefore also infringing on the right to education. The Respondent College has not allowed the Petitioner and the other female students from entering the college premises and to attend classes, till date.

4. It is submitted that the rights guaranteed under our constitutional fabric are the dynamic and timeless rights of "liberty" and "equality" however actions of the Respondent College, in restricting the Petitioners herein from entering into the College premises and denying the children of the minority sector, right to education would trample over their rights such as those under Articles 14, 19, 21, 25(1), 26(b), 21(A), & 15(1) under the constitution of India and thereby render such action as

illegal, manifestly arbitrary, exclusionary unconstitutional and discriminatory.

5. It is submitted that the Freedom to profess, practice and propagate religion is a fundamental right, which is subject to public order, morality and health as enshrined under Article 25(1) of the Constitution of India. It is submitted that the religious practice of wearing the Hijab is neither entangled in public law nor is there any conflict between the Petitioner's Right to Religious Freedom and the State's duty to regulate public affairs in matters of general nature or secular activities.

6. The Constitution of India guarantees the Freedom of Conscience and the right to profess, practice and propagate religion, while reserving the State's right to interfere with the religious matters, only if it involves an issue relating to public order, morality and health. However with the lack of any such imminent necessity to garner such unsought action, the Respondent College has singled out the petitioner herein along with a handful of female students belonging to the Islamic faith and arbitrarily and indefinitely denied them access/entry to college as well their education. The manner in which the Respondent College has ousted the Petitioner not only creates a stigma amongst her batch mates but among the children of entire college, which in turn will affect the mental health as well as future prospects of the petitioner moving forward.

7. It is imperative to mention that the Constitution guarantees protection to religious practices based on what one's conscience profess. In other words, one can retain identity based on the religion. However the state ought to refrain from interfering with the practice of religious affairs, which would obliterate one's religious identity especially in the manner done so by the Respondent College, which in doing so has also denied the right to education. The Respondent College without any form of public consultation with the students or the student representative of the college, prior intimation or hearing, in the guise of being opposed to uniform policy of the Respondent college, have curtailed the right to education on the sole ground of religion is smacked by malafides, discriminatory and politically motivated. By doing so, the state has failed in its duty to realize the right to human development by denying the petitioner her education in the manner portrayed above.

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

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

outside authority has any jurisdiction to interfere with the decision in such matters"

9. It is submitted that the protection of essential practice thus means that liberty is beyond the interference by the State and the State has the obligation to respect the essential religious practice. Any interference with the person's right or denominations' right thus requires justification of State interest to override such protection. It is clear that no such justification whatsoever has been forthcoming and the Respondent College has remained mute on the above aspect till date. It is imperative to mention that the principles of liberty enshrined in our constitution ought not to be given a static approach and must yield to the present times of an all inclusive interpretation of fundamental rights guaranteed in our constitution of India. A mere wearing of a Hijab being an essential part of the Islamic religion cannot be the sole ground to deny education to the petitioner thus it is nothing but a draconian manner of exercising state action plagued by malafides.

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

"What constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year

or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use or marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b)"

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

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

Thus by not keeping a check on such unfettered action on the state to deny the petitioner her guaranteed right to education merely on the ground of wearing the hijab, which is an essential religious practice would tantamount to reducing the rule of law to an individuals perception to good social order. This in turn would defeat the constitutional idealisms by retarding and impeding the social integration,

promotion of inclusion of pluralism and of abandoning the idea of alienation or unacceptable social norms.

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

13. It is submitted that in the case of *'Commissioner of Police v. Acharya Jagadishwarananda Avadhuta [AIR 2004 SC 2984]* the Hon'ble Supreme Court has held that:

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

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

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

> *"There are five kinds of rules recognized in Islamic law to classify the nature of the law for its operation which are as follows:*
>
> 1. *Farz: Strictly obligatory - Five times prayer, Compulsory payment (zakat), Fasting, wearing of Hijab etc.*
> 2. *Haram: Those are strictly forbidden. Consumption of liquor, eating of pork etc.*
> 3. *Mandub: Things which are advice to do. These are things which one fails to perform would not cause any harm to him like additional prayers apart from the five times obligatory prayers.*
> 4. *Makruh: Which means advice to refrain from. These sins are a lesser category which is short of forbidden, such as wasting food, water, etc.*

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5. Jaiz: This is about the things, the religion is indifferent. These things are lawful and would not reap any rewards.

the analysis of the Quranic injunctions and the Hadiths would show that it is a 'Farz' to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram)"

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

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

17. It is submitted that now, in the present circumstances the petitioner herein has been denied her right to education by being singled out only the ground that she wears a Hijab (Headscarf) fact of therefore, picking her out from a class of persons and subjecting her to unreasonable

restriction. Such action if goes unchecked, it will render the constitution and its progressive principle upheld by a cantena of judgements as ineffective.

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

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

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

> *"Whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right*

must be examined to discover whether such act is to protect public order, morality and health; whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorized by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practice or to provide for social welfare and reform".

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

22. It is submitted that the Petitioner has made representations to Respondent No. 2 & 3 on 28/01/2022, requesting that she be allowed to attend classes in the Respondent College, while wearing her Hijab. The

Representations dated 28/01/2022, along with the acknowledgements are herewith marked and produced as **ANNEXURE- C, D, E & F** respectively.

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

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

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

GROUNDS

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

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

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

d. In the case of *AmnahBint Basheer &Anr. v. Central Board of Secondary Education (CBSE) &Ors. (2016 SCC OnLine Ker 17250)* The Hon'ble High Court of Kerala has held that the analysis of the Quranic injunctions and the Hadiths would show that it is a 'Farz' to cover the head and wear the long sleeved dress except face part and exposing the body otherwise is forbidden (haram)"

e. It is submitted that Islam embraces and encompasses guidance to the human in all walks of life. The Shariah consists of two things.

   a. The laws revealed through the Holly Quran.

   b. The laws that are taken from the lifestyle and teachings of the prophet Mohamed. This part is called the Hadiths

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

f. It is submitted that there is a possibility of reporting Hadiths in different interpretations with respect to the sayings and teaching of prophet Mohamed, the Messenger. This is one of the reason, the different schools of thoughts have come into existence among the Muslims. It is submitted

that, as far as the Constitutional Courts are concerned, when called upon to decide the rights premised on the freedom guaranteed under Article 25(1) or 26 is to accommodate such different propositions to honour such freedom. In protecting the religious freedoms, the Constitutional Courts are required to look at the issue from the angle of freedom guaranteed and not to take-up on the task of validity of such propositions, as the priests or proponents of such proposition would do. It is submitted that all such proposition are to be safeguarded, irrespective of the challenge being made for acceptance of such propositions within or outside the religion. The authority to decide what is valid or not valid should be left to the discretion of the persons referred under Article 25(1) or to the denominations as referred under Article 26.

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

> "And tell the believing women to lower their gaze and be modest, and to display of their adornment only that which is apparent, and to draw their veils over their bosoms, and not to reveal their adornment save to their own husbands or fathers or husbands' fathers, or their sons or their husbands' sons, or their brothers or their brothers' sons or sisters' sons, or their women, or their slaves, or male attendants who lack vigour, or children who know naught of women's nakedness. And let them not stamp their feet so

as to reveal what they hide of their adornment. And turn unto Allah together, O believers, so that ye may succeed."

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

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

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

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

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

k. The religious practice of wearing the Hijab is neither entangled in public law nor is there any conflict between the Petitioner's Right to

Religious Freedom and the State's duty to regulate public affairs in matters of general nature or secular activities.

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

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

n. The Respondent College in denying entry into the College premises and restricting the Petitioners from attending classes, on the ground that they were wearing a Hijab (headscarf), has acted in an illegal, unconstitutional and discriminatory manner as their actions are violative of Articles 25(1), 26(b), 21(A), & 15(1).

o. The exclusionary practice of singling out the petitioner herein solely on the basis of wearing a hijab at thereby denying the petitioner her right to attend classes is against the constitutional morality. That such an act cannot take the shelter under section19(2) as there lacks any public interest such action.

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GROUNDS FOR INTERIM RELIEF

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

PRAYER

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

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

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

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

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

Interim Prayer

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

Place: Bangalore

Date: 31-01-22

Advocate for Petitioners
(Shathabish Shivanna)

ADDRESS FOR SERVICE

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True Copy

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ANNEXURE P-3

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ನಡವಳಿಗಳು

ವಿಷಯ: ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿಗಳ ವಸ್ತ್ರ ಸಂಹಿತೆ ಕುರಿತು.

ಓದಲಾಗಿದೆ: 1) ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983.

2) ಸರ್ಕಾರದ ಸುತ್ತೋಲೆ ಸಂಖ್ಯೆ: 509 ಎಸ್‌ಹೆಚ್‌ಹೆಚ್ 2013, ದಿನಾಂಕ: 31-01-2014.

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ಪ್ರಸ್ತಾವನೆ:-

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ:1ರಲ್ಲಿ ಕರ್ನಾಟಕ ಸರ್ಕಾರವು 1983ರಲ್ಲಿ ಜಾರಿಗೆ ತಂದಿರುವ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983ರಲ್ಲಿ (1-1995) ಕಲಂ 7 (2)-(5)ರಲ್ಲಿ ವಿವರಿಸಿರುವಂತೆ ಕರ್ನಾಟಕ ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲೆಗಳ ವಿದ್ಯಾರ್ಥಿ-ವಿದ್ಯಾರ್ಥಿನಿಯರು ಒಂದೇ ಕುಟುಂಬದ ರೀತಿಯಲ್ಲಿ ನಡೆದುಕೊಳ್ಳಬೇಕೆಂದು ಮತ್ತು ಯಾವುದೇ ಬೂದು ಪರ್ಗಕ್ಕೆ ಸೀಮಿತವಾಗಿರದೇ ಸಾಮಾಜಿಕ ನ್ಯಾಯದ ಪರವಾಗಿ ನಡೆದುಕೊಳ್ಳಬೇಕು. ಪ್ರಸ್ತುತ ಕಾಯ್ದೆ ಕಲಂ-133ರ ಅಡಿಯಲ್ಲಿ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜುಗಳಿಗೆ ಈ ಬಗ್ಗೆ ಸೂಕ್ತ ನಿರ್ದೇಶನಗಳನ್ನು ನೀಡುವ ಅಧಿಕಾರವು ಸರ್ಕಾರಕ್ಕೆ ಪ್ರದತ್ತವಾಗಿರುತ್ತದೆ.

ಮೇಲೆ ಓದಲಾದ ಕ್ರಮ ಸಂಖ್ಯೆ:(2)ರಲ್ಲಿನ ಸುತ್ತೋಲೆಯಲ್ಲಿ ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣವು ವಿದ್ಯಾರ್ಥಿಗಳ ಜೀವನದಲ್ಲಿ ಪ್ರಮುಖ ಘಟ್ಟವಾಗಿರುತ್ತದೆ. ಸರ್ಕಾರ ನೀಡುವ ಸೂಚನೆಗೆ ಅನುಗುಣವಾಗಿ ಮತ್ತು ಬಿಡುಗಡೆ ಮಾಡುವ ಅನುದಾನವನ್ನು ಸರಿಯಾಗಿ ಉಪಯೋಗಿಸಿಕೊಳ್ಳುವ ನಿಟ್ಟಿನಲ್ಲಿ ಹಾಗೂ ಮೂಲಭೂತ ಸೌಕರ್ಯಗಳನ್ನು ಅಭಿವೃದ್ಧಿಪಡಿಸುವ, ಶೈಕ್ಷಣಿಕ ಗುಣಮಟ್ಟವನ್ನು ಕಾಪಾಡುವ ದೃಷ್ಟಿಯಿಂದ ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜುಗಳಲ್ಲಿ ಅಭಿವೃದ್ಧಿ ಸಮಿತಿಗಳನ್ನು ರಚಿಸಲಾಗಿದ್ದು, ಆಯಾ ಶಾಲಾ ಮತ್ತು ಕಾಲೇಜು ಅಭಿವೃದ್ಧಿ ಸಮಿತಿಯ ನಿರ್ಣಯಗಳ ಪ್ರಕಾರ ಕಾರ್ಯನಿರ್ವಹಿಸಲು ಸೂಚಿಸಲಾಗಿದೆ.

ಯಾವುದೇ ಶಿಕ್ಷಣ ಸಂಸ್ಥೆಯ ಮೇಲ್ವಿಚಾರಣಾ ಸಮಿತಿಯು (ಸರ್ಕಾರಿ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ-ವಸ್ತ್ರ ಡಿ.ಎಂ.ಸಿ, ಖಾಸಗಿ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ-ಮೋಷಕರು ಮತ್ತು ಶಿಕ್ಷಕರ ಸಮಿತಿ ಹಾಗೂ ಆ ಸಂಸ್ಥೆಯ ಆಡಳಿತ ಮಂಡಳಿ) ಮೇಲಿನಂತೆ ಸುಗಮ ಶೈಕ್ಷಣಿಕ ವಾತಾವರಣವನ್ನು ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಕಲ್ಪಿಸುವ ಸದಾಶಯದಿಂದ ಸೂಕ್ತ ನೀತಿ ಸಂಹಿತೆಗಳನ್ನು ಆಯಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಸರ್ಕಾರದ ನೀತಿಗಳಿಗೆ ಅನುಸಾರವಾಗಿ ನಿರ್ಣಯಿಸಿ ಅಳವಡಿಸಿಕೊಳ್ಳಬಹುದಾಗಿದೆ. ಅಂತಹ ಸಮಿತಿಯ ನಿರ್ಣಯವು ಆಯಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇರುತ್ತದೆ.

ರಾಜ್ಯದ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿ-ವಿದ್ಯಾರ್ಥಿನಿಯರು ಏಕರೂಪ ಕಲಿಕಾ ಕಾರ್ಯಕ್ರಮದಲ್ಲಿ ಭಾಗವಹಿಸಲು ಅನುಕೂಲವಾಗುವಂತೆ ಎಲ್ಲಾ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಹಮ್ಮಿಕೊಳ್ಳಲಾಗಿದೆ. ಆದರೆ, ಕೆಲವು ವಿದ್ಯಾ ಸಂಸ್ಥೆಗಳಲ್ಲಿ ವಿದ್ಯಾರ್ಥಿ ವಿದ್ಯಾರ್ಥಿನಿಯರು ತಮ್ಮ ಧರ್ಮದ ಅನುಸಾರ ಆಚರಣೆಗಳನ್ನು ಪಾಲಿಸುತ್ತಿರುವುದು ಕಂಡುಬರುತ್ತಿದ್ದು ಇದರಿಂದ ಶಾಲಾ ಕಾಲೇಜುಗಳಲ್ಲಿ ಸಮಾನತೆ ಮತ್ತು ಏಕತೆಗೆ ಧಕ್ಕೆ ಬರುತ್ತಿರುವುದು ಶಿಕ್ಷಣ ಇಲಾಖೆಯ ಗಮನಕ್ಕೆ ಬಂದಿರುತ್ತದೆ.

ವೈಯಕ್ತಿಕ ವಸ್ತ್ರ ಸಂಹಿತೆಗಿಂತ ವಿಕರೂಪ ವಸ್ತ್ರ ಸಂಹಿತೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಷ್ಟ್ರದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಮತ್ತು ವಿವಿಧ ರಾಜ್ಯಗಳ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ಮುಂದೆ ದಾಖಲಾದ ಪ್ರಕರಣಗಳಲ್ಲಿ ಈ ಕೆಳಕಂಡಂತೆ ತೀರ್ಮ ನೀಡಲಾಗಿರುತ್ತದೆ:

1) ಕೇರಳ ರಾಜ್ಯದ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು W.P(C) No. 35293/2018ರ ದಿನಾಂಕ:04-12-2018ರಂದು ನೀಡಲಾದ ಆದೇಶದ ಕಂಡಿಕೆ-9ರಲ್ಲಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಹೇಳಿರುವ ತತ್ವವನ್ನು ಈ ಕೆಳಕಂಡಂತೆ ವಿವರಿಸಿರುತ್ತದೆ:

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

2) ಫಾತಿಮಾ ಹುಸೇನ್ ಸೈಯದ್ ವಿರುದ್ಧ ಭಾರತ್ ಎಜುಕೇಷನ್ ಸೊಸೈಟಿ ಮತ್ತು ಇತರರು, (AIR 2003 Bom 75) ಪ್ರಕರಣದಲ್ಲಿ ಇದೇ ರೀತಿಯಲ್ಲಿ ವಸ್ತ್ರ ಸಂಹಿತೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಕಾರ್ಡಿಕ್ ಇಂಗ್ಲೀಷ್ ಸ್ಕೂಲ್, ಮುಂಬೈನಲ್ಲಿ ಸಮಸ್ಯೆ ಉದ್ಭವಿಸಿದ್ದು, ಸದರಿ ಸಮಸ್ಯೆಯ ವಿಚಾರಣೆಯನ್ನು ಬಾಂಬೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಪರಿಶೀಲಿಸಿದ್ದು, ಈ ಶಾಲೆಯ ಪ್ರಾಂಶುಪಾಲರು ಅರ್ಜಿದಾರರಿಗೆ ಶಿರವಸ್ತ್ರ(Head scarf) ಹಾಕಿಕೊಂಡು ಅಥವಾ ತಲೆಯನ್ನು ಮುಚ್ಚಿಕೊಂಡು ಶಾಲೆಗೆ ಬರದಂತೆ ನಿರ್ದೇಶಿಸಿರುವುದು ಸಂವಿಧಾನದ ಅನುಚ್ಛೇದ 25ರ ಉಲ್ಲಂಘನೆ ಅಲ್ಲವೆಂದು ಅಂತಿಮವಾಗಿ ತೀರ್ಮ ನೀಡಿರುತ್ತದೆ.

3) ಮೇಲೆ ಹೇಳಲಾದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪನ್ನು ಅವಲೋಕಿಸಿ ಮಾನ್ಯ ಮದ್ರಾಸ್ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಸಹ ವಿ. ಕಮಲಮ್ಮ ವಿರುದ್ಧ ಡಾ.ಎಂ.ಜಿ.ಆರ್. ಮೆಡಿಕಲ್ ಯೂನಿವರ್ಸಿಟಿ, ತಮಿಳುನಾಡು ಮತ್ತು ಇತರರು. ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸದರಿ ವಿಶ್ವವಿದ್ಯಾಲಯವು ಮಾರ್ಪಾಡು ಮಾಡಿ ನಿಗಧಿಪಡಿಸಿದ ವಸ್ತ್ರ ಸಂಹಿತೆಯ ನಿರ್ಧಾರವನ್ನು ಎತ್ತಿ ಹಿಡಿದಿದೆ. ಇದೇ ತರಹದ ವಿಷಯವು ಮಾನ್ಯ ಮದ್ರಾಸ್ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಶ್ರೀ ಎಂ.ವೆಂಕಟಸುಬ್ಬರಾವ್ ಮೆಟ್ರಿಕುಲೇಷನ್ ಹೈಯರ್ ಸೆಕೆಂಡರಿ ಸ್ಕೂಲ್ ಸ್ಟಾಫ್ ಅಸೋಸಿಯೇಷನ್ ವಿರುದ್ಧ ಶ್ರೀ ಎಂ.ವೆಂಕಟಸುಬ್ಬರಾವ್ ಮೆಟ್ರಿಕುಲೇಷನ್ ಹೈಯರ್ ಸೆಕೆಂಡರಿ ಸ್ಕೂಲ್ ಎಂಬ ಮತ್ತೊಂದು (2004) 2 MLJ 653 ಪ್ರಕರಣದಲ್ಲಿ ಸಹ ಪರಿಗಣಿತವಾಗಿದೆ.

ಮೇಲೆ ಪ್ರಸ್ತಾಪಿಸಲಾದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ವಿವಿಧ ರಾಜ್ಯಗಳ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿನ ತೀರ್ಮಗಳನ್ವಯ ಶಿರವಸ್ತ್ರ(Head scarf) ಹಾಕಿಕೊಂಡು ಅಥವಾ ತಲೆಯನ್ನು ಮುಚ್ಚಿಕೊಂಡು ಶಾಲೆಗೆ ಬರದಂತೆ ನಿರ್ದೇಶಿಸಿರುವುದು ಸಂವಿಧಾನದ ಅನುಚ್ಛೇದ 25ರ ಉಲ್ಲಂಘನೆ ಅಲ್ಲವೆಂದಿರುವುದರಿಂದ ಹಾಗೂ ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983 ಮತ್ತು ಅದರಡಿ ರಚಿತವಾದ ನಿಯಮಗಳನ್ನು ಕೂಲಂಕಷವಾಗಿ ಪರಿಶೀಲಿಸಿ ಸರ್ಕಾರವು ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ:

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ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಇಪಿ 14 ಎಸ್‌ಹೆಚ್‌ಹೆಚ್ 2022 ಬೆಂಗಳೂರು, ದಿನಾಂಕ:05.02.2022.

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಕರ್ನಾಟಕ ಶಿಕ್ಷಣ ಕಾಯ್ದೆ 1983 ಕಲಂ 133 ಉಪ ಕಂಡಿಕೆ (2)ರಲ್ಲಿ ಪ್ರದತ್ತವಾಗಿರುವ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ ರಾಜ್ಯದ ಎಲ್ಲಾ ಸರ್ಕಾರಿ ಶಾಲೆಗಳಲ್ಲಿ ಸರ್ಕಾರ ನಿಗಧಿ ಪಡಿಸಿರುವ ಸಮವಸ್ತ್ರವನ್ನು ಕಡ್ಡಾಯವಾಗಿ ಧರಿಸತಕ್ಕದ್ದು. ಖಾಸಗಿ ಶಾಲೆಗಳು ತಮ್ಮ ಆಡಳಿತ ಮಂಡಳಿಗಳು ನಿರ್ಧರಿಸಿರುವಂತಹ ಸಮವಸ್ತ್ರವನ್ನೇ ಧರಿಸತಕ್ಕದ್ದು.

ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿನ ಕಾಲೇಜುಗಳಲ್ಲಿ ಆಯಾ ಕಾಲೇಜಿನ ಕಾಲೇಜು ಅಭಿವೃದ್ಧಿ ಸಮಿತಿ (CDC) ಅಥವಾ ಆಡಳಿತ ಮಂಡಳಿಯ ಮೇಲ್ವಿಚಾರಣಾ ಸಮಿತಿಯು ನಿರ್ಧರಿಸುವಂತಹ ಸಮವಸ್ತ್ರಗಳನ್ನು ಧರಿಸತಕ್ಕದ್ದು. ಆಡಳಿತ ಮಂಡಳಿಗಳು ಸಮವಸ್ತ್ರಗಳನ್ನು ನಿಗಧಿಪಡಿಸದೇ ಇದ್ದಲ್ಲಿ, ಸಮಾನತೆ ಮತ್ತು ಐಕ್ಯತೆಯನ್ನು ಕಾಪಾಡಿಕೊಂಡು ಹಾಗೂ ಸಾರ್ವಜನಿಕ ಸುವ್ಯವಸ್ಥೆಗೆ ಭಂಗ ಬರದಂತೆ ಇರುವ ಉಡುಪುಗಳನ್ನು ಧರಿಸಿಕೊಳ್ಳತಕ್ಕದ್ದೆಂದು ಆದೇಶಿಸಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ
(ಪದ್ಮಿನಿ ಎಸ್.ಎನ್.) 4/2/22
ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ
ಶಿಕ್ಷಣ ಇಲಾಖೆ(ಪದವಿ ಪೂರ್ವ)

ಇವರಿಗೆ:

1. ಸರ್ಕಾರದ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ, ಕರ್ನಾಟಕ ಸರ್ಕಾರ, ವಿಧಾನಸೌಧ, ಬೆಂಗಳೂರು.
2. ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿ, ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಮತ್ತು ಪಂಚಾಯತ್ ರಾಜ್ ಇಲಾಖೆ. ಬೆಂಗಳೂರು.
3. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಸಮಾಜ ಕಲ್ಯಾಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
4. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಅಲ್ಪಸಂಖ್ಯಾತರ ಕಲ್ಯಾಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
5. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ಮಹಿಳಾ ಮತ್ತು ಮಕ್ಕಳ ಅಭಿವೃದ್ಧಿ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
6. ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಗಳ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿ, ವಿಧಾನಸೌಧ, ಬೆಂಗಳೂರು.
7. ಆಯುಕ್ತರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
8. ನಿರ್ದೇಶಕರು, ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಬೆಂಗಳೂರು.
9. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲಾಧಿಕಾರಿಗಳು ಮತ್ತು ಜಿಲ್ಲಾ ದಂಡಾಧಿಕಾರಿಗಳು.
10. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಿಲ್ಲಾ ಪಂಚಾಯತ್ ಮುಖ್ಯ ಕಾರ್ಯನಿರ್ವಹಣಾಧಿಕಾರಿಗಳು.
11. ಅಪರ ಆಯುಕ್ತರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ, ಕಲಬುರಗಿ/ಧಾರವಾಡ.
12. ರಾಜ್ಯದ ಎಲ್ಲಾ ಜಂಟಿ/ಉಪನಿರ್ದೇಶಕರು, ಸಾರ್ವಜನಿಕ ಶಿಕ್ಷಣ ಇಲಾಖೆ.
13. ಎಲ್ಲಾ ಜಂಟಿ / ಉಪನಿರ್ದೇಶಕರು, ಪದವಿ ಪೂರ್ವ ಶಿಕ್ಷಣ ಇಲಾಖೆ.
14. ಮಾನ್ಯ ಪ್ರಾಥಮಿಕ ಮತ್ತು ಪ್ರೌಢಶಿಕ್ಷಣ ಹಾಗೂ ಸಕಾಲ ಸಚಿವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ. ವಿಧಾನಸೌಧ.
15. ಸರ್ಕಾರದ ಅಪರ ಮುಖ್ಯ ಕಾರ್ಯದರ್ಶಿರವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ, ಉನ್ನತ ಶಿಕ್ಷಣ ಇಲಾಖೆ,
16. ಸರ್ಕಾರದ ಪ್ರಧಾನ ಕಾರ್ಯದರ್ಶಿರವರ ಆಪ್ತ ಕಾರ್ಯದರ್ಶಿ, ಪ್ರಾಥಮಿಕ ಮತ್ತು ಪ್ರೌಢಶಿಕ್ಷಣ ಇಲಾಖೆ.
17. ಸರ್ಕಾರದ ಅಪರ/ಉಪ ಕಾರ್ಯದರ್ಶಿಗಳು-1, 2 ಆಪ್ತ ಸಹಾಯಕರು.
18. ಹೆಚ್ಚುವರಿ ಪ್ರತಿಗಳು.

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True Translated copy of the G.O Dated 05.02.2022

Subject: Regarding the Dress Code of students of all schools and colleges in the state

Reference:
1) Karnataka Education Act, 1983
2) Government Circular No. 509 SHH 2013, dated 31.01.2014

Order:
As per Section 7(2)(v) of the Karnataka Education Act, 1983 (as mentioned in Reference 1) students of all educational institutions shall behave as one family, without restricting themselves to one class of persons, jointly maintain and uphold public order. Under Section 133 of the Act, the government reserves the right to issue appropriate directions to schools and colleges to ensure maintenance of public order.
As per the Circular mentioned in Reference 2, Pre-University education is an important stage in students' lives. As per the Circular, Development Committees of all schools and colleges have been created to make proper use of government grants, improve basic infrastructure and facilities, and maintain the quality of education. Schools and colleges are directed to operate as per the decisions of the development committees.

Any supervisory committees (in government schools and colleges— School Development and Monitoring Committee or SDMC; in private schools and colleges— Parent Teacher Association and the management of that institution) may create policies/rules/codes of conduct in accordance with government rules, to facilitate a smooth functioning atmosphere for the students. The decisions of the committees will be applicable to their respective institutions.
All schools and colleges have adopted methods to allow all students to participate in uniform learning programs. However, it has come to the notice of the Department of Education that in some institutions, students are following practises as per their religion, which is adversely affecting equality in such schools and colleges.

The following decisions of the Supreme Court and various High Courts arise from pleas for uniform dress codes instead of personal dress codes.

1. On 4.12.2018, the Kerala High Court in W.P(C) No. 35293/2018 paragraph 9 explained the decision of the Supreme Court as stated below:

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

2. In *Fathima Hussain Sayed v Bharat Education Society & Ors* (AIR 2003 BOM 75) a similar issue pertaining to dress codes arose in Karthik English School, Mumbai. After investigating the issue, the Bombay High Court held that the petitioner's (school Principal's) restriction on wearing a headscarf or covering one's head is not violative of Article 25 of the Constitution.
3. In accordance with the Supreme Court decision in *Asha Renjan*, the Madras High Court in *Kamalam v Dr. M.G.R Medical University, Tamilnadu & Ors* upheld the dress code issued by the university. In Sir M.Venkata Subba Rao Matriculation Higher Secondary School Staff Association v Sir M.Venkata Subba Rao Matriculation Higher Secondary School (2004) 2 MLJ 653 the Madras High Court decided on a similar matter, allowing the restriction.

As the Supreme Court and various High Courts have held that restricting students from coming to school wearing head scarfs or head covering is not in violation of Article 25 of the Constitution, and after carefully examining the rules under Karnataka Education Act 1983, the government issues the following Order:

Government Order No. EP 14 SHH 2022 Bangalore, dated 05.02.2022

In exercise of the powers conferred under Section 133(2) of the Karnataka Education Act, 1983, we direct students of all government schools to wear the uniform fixed by the state. Students of private schools may wear uniforms prescribed by the management committees of the school.

In colleges that fall under the Karnataka Board of Pre-University Education, dress code prescribed by the College Development Committee (CDC) or the administrative supervisory committee must be followed. If the administration does not fix a dress code, clothes that do not threaten equality, unity, and public order must be worn.

As per the instructions and on behalf of Governor of Karnataka,
Under Secretary to the Government
Department of Education (Pre-university)

ANNEXURE-P-4

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

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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

CJ & KSDJ & JMKJ:
10.02.2022
(VIDEO CONFERENCING)

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Sd/-
JUDGE

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

True Copy

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ANNEXURE P-5

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P.No. 2347/2022

BETWEEN

Resham and Anr ...Petitioners

AND

State of Karnataka & Ors. ...Respondents

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Place: Bangalore

Date: Advocate for the Impleading Applicant

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BEFORE THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. NO. 2347 / 2022

I.A. No. _____

BETWEEN

Resham and Anr. PETITIONERS

AND

STATE OF KARNATAKA & Ors. RESPONDENTS

AND

Women's Voice
Having its Office at:
Maidas Sterch, 2nd Floor, No. 1319
32F Cross, Jayanagara 4T Block
Bangalore-560041
Represented by its General Secretary
Dr. Ruth Manorama IMPLEADING APPLICANT

APPLICATION FOR IMPLEADMENT / INTERVENTION UNDER ARTICLE 226 OF THE CONSTITUTION READ WITH ORDER 1 RULE 10 (2) READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908

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The Impleading Applicant / Intervenor most respectfully submits as follows:

1. The present Writ Petition has been filed by the Petitioners challenging the Respondent Udupi Women's Pre-University College's December 2021 directive to ban the wearing of hijabs within the premises. The Respondents have also prevented the petitioner and other female Muslim students from attending classes on the ground that they wear hijabs.

2. In this regard, the Applicant being an organization working on the rights of women in the country and especially in Karnataka, seeks to implead / intervene in the present proceedings before this Hon'ble Court.

3. The Applicant organisation is **Women's Voice**, a registered public charitable trust working for women's rights in Karnataka and the country. Among the rights of women, the Applicant organisation is also working specifically on the rights of marginalised women, including women from Dalit and Adivasi communities, minority religions, rural women, migrant women and other marginalised backgrounds. The Applicant has filed the present Application seeking that the orders passed by the Respondent State government and the colleges prohibiting

women from wearing the hijab to college amounts to a discrimination on the ground of sex and religion and violates the guarantee of equality and the right to education of Muslim girls and hence deserves to be set aside.

I. The impugned Orders amount to an Article 14 violation of the guarantee of equality because the orders impact Muslim women unequally than others and discriminates against them:

4. It is submitted that the impugned orders of the Respondents not to allow religious clothes in Pre-University Colleges, have an unequal impact on Muslim women and amount to a violation of Article 14 of the constitution as a violation of substantive equality.

5. It is submitted that while the impugned orders may seem innocuous as banning or prohibiting all forms of religious dress of headscarves (hijabs) and bhagwas or shawls, on the ground the actual impact of the said orders are on Muslim women and not on others. The elaboration of Article 14 by the Supreme Court states that article 14 does not look at merely formal equality which looks at treating of likes similarly, but should incorporate substantive equality.

6. Our courts have held that substantive equality looks beyond the limits of identical treatment, to the measures which may be required in order to counter disadvantage and to facilitate equality. It therefore requires difference, resulting from factors such as religion or disability, to be acknowledged and to elicit different treatment where identical treatment would cause disadvantage. Substantive equality should ensure that equality is not based on a like for like approach, and should address structural forms of discrimination and needs to encompass positive or special measures. This was recently articulated by the Supreme Court in ***Nitisha v. Union of India***, 2021 SCC OnLine SC 261where it held that:

"In light of the systemic discrimination that women have faced in the Army over a period of time, to call for the adoption of a pattern of evaluation that accounts and compensates for this harsh reality is not to ask for 'special and unjustified treatment'. Rather, it is the only pathway for the attainment of substantive equality. To adopt a symmetrical concept of equality, is to empty the antidiscrimination guarantee under Article 15, of all meaning."

7. Thus, to state that the impugned orders may seem applicable to all persons both male and female and to members of all religions, but in reality, the persons impacted and denied education are Muslim women and not women of other religions or Muslim men. Muslim women who wear the hijab are at a disadvantage because not only are they women and thus discriminated on the basis of gender but also from a minority religion, and hence face

multiple discrimination. Hence just similar treatment or coverage under the impugned orders would not amount to a satisfaction of Article 14. Substantive equality embraces a wide range of concepts such as equality of results. Deviations from the formal equal treatment principle are justified by reference to the pursuit of goals such as equality of results. The ultimate result should ensure that no one is impacted differently or discriminated. Equality of Results as a part of substantive equality recognizes that there are positive obligations on the State to promote equality rather than obstructing it by accommodating differences.

8. This requirement of accommodation of differences for providing equality of opportunity has been recognized as an integral part of the concept of equality under Article 14 by the Supreme Court. In ***Ashok Kumar Gupta* vs. *State of U.P.(1997) 5 SCC 201***. The Supreme Court held that,

> *"In order to bridge the gap between inequality in results and equality in fact, protective discrimination provides equality of opportunity. Those who are unequals cannot be treated by identical standards. Equality in law certainly would not be real equality. In the circumstances, equality of opportunity depends not merely on the absence of disparities but on the presence of abilities and opportunities. De jure equality must ultimately find its raison d'etre in de fact equality. The State must, therefore, resort to protective discrimination for the purpose of making people, who are factually unequal, equal in specific areas."*

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II. The impugned orders amount to discrimination and a violation of Article 15 on the ground of sex and religion and hence deserve to be set aside:

9. It is submitted that under Article 15 (1), discrimination is prohibited on the ground of sex, religion, race, caste and place of birth. In the instant case, by not allowing headscarves, Muslim girls are prevented from attending college and getting their education which amounts to discrimination on the ground of both SEX and Religion under Article 15 (1).

10. The general interpretation for giving a finding of discrimination under Article 15 (1) has been only if there was any discrimination shown only on one of the grounds mentioned. Such a rigid interpretation has meant that where discrimination has been experienced on multiple grounds of sex and religion, the Supreme Court has recognized multiple grounds of discrimination. The recognition of intersectionality has only just begun from 2018 onwards. In **Navtej Johar v. Union of India,** (2018) 10 SCC 1, for the first time the Supreme Court referred to the term intersectionality in the context of Article 15. It held that a narrow view of Article 15 strips the prohibition on discrimination of its essential content. Further the court observed that the narrow

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interpretation of Article 15(1) fails to take into account the intersectional nature of sex discrimination, which cannot be said to operate in isolation of other identities, especially from the socio-political and economic context and that such a formalistic view of the prohibition in Article 15, rejects the true operation of discrimination, which intersects varied identities and characteristics.

III. <u>The right to Education under Article 21 is violated</u>

11. It submitted that the prohibition on women wearing Hijabs from entering colleges around the state also violates the right to education which has been recognized to be a part of Article 21 as per the interpretation of the Supreme Court in ***Unni Krishnan, J.P. v. State Of Andhra Pradesh and Others, 1993 SCR (1) 594 and Mohini Jain v. State of Karnataka, 1992 SCR (3) 658,*** where it held that:

""The Right to life" is the compendious expression for all those rights which the Court 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. ***<u>The State Government is under an obligation to make endeavours to provide educational facilities at all levels to its citizens.</u>"***

discrimination against women by any person, organization or enterprise in particular in the political, social, economic and cultural fields. Article 3 requires that States parties shall take all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

15. In the present case, the Respondents, instead of prescribing practices requiring the removal of hijab or headscarves and prohibiting Muslim women from attending college for wearing the headscarf should eliminate such practices whether by State authorities or private educational institutions as they discriminate against women and prevent them from enjoying their full right to the right to education and ensure that they are not denied these rights.

16. It is submitted that the Applicant seeks to place these legal issues on record and assist this Hon'ble Court on the constitutional questions arising in this matter, as they are of great public importance and will have an impact on the rights of Muslim women and their access to education throughout the

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country. It is reiterated that the Applicant has the requisite experience and resources to do so and hence would be a necessary and proper party for Impleadment / Intervention.

17. It is submitted that no harm, loss or injury would be caused to the Parties to the instant petition if the Applicant Organisation is permitted to come on record and place all relevant facts and materials which are necessary for the proper adjudication of the issues raised in the present Writ Petition.

PRAYER

Wherefore in light of the above facts and circumstances, it is prayed that this Hon'ble Court be pleased to:

A. Allow this application and permit the Applicant herein, Women's Voice, to implead / intervene in the present petition, and

B. Pass any such further orders as this Hon'ble Court deems fit in the interest of justice and equity.

Place: Bangalore

Date:

Counsel for the Applicants

Rohan Kothari

Address for Service:

D6, Dona Cynthia Apartments,

35 Primrose Road, Bangalore-560025

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

(ORIGINAL JURISDICTION)

W.P.No.2347/2020

BETWEEN

Resham and Anr ...Petitioners

AND

State of Karnataka & Ors. ...Respondents

IMPLEADING APPLICANT

Women's Voice

Represented by Its authorized signatory Impleading Applicant

VERIFYING AFFIDAVIT

I, Dr. Ruth Manorama, W/o N. PAKKIRI SAMY, Aged about 69 years, residing at #84/2, 2nd Cross, 8th Main Road, 3rd Block Jayanagar East, Bangalore 560011do hereby solemnly swear and state on oath as follows:

1. I state that I am the General Secretary and authorized signatory of the Applicant organization and I am authorized to swear to this affidavit on its behalf. I am fully aware of the facts of the case and competent to swear to this affidavit.

2. I state that all the contents of the accompanying Application In Paragraphs 1 to 17 are to the best of my knowledge, information and belief.

WOMEN'S VOICE * BANGALORE *

Ruth Manorama

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Place: Bangalore

Date:

Identified by me:

WOMEN'S V... BANGALORE

DEPONENT

Advocate

True Copy

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No. of 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-VERSUS-

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING PERMISSION TO FILE PRESENT SPECIAL LEAVE PETITION

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

THE HUMBLE APPLICATION OF
THE PETITIONER/APPLICANT
ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition is being filed against the impugned common judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022 whereby the Hon'ble High Court has erroneously dismissed the Writ Petition on merits, holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, and gave a finding that colleges can prescribe a uniform to exclude the hijab or bhagwa or such other religious symbols and the same would be a reasonable restriction which cannot be objected to.
2. That the facts and circumstances stated in the above Special Leave Petition may be taken as part and parcel of this Application and the same is not being repeated herein for the sake of brevity.
3. That W.P. (C) No. No. 2347 of 2022 titled as "Resham v. The State of Karnataka & Anr." was filed before the Hon'ble High Court of Karnataka, by the Petitioners therein as Writ Petition.
4. That the Petitioner Organization herein 'Women's Voice' is a registered charitable trust working for women's rights in Karnataka and had filed an intervention/ impleadment application being I.A No.17 of 2022 in W.P No. 2347 of 2022. That, however the said Application was disposed of in view of the dismissal of the Writ Petition vide the impugned judgment. However, the Hon'ble High Court was pleased to advert to the written submissions/supplements filed by the Petitioner herein.
5. In such circumstance the Petitioner herein, seeks permission of this Hon'ble Court to file the present Special Leave Petition challenging the impugned judgement and final order.

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6. The Petitioner herein is one amongst the largely affected population. That the Petitioner herein was not a party to the abovementioned Writ Petition and hence is filing the present application seeking permission to file the present Special Leave Petition.
7. In view of the urgency of the present matter and in the interest of justice, the Petitioner herein may please be permitted to file the present Special Leave Petition.

PRAYER

In the facts and circumstances set out herein above it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Grant permission to the Petitioner herein to file the present Special Leave Petition; and
b. Pass any other order and/or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

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

PLACE: NEW DELHI

Dated:

DRAWN & FILED BY

[ANINDITA PUJARI]
Advocate for the Petitioner

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. No. of 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-VERSUS-

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED COPY OF THE IMPUGNED ORDER

TO,

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

THE HUMBLE APPLICATION OF THE
APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition is being filed by the Petitioner challenging the impugned judgment and final order dated 15.03.2022 passed by the

Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022 whereby the Hon'ble High Court has erroneously dismissed the Writ Petition on merits, holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, and gave a finding that colleges can prescribe a uniform to exclude the hijab or bhagwa or such other religious symbols and the same would be a reasonable restriction which cannot be objected to.

2. That the facts and circumstances stated in the above Special Leave Petition may be taken as part and parcel of this Application and the same is not being repeated herein for the sake of brevity.
3. That the Petitioner has an ordinary copy of the impugned judgment and final order. That in order to avoid any further delay the Petitioner is filing the present Petition with an ordinary copy of the impugned judgment and final order dated 15.03.2022, passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022.
4. In view of the urgency and in the interest of justice, the Petitioners may please be exempted from filing certified copy of the impugned order.

PRAYER

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

a. Exempt the Petitioners from filing certified copy of the impugned judgment and final order dated 15.03.2021, passed by the Hon'ble High Court of Karnataka in WP(C) No. 2347 of 2022; and

b. Pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

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PLACE: NEW DELHI

Dated

DRAWN & FILED BY

[ANINDITA PUJARI]

Advocate for the Petitioner

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IN THE SUPREME COURT OF INDIA

[Under ORDER XXI, RULE 3 (1) (a) of the S.C. Rules]

CIVIL APPELLATE JURISDICTION

I.A. No. _____ of 2022

IN

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2022

IN THE MATTER OF:-

WOMEN'S VOICE ... PETITIONER

-VERSUS-

STATE OF KARNATAKA & ORS. ... RESPONDENTS

APPLICATION SEEKING EXEMPTION FROM FILING OFFICIAL TRANSLATION OF ANNEXURE

TO,

HON'BLE THE CHIEF JUSTICE AND HIS

HON'BLE COMPANION JUSTICE OF THE

HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE

APPLICANT ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

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1. That the accompanying Special Leave Petition has been filed by the Petitioner challenging the impugned judgment and final order dated 15.03.2022 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 2347 of 2022 whereby the Hon'ble High Court has erroneously dismissed the Writ Petition on merits, holding that wearing of Hijab by Muslim women does not form a part of essential religious practice in Islamic faith, and gave a finding that colleges can prescribe a uniform to exclude the hijab or bhagwa or such other religious symbols and the same would be a reasonable restriction which cannot be objected to.
2. That the facts and circumstances stated in the abovementioned Special Leave Petition may be taken as part and parcel of this application and the same is not being repeated herein for the sake of brevity.
3. That Annexure Nos. P- _ was in vernacular which is now being translated from Kannada to English. It is submitted that the said translations have been done by a competent person who is conversant with the legal phraseology and the same are correct and true English translations of the said document. It is in the interest of justice that the English Translations filed by the Petitioners be taken on record and the Petitioners be exempted from filing of the Official Translation of the above-mentioned Annexure.

PRAYER

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

A. Grant exemption to the Petitioner from filing Official Translations of Annexure P-3 ; and

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B. Pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

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

PLACE: NEW DELHI

Dated

DRAWN & FILED BY

[ANINDITA PUJARI]

Advocate for the Petitioner