



2026:AH:176816-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 31172 of 2026

Sukaina Rizvi

.....Petitioner

Versus

State of U.P. and others

.....Respondents

Counsel for the Petitioner	: Ejaz Ahmad Khan, Mohd. Monis, Zeenat Jahan
Counsel for the Respondents	: Alok Tiwari, C.S.C.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. Sukaina Rizvi, a minor and a student of the Tagore Public School, Attarsuiya, Prayagraj, who has passed High School and seeks admission to Class-XI in the same institution, has moved this Court through her mother, asking us to issue a mandamus, directing the School Authorities to permit the petitioner to wear a headscarf, in addition to the uniform prescribed by the School for all their students.

2. The petitioner says that she has passed her Class-X from the Tagore Public School, Attarsuiya, Prayagraj (for short, 'the School') and sought admission in Class-XI there, but the School Authorities have refused her admission in Class-XI on ground that she is not welcome with her headscarf. She says that she has read from Class-VI to Class-X regularly and wore a scarf on her head, ever-since she was a student of Class-VI. No objection was

raised by the School Authorities in this regard. In support of her claim that she wore a headscarf during time when she was reading in the lower classes, she has appended her ID Cards and group photographs relating to Classes VIII, IX & X, all of which show her in School uniform with the headscarf super-added to her attire.

3. The petitioner says that she requested the School Authorities to permit her to wear her headscarf, but they denied her admission to Class-XI on that ground. There is no written order about it, but the stand is indeed that. At this stage, the petitioner moved an application to that believed plenipotentiary of the district, called the District Magistrate. The applications are more than one. There are two – one dated 14.05.2026 and the other 10.06.2026. The applications carry the same complaint against the School and that is denying the petitioner admission to Class-XI with her headscarf. The petitioner requested the District Magistrate to look into the matter and take necessary action, so that she could continue her education without discrimination. The District Magistrate lived up to the reputation of his office, and, though not in any manner possessed of jurisdiction over the School, a private unaided institution affiliated to the Central Board of Secondary Education (for short, 'CBSE'), he called for a report from the District Inspector of Schools ('DIOS' for short) in the matter. The DIOS caused the School Principal's statement regarding the petitioner's grievance to be recorded by the Assistant DIOS and made a report dated 13.07.2026 to the District Magistrate. We would think that neither the DIOS had anything to do with the School, a private and unaided institution, affiliated to the CBSE nor was he answerable to the District Magistrate. Nonetheless, he made his report after causing the School Principal's statement to be recorded, as the report of the DIOS would show. The Assistant DIOS, Prayagraj summoned both the Principal of the School and the petitioner on 08.09.2027

at 3 p.m., requiring them to appear before him and produce whatever evidence they wished in support of their respective claims. The Assistant DIOS, after hearing both parties, made a report to the DIOS through a letter of his dated 10.07.2026 recording the stand of both parties. The relevant part of the Assistant DIOS's report figures in the report of the DIOS dated 13.07.2026, submitted to the District Magistrate. The Assistant DIOS has recorded the stand of parties in the following words:

"..... अधोहस्ताक्षरी ने अपने पत्रांक/आई.जी.आर.एस./5455-58/2026-27 दिनांक 06.07.2026 द्वारा दिनांक 08.09.2027 को अपरान्ह 3:00 बजे सुनवाई बैठक निर्धारित करते हुए सम्बन्धित प्रधानाचार्या एवं शिकायतकर्ता को साक्ष्य सहित उपस्थित होने के निर्देश दिये गये। उक्त सुनवाई बैठक में दोनों पक्ष उपस्थित हुए। शिकायतकर्ता ने बताया कि छात्रा कक्षा-6 से 10 तक इसी विद्यालय में पढ़ती रही और स्कॉर्फ पहनकर कक्षाएं लेती रही तथा अभिभावक द्वारा ड्रेस कोड अपडेटेकिंग पर नियमित रूप से हस्ताक्षर किया जाता रहा, किन्तु अब कक्षा-11 में छात्रा को विद्यालय में स्कॉर्फ पहनकर कक्षा में आने से रोका जा रहा है और इसी आधार पर प्रवेश नहीं दिया जा रहा है, जबकि स्कॉर्फ हमारे कल्चर का हिस्सा है। प्रधानाचार्या द्वारा अपना पक्ष रखते हुए अपने पत्र दिनांक 10.07.2026 (छायाप्रति संलग्न) द्वारा अवगत कराया गया कि यह विद्यालय को एजुकेशन का विद्यालय है जिसमें सभी समुदाय के बच्चे पढ़ते हैं। सभी बच्चों के लिए एक समान ड्रेस कोड की व्यवस्था लागू है। जिसका सभी छात्र-छात्राओं द्वारा पालन किया जाता है। इस छात्रा के स्कॉर्फ पहनकर कक्षा में बैठने से विद्यालय के ड्रेस कोड का उल्लंघन हो रहा है, जबकि इसी समुदाय की अन्य छात्राएं निर्धारित ड्रेस कोड का पूरा पालन कर रही हैं। ऐसी स्थिति में सिर्फ एक छात्रा को विशेष छूट देने से विद्यालय की व्यवस्था प्रभावित हो सकती है। अतः स्कॉर्फ पहनकर कक्षा में अध्ययन करने की जिद के कारण विद्यालय में प्रवेश दिया जाना सम्भव नहीं है।

टैगोर पब्लिक स्कूल सी०बी०एस०ई० द्वारा सम्बद्ध स्ववित्तपोषित विद्यालय है जिसे अपना आन्तरिक अनुशासन एवं ड्रेस कोड निर्धारित करने की स्वायत्तता है। अतः किसी विशेष छात्र छात्रा द्वारा निर्धारित ड्रेस कोड/नियम को न मानते हुए दबाव बनाकर प्रवेश लिया जाना सम्यक प्रतीत नहीं होता है।"

4. It is evident from a perusal of the Assistant DIOS's report that the stand of the School Principal was clear, which was placed on record through a letter dated 10.07.2026. The Principal said that the School is a co-education institution, where students from all communities read. There is a uniform policy regarding the dress code for all children reading in the School. It is adhered to by all boys and girls. The Principal said that because of the petitioner wearing a scarf and sitting in the class, the dress code of the School is violated. It was emphasized that other girls from the same religious community follow the dress code prescribed by the School. It was also said that in the circumstances, granting exemption to one student, affects the administration of the School.

The Principal then clearly said that insistence by the petitioner to wear a headscarf to class and pursue her studies wearing it, compelled the School to deny her admission.

5. We notice that in the report made by the Assistant DIOS, it is remarked that the School is affiliated to the CBSE and is self-financed. The School has the freedom to enforce their internal discipline and determine the dress code. The Assistant DIOS added that in the circumstances, it does not appear feasible that a particular student be permitted to violate the dress code and by exerting pressure, secure admission. The DIOS endorsed the said report and submitted it to the District Magistrate, as already said.

6. It is the petitioner's case that she is a girl, who wears a headscarf since she was a student of Class-VI without any objection by the School. The School now deny her admission on the ground that she cannot wear a headscarf to School, whereas the petitioner is not violating the dress code in any manner. She is just adding a headscarf to it of her own will. It is further pleaded that the petitioner belongs to the Muslim Shia Community and has a fundamental right to wear a scarf. She has been wearing a scarf since her childhood and does not feel comfortable without it. She, therefore, requested the School to permit her to wear the headscarf along with the uniform. It is next pleaded that there was no justification on the School's part to have prescribed a dress code for the first time, when she sought admission to Class-XI and by that dress code, forbade the petitioner from donning a scarf, though she professes Islam as her faith. It is said that on the contrary, students were permitted to wear a formal and decent dress where the girl students could wear any Indian/ western non-revealing dress. She says that with the dress code prescribed by the School as above described, on one hand, and asking her not to wear the headscarf, on the other, labelled the scarf as something indecent to be worn by a girl in the School. The

petitioner says that her right to wear a headscarf is protected as part of the freedom of expression guaranteed under Article 19(1) (a) of the Constitution. She could not be prevented from dressing appropriately by donning a headscarf, as she has the right to freedom of expression. The restrictions imposed by the School affect the petitioner's right to dignity and bodily integrity. She says that the headscarf, that is prohibited by the School, is decent and it could not be said that this restriction imposed by the School is in any manner reasonable. Rather, the action of the School is discriminatory and not in accordance with law. The donning of a scarf was an essential religious practice of the petitioner and precluding her from wearing it as part of her attire, was violative of her fundamental rights guaranteed under Articles 14 and 19(1)(a) of the Constitution. It is broadly on these facts and grounds that the petitioner prays that we grant a *mandamus* against the School and order them to permit the petitioner to wear a headscarf to her classes.

7. Heard Mr. Mohd. Monis, learned Counsel for the petitioner and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel on behalf of respondent nos. 1, 4, 5 and 6 and Mr. Alok Tiwari, learned Counsel appearing on behalf of respondent nos. 2 and 3.

8. Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, appearing on behalf of respondent nos. 1, 4, 5 and 6, submits that the School is a private unaided institution and not at all subject to the State's jurisdiction in the matter of regulating their internal administration, including the prescription of uniform to be worn by students attending their classes. That apart, Mr. Tripathi submits that the prescription of a uniform is essentially a matter within the policy of the School administration, the purpose whereof is to uphold uniformity amongst students attending their institution. There is absolutely nothing of the kind

of violation of the fundamental right regarding the freedom to practice, profess or propagate one's religion, that is at stake. Moreover, the petitioner is a young student, who should be adherent to School discipline. Mr. Alok Tiwari, learned Counsel appearing on behalf of the Central Board of Secondary Education (CBSE) supports Mr. Tripathi's submission and urges that the petitioner is not entitled to the relief that she seeks.

9. We have heard learned Counsel for the parties, who have agreed that this petition may be heard and decided on the existing material.

10. The petitioner, in substance, seeks a *mandamus* compelling the School to permit her to wear a headscarf in addition to the uniform prescribed. The question is, if an individual student can insist, as a matter of his/ her enforceable rights, upon an addition to the uniformly prescribed dress code by the School. We are of opinion that so long as the dress code is uniform, *bona fide*, non-discriminatory and intended to maintain discipline and institutional identity, the choice of the prescribed uniform primarily lies within the domain of the School. The pleadings show that the School has a prescribed dress code and objection is not to the ordinary uniform prescribed for others, which the petitioner is willing to wear, but she insists upon adding a headscarf to it. The report called by the District Magistrate from the DIOS and the stand of the Principal of the School recorded by the Assistant DIOS shows that the addition of a headscarf to the prescribed uniform would be contrary to the dress code. The mere fact that the petitioner might have worn a headscarf earlier when she was reading in the lower classes without objection from the School, cannot by itself create a vested or enforceable right to compel the School to alter or relax their uniform policy for students seeking admission to Class-XI. In the past, the School might not have raised objection to the petitioner wearing a headscarf when she was reading in the

lower classes, either due to lethargy, inaction, lack of will, non-enforcement of the uniform policy, even courtesy or hesitation, but that would not give rise to an estoppel against the School when they decide to enforce a uniform policy, enforcing their dress code. It is also open to the School to change the uniform policy and alter the dress code and students have to adhere to it. This is not even a case, where the prescribed uniform or dress code has been changed. Rather, it is a case where the School now insist upon the petitioner giving up on the modification of their uniform or dress code that she had done by adding a headscarf to it while reading in the lower classes.

11. It is true that this Court, in the exercise of our jurisdiction under Article 226 of the Constitution, can act to enforce fundamental rights of citizens, if brazenly violated, but in matters where we do not find that kind of a violation, such as adherence to a prescribed dress code, as a matter of School discipline for students required to wear a uniform, this Court would be loath to substitute our opinion for that of the policy maker, to wit, the School. The prescribed uniform that serves as a dress code for students attending a School serves many purposes. It instills discipline, equality amongst children, projects institutional identity and eschews distinctions within the classroom. A rule, requiring students to wear a uniform, promotes a religion neutral atmosphere as it applies to students professing different faiths without singling out any one on the basis of his/ her faith. In **Pradeep Kumar Srivastava v. Ministry of Human Resource Development, New Delhi and others, 2014:AHC:79135-DB**, a Division Bench of this Court was confronted with a prayer made by a petitioner ostensibly in public interest, objecting to the dress code prescribed by the school involved there, where skirts for girls were part of the uniform. The Division Bench in repelling the PIL petitioner's contention in **Pradeep Kumar Srivastava** (*supra*) opined:

“We must express our displeasure about the underlying notions which have led to the filing of the petition. There is absolutely nothing improper about such a dress code for girl students which would permit the wearing of the skirt if the concerned educational authorities believe that such a dress code is appropriate. The change, if any, must be brought in the mindset of those who complain about such a dress code and not by changing the dress code itself. The petitioner has even filed the photographs of the children of the school sitting with the teachers in a group photograph. We are of the view that the petition constitutes a thorough abuse of the process of the Court.”

12. The insistence on wearing a headscarf, virtually modifying a School uniform, is not the first of its kind that has been raised here. In **Fathima Thasneem (Minor) and another v. State of Kerala and others, 2018 SCC OnLine Ker 5267**, Muslim girl students of a private educational institution sought permission to wear headscarves and full sleeve shirts contrary to the prescribed uniform, which the school authorities in that case did not accept. In **Fathima Thasneem (supra)**, the Kerala High Court repelled the students' contention and held:

“3. One has the liberty to follow his own notions and convictions in the matter of dress code. At the same time, when such a right is claimed against a private entity which is also having equal Fundamental Right to manage and administer an institution, the Court has to balance the competing Fundamental Rights and decide the issue.

4. This Court by judgment in *Amnah Bint Basheer v. Central Board of Secondary Education*, [2016 (2) KLT 601] had taken a view that right of woman to have the choice of dress based on religious injunctions is a Fundamental Right protected under Article 25(1) of the Constitution of India, when such prescription of dress is an essential part of the religion. Therefore, there may not be any difficulty to hold that it is the Fundamental Right of the petitioners to choose the dress of their own choice.

5. The right to establish, manage and administer an institution is equally a Fundamental Right. This Fundamental Right is traceable under Article 19 of the Constitution of India, of course, subject to reasonable restrictions. (See judgments of the Hon'ble Supreme Court in *T.M.A. Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481] and *P.A. Inamdar v. State of Maharashtra* [(2005) 6 SCC 537]). This competing Fundamental Right is to be considered in this writ petition and, in what manner this matter has to be resolved is called for a Judicial decision in this case.

7. Fundamental Rights are either in nature of the absolute right or relative right. Absolute rights are non-negotiable. Relative rights are always subject to the restriction imposed by the Constitution. The religious rights are relative rights (see Art 25 of the Constitution). In the absence of any restriction placed by the State, the Court need not examine the matter in the light of restriction under the Constitution. The Court will, therefore, have to examine the matter on a totally different angle on the conflict between Fundamental Rights available to both. The Court has to examine the prioritization of competing Fundamental Rights in a larger legal principle on which legal system function in the absence of any Constitutional guidance in this regard. The Constitution itself envisage a Society where rights are balanced to subserve the larger interest of the Society.

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

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.. ..”

13. A similar issue arose before a Division Bench of the Bombay High Court in **Fathema Hussain Sayed a Minor v. Bharat Education Society and others**, 2002 SCC OnLine Bom 713, where the facts involved can best be recapitulated in the words of their Lordships of the Division Bench as these figure in the report. These read:

“2. The petitioner Ms. Fathema Hussain Sayed (minor) is a student of standard VI in Karthika English School (respondent No. 2). It is her case that she was asked by the Principal of the School to not to attend class from 28-11-2001 if she wore the head scarf. This direction given by the Principal to the petitioner on 28-11-2001 is under challenge in this writ petition. The petitioner says that she hails from Muslim family and follows the Islam religion and since the Holy Quran provides that a female child after 9 years of age should cover her head by scarf, she started wearing head-scarf from June, 2001. According to her, head-scarf does not violate the dress code or the discipline of respondent No. 2 school and therefore, the direction given by the Principal on 28-11-2001 is violative of petitioner's fundamental right of freedom of conscience and professing, propagating and practicing Islam religion.”

14. In repelling the petitioner's contention in **Fathema Hussain Sayed (supra)**, the Court held:

“5. Even if we assume that petitioner may be permitted to file second writ petition though first writ petition was withdrawn without liberty, we find it difficult to accept the submission of the learned counsel that by not permitting the petitioner to wear head-scarf, the fundamental right of the petitioner under Article 25 is violated. Article 25 of Constitution of India reads thus—

“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 (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

6. By asking petitioner who is student in class VIth standard of respondent No. 2 school to maintain the dress code prescribed by the school, how can it be said that the petitioner's fundamental right of freedom of conscience and free profession, practice and propagation of religion is violated. Article 25 guarantees that every person in India shall have freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State on the grounds of; (i) public order, morality and health; (ii) other provisions of the Constitution; (iii) regulation of non-religious activity associated with religious practice; (iv) social welfare and reform etc. There does not seem to be such established practice and profession of the Islam religion from covering their heads by the girls studying in all girls school. The learned counsel for the petitioner however, sought to place reliance upon verse 31 of Chapter 24-64 of Holy Quran (Quran-E-Majid). Verse 31 reads thus—

“31. And say to the believing women that they cast down their looks and guard their private parts and not display their ornaments except what appears thereof, and let them wear their head-coverings over their bosoms, and not display their ornaments except to their husbands or their fathers, or the fathers of their husbands, or their sons, or the sons of their husbands, or their brothers, or their brothers sons, or their sisters sons, or their women, or those whom their right hands possess, or the male servants not having need (of women), or the children who have not attained knowledge of what is hidden of women; and let them not strike their feet so that what they hide of their ornaments may be known; and turn to Allah all of you, O believers; so that you may be successful.”

7. A girl student not wearing the head scarf or head covering studying 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.”

15. The issue most prominently received attention in the celebrated case of **Resham v. State of Karnataka, (2022) 1 HCC (Kar) 43**, where a Full Bench of the High Court of Karnataka was confronted with the same essential question about the right of a Muslim girl student to wear a headscarf to school, somehow in derogation of the prescribed dress code and uniform. The questions, that were actually considered by the Full Bench, were framed with reference to the foundation of this right claimed by the

female Muslim students while attending educational institutions in the State of Karnataka and the denial of those rights by the State and the educational institutions, who had a prescribed uniform and dress code. The following questions were considered by the Full Bench, as these appear from the report of the judgment of the Full Bench in **Resham** (*supra*):

- “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 of 2022 for issuance of a direction for initiating disciplinary enquiry against respondents Nos. 6 to 14 and for issuance of a Writ of *Quo Warranto* against respondents Nos. 15 & 16?”

16. The Full Bench of the Karnataka High Court in Resham answered the first question in the following terms:

“16.1. 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 Supreme Court that ultimately ended with *Indian Young Lawyers Assn. case [Indian Young Lawyers Assn. v. State of Kerala, (2019) 11 SCC 1]* . The same has already been summarised by us above. All these belong to the domain of facts. In *A.S. Narayana Deekshitulu case [A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC 548]* , 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 v. State of Bihar [Mohd. Hanif Quareshi v. State of Bihar, 1957 SCC OnLine SC 17 : AIR 1958 SC 731 : 1959 SCR 629]* which the Supreme Court had criticised. 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 Supreme Court in *Indian Young Lawyers Assn. case [Indian Young Lawyers Assn. v. State of Kerala, (2019) 11 SCC 1]* , 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.”

17. The second question was answered by the Full Bench as follows:

“19.

The counsel for the petitioners passionately submitted that the students should be permitted to wear hijab of structure and 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 and 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 crystallise. 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 of on 28-8-2019, WP No. 13751 of 2019 (EDN-RES-PIL) between *Manjunath v. Union of India* [*Manjunath v. Union of India*, 2019 SCC OnLine Kar 3101] 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.”

18. Question No. 3 formulated by the Full Bench has been answered in paragraph 18.4, which reads:

“18.4. 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 and 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 and decorum. Even the substantive rights themselves metamorphise into a kind of derivative rights in such places. These illustrate this: the rights of an undertrial detainee qualitatively and quantitatively are inferior to those of a free citizen. Similarly, the rights of a serving convict are inferior to those of an undertrial detainee. By no stretch of imagination, it can be gainfully argued that prescription of dress code offends students' fundamental right to expression or their autonomy. In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination inter alia under Articles 14 and 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.”

19. Question No. 4 formulated by the Full Bench is answered thus:

“22.4. 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 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 case* [*Union of India v. K.M. Shankarappa*, (2001) 1 SCC 582] . They further argued that ours being a “positive secularism”, the State should endeavour to create congenial atmosphere for the exercise of citizens rights, by taking stern action against those who obstruct vide *Praveen Bhai Thogadia case* [*State of Karnataka v. Praveen Bhai Thogadia*, (2004) 4 SCC 684 : 2004 SCC (Cri) 1387] . 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 US 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.”

22.7. 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 and 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 and efficacy of the Government. A strong case has to be made to invoke such a ground, in terms of pleadings and proof.

In view of the above, we are of the considered opinion that the Government has power to issue the impugned order dated 5-2-2022 and that no case is made out for its invalidation.”

20. The validity of the judgment of the Full Bench in **Resham** came up for consideration before the Supreme Court in **Aishat Shifa (Hijab Case-2 J.) v. State of Karnataka and others, (2023) 2 SCC 1**. The two Hon’ble Judges, comprising the Bench, delivered a split verdict, and, whereas Hemant Gupta, J. dismissed the appeal, Sudhanshu Dhulia, J. allowed them. In view of the difference of opinion, the matter was directed to be placed before the Hon’ble the Chief Justice for the constitution of an appropriate Bench. There is no authoritative pronouncement as yet by the Supreme Court, finally settling the issue, arising from the judgment of the Karnataka Full Bench. We are of opinion that the Karnataka Full Bench, like the other Courts, is nevertheless persuasive authority of great value and there is no reason for us to take a different view.

21. Learned Counsel for the petitioner, at this stage, pointed out that a similar judgment of the Bombay High Court in **Zainab Abdul Qayyum Choudhary and others v. Chembur Trombay Education Society’s, N.G. Acharya and D.K. Marathe College of Art, Science and Commerce and others, 2024 SCC OnLine Bom 1925**, upholding the power of the institution to prescribe a dress code in the interest of discipline, uniformity and academics, was impugned before the Supreme Court, and their Lordships have passed an interim order in Special Leave Petition (Civil) Diary No(s). 34086/2024 on 09.08.2024, staying the clause to the extent it prohibits *Hijab*, Cap or Badge from being worn by the students, involved in that case. We must note that though the issue is pending examination before the Supreme Court, but the interim

order by itself is not a binding precedent. It is only reasons, which bind. The interim order of the Supreme Court does not give any reasons and is provisional in nature. Therefore, we are of opinion that the consistent, preponderant and reasoned opinion, coming from different High Courts in the country, would have precedential value albeit persuasive.

22. It is to be noted that the assertion in the writ petition, that wearing a headscarf is an essential religious practice, is a bare assertion. There is no pleading or authoritative religious text or material placed on record, sufficient by itself to establish, that the practice asserted by the petitioner about the obligation to wear a scarf inside the classroom, is obligatory upon her and the non-observance thereof would alter the fundamental character of her faith. A claim, placing reliance upon Article 25 of the Constitution, cannot be accepted for the sake of mere assertion, without the necessary factual and legal foundation laid for the purpose. A perusal of the writ petition shows that there are no pleadings to that effect by the petitioner, except that she has been doing it since she was a child and ever-since she joined the School in Class-VI.

23. We must remark here that the District Magistrate after all would have no control over the School, the School being private, unaided and affiliated to the CBSE. Nevertheless, we do not say that the School is not subject to our writ because after all education is in itself a public function, entrusted to private hands for the purpose of better and far reaching realization of the goal of education for a very big size of the population, particularly education upto Class-XII. The School in this case does not seek to curtail the petitioner's freedom of faith at all. All that they require is conformity to institutional discipline, of which a uniform is an essential part. In the event, individual students were permitted to aid or depart, even a little bit from the prescribed uniform on

subjective grounds, it would militate against the idea of a uniform. It would transfer the authority to determine School discipline from the institution to individual students.

24. We have perused the photographs from various classes relating to the petitioner. Except for her, no other girl student is donning the headscarf, even those belonging to the same religious community, as the petitioner. Wherever this issue has arisen, the High Courts have been unanimous in opinion that wearing a headscarf is not essential part of the Islamic faith for a women to don, in the absence of which, faith would be jeopardized. Here, as already remarked, no such factual foundation has been laid or material placed on record to establish a case that the donning of a headscarf is an essential part of religion for a Muslim female, forsaking which, would oust the girl or woman concerned from the faith that she professes and practices. In the absence of this kind of a pleading and material, we are unable to hold for the petitioner on the facts obtaining here. The existing precedents would take care of the question, which go against her on this point.

25. In the result, this writ petition fails and is **dismissed**.

26. There shall be no order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

August 21, 2026

Anoop