REPORTABLE

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE/ORIGINAL JURISDICTION)

Civil Appeal No. 7095 Of 2022
(Arising Out Of S.L.P. (C) No. 5236 Of 2022)

Aishat Shifa .....Appellant(s)

VERSUS

The State of Karnataka & Ors. .... Respondent(s)

With

Writ Petition (C) No.120 Of 2022

Civil Appeal No.7075 Of 2022
(Arising Out Of S.L.P. (C) No. 15405 Of 2022)

Civil Appeal No. 6957 Of 2022
(Arising Out Of S.L.P. (C) No. 9217 Of 2022)

Civil Appeal Nos.7078-7083 Of 2022
(Arising Out Of S.L.P. (C) Nos.15407-15412 Of 2022)

Civil Appeal No. 7077 Of 2022
(Arising Out Of S.L.P. (C) No. 15419 Of 2022)

Civil Appeal No. 7074 Of 2022
(Arising Out Of S.L.P. (C) No.15403 Of 2022)

Civil Appeal No.7076 Of 2022
(Arising Out Of S.L.P. (C) No.15418 Of 2022)

Civil Appeal No. 7072 Of 2022
(Arising Out Of S.L.P. (C) No. 11396 Of 2022)

Civil Appeal No. 6934 Of 2022
(Arising Out Of S.L.P. (C) No. 7794 Of 2022)

Civil Appeal No. 7084 Of 2022
(Arising Out Of S.L.P. (C) No. 15402 Of 2022)

Civil Appeal No. 7085 Of 2022
(Arising Out Of S.L.P. (C) No. 15416 Of 2022)

Civil Appeal No. 7092 Of 2022
(Arising Out Of S.L.P. (C) No. 15404 Of 2022)

Civil Appeal No. 7088 Of 2022
(Arising Out Of S.L.P. (C) No. 15414 Of 2022)

Writ Petition (C) No.95 Of 2022

Civil Appeal No.7087 Of 2022
(Arising Out Of S.L.P. (C) No. 15413 Of 2022)

Civil Appeal No.7090 Of 2022
(Arising Out Of S.L.P. (C) No. 15401 Of 2022)

Civil Appeal No. 7096 Of 2022
(Arising Out Of S.L.P. (C) No. 5690 Of 2022)

Civil Appeal No. 7091 Of 2022
(Arising Out Of S.L.P. (C) No. 15399 Of 2022)

Civil Appeal No.7089 Of 2022
(Arising Out Of S.L.P. (C) No. 15417 Of 2022)

Civil Appeal No. 7086 Of 2022
(Arising Out Of S.L.P. (C) No. 15400 Of 2022)

Civil Appeal No. 7069 Of 2022
(Arising Out Of S.L.P. (C) No.17648 Of 2022)
(Diary No.21273 Of 2022)

Civil Appeal No. 7098 Of 2022
(Arising Out Of S.L.P. (C) No.17656 Of 2022)
(Diary No.9117 Of 2022)

Civil Appeal No. 7093 Of 2022
(Arising Out Of S.L.P. (C) No.17653 Of 2022)
(Diary No.25867 Of 2022)

Civil Appeal No. 7099 Of 2022
(Arising Out Of S.L.P. (C) No.17663 Of 2022)
(Diary No.11577 Of 2022)

Civil Appeal No. 7070 Of 2022
(Arising Out Of S.L.P. (C) No.17647 Of 2022)
(Diary No.21272 Of 2022)

J U D G M E N T

Sudhanshu Dhulia, J

1. In the long hearing of this case, which went on for several days, I had the privilege of listening to the erudite submissions of learned counsels from both sides. On behalf of the Petitioners we have heard, Mr. Kapil Sibal, Mr. Rajeev Dhawan, Mr. Dushyant Dave, Mr. Salman Khurshid, Mr. Colin Gonsalves, Mr. Yusuf Hatim Muchhala, Mr. Huzefa Ahmadi, Ms. Meenakshi Arora, Mr.

Aditya Sondhi, Mr. Sanjay R. Hegde, Mr. Devadatt Kamat, Ms. Jayna Kothari, Mr. A.M. Dar learned Senior Advocates and Mr. Prashant Bhushan, Mr. Shoeb Alam, Mr. Nizam Pasha, Ms. Kirti Singh and Mr. Thulasi K. Raj learned Advocates. The arguments on behalf of the State were made by Mr. Tushar Mehta, Solicitor General of India, Mr. K.M. Nataraj, Additional Solicitor General of India and Mr. Prabhuling Navadgi, Advocate General for Karnataka learned Senior Advocates. Mr. R. Venkatramani, Ms. V. Mohana and Mr. Dama Seshadri Naidu, learned Senior Advocates have appeared on behalf of the teachers.

2. I had the advantage of going through the Judgement of Justice Hemant Gupta. Justice Gupta has recorded each argument which was raised at the Bar before us in the long hearing of the case and he has given his findings on each of the issues. It is a very well composed Judgement. I am, however, unable to agree with the decision of Justice Gupta. I am therefore giving a separate opinion, on this important matter.

3. While I do so, I am conscious that as far as possible, a Constitutional Court must speak in one voice. Split verdicts and discordant notes do not resolve a dispute. Finality is not reached. But then to borrow the words of Lord Atkin (which he said though in an entirely different context), "*...finality is a good thing, but Justice is better.*"[1]

4. The Judgement impugned before this Court was pronounced by the Karnataka High Court on March 15, 2022. This was challenged before this Court in several SLP's. Apart from the SLP we also had before us two Writ Petitions filed under Article 32 of the Constitution of India. The Karnataka High Court was dealing with 7 Petitions where the lead matter was W.P. (C) No. 2347 of 2022. All the same while we deal with the facts of the present case, we would be referring to Aishat Shifa who was there in Special Leave Petition (Civil) 5236 of 2022, and was one of the two Petitioners before the Karnataka High Court, in Writ Petition (Civil) No. 2880 of 2022. We have heard this as the lead matter. On 22.09.2022

1 Ras Behari Lal and Others vs. The King-Emperor in AIR 1933 PC 208

leave was granted by this Court, and Judgement was reserved.

5. In the district of Udupi in Karnataka there is a small town called Kundapura. Aishat Shifa and Tehrina Begum were the two second year students of Government Pre-University College in Kundapura. They both follow Islam religion and wear *hijab*. According to them they have been wearing *hijab*, inside their classrooms, ever since they joined the college, more than a year back. They say that in the past they had never faced any objection from anyone, including the college administration and their wearing of *hijab* inside their classroom was never an issue.

6. On February 3, 2022, these two girl students were stopped at the gate of their college. They were told that they will have to take off their *hijab* before entering the college. Since they refused to take off their *hijab*, they were denied entry in the college, by the college administration.

7. The next day that is February 4, 2022, both made a representation before the Deputy Commissioner Udupi, praying that direction be given to the college authorities to let them enter their college and complete their studies. No effective orders were passed by the Deputy Commissioner, but instead the Government came up with an Order on February 5, 2022. This G.O has a Preamble, which refers to the Karnataka Education Act, 1983 and the Rules framed therein, from where it draws its powers and then cites three Judgments of different High Courts to conclude that prohibiting *hijab* does not amount to a violation of Article 25 of the Constitution. It then mandates that the Government schools must have a school uniform and the colleges which come under the jurisdiction of the Pre-University Education Department the uniform which is prescribed by the College Development Committees (in Government colleges), and Board of Management (in private schools), should be worn. There was, however, a caveat, which said that in the event the Board of Management did not mandate any uniform then students should wear

clothes that are "*in the interest of unity, equality and public order*."

8. Since the entire G.O. has been reproduced by Justice Hemant Gupta in his Judgement I need not reproduce the entire G.O., but the relevant portion of the G.O are as under:

> "In the backdrop of the issues highlighted in the proposal, using the powers granted by the Karnataka Education Act Section 133 (2), all the government schools in the state are mandated to abide by the official uniform. Private schools should mandate a uniform decided upon by their board of management.
>
> In colleges that come under the pre-university education department's jurisdiction the uniforms mandated by the College Development Committee, or the board of management, should be worn. In the event that the management does [*sic* does not] mandate a uniform, students should wear clothes that are in the interests of unity, equality and public order.
>
> **By the Orders of the Governor of Karnataka**"

9. Since *hijab* was not made a part of the 'uniform,' and wearing it was not 'in the interest of unity, equality and public order,' as the G.O. mandated, the Petitioners

were denied entry in their school. This Court has been informed at the Bar, that similar restriction was imposed on other school going girls in different parts in Karnataka.

10. The two girls, who were the students were then constrained to file Writ Petitions before the Karnataka High Court. Initially the case went before a learned Single Judge of the High Court, who in turn, considering the importance of the matter, referred it to the Chief Justice for constituting a larger bench. A three-judge bench was constituted by the Chief justice, which has heard the matter at length and then passed its orders on March 15, 2022, dismissing the Writ Petitions, an order which is presently impugned before this Court.

11. Before the Karnataka High Court as well as before this Court the main argument of the Petitioners was that the G.O. dated February 5, 2022, and the restrictions imposed by the school authorities in not permitting the Petitioners to wear *hijab* inside their classrooms amounts to a violation of their Fundamental

Rights given to them under Article 19(1)(a) and Article 25(1) of the Constitution of India as well as under Articles 14 and 21 of the Constitution. Some of the Petitioners also raised a claim that wearing of *hijab* is a part of their Essential Religious Practice. The argument of the State on the other hand would be that the G.O only directs the school authorities of respective schools to prescribe a school uniform. It is an innocuous order, which is religion neutral. As to the argument on Fundamental Rights, the reply was that Fundamental Rights are not absolute and they are always subject to reasonable restrictions. Prohibiting *hijab* inside a classroom is a reasonable restriction. Wearing of *hijab* was also said to be not an Essential Religious Practice.

12. The Karnataka High Court had formulated four questions for its consideration. These questions are as follows:

a) Whether wearing *hijab*/headscarf is a part of Essential Religious practice in Islamic Faith protected under Article 25 of the Constitution.

b) Whether prescription of school uniform is not legally permissible, as being violative of petitioners' Fundamental Rights *inter-alia* guaranteed under Article 19(1)(a), (i.e., freedom of expression) and 21 (i.e., privacy) of the Constitution.

c) 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 Article 14 and 15 of the Constitution?

d) Whether any case is made out in Writ Petition Number 2146 of 2022 for issuance of a direction for initiating disciplinary enquiry against Respondent No. 6 to 14 and for issuance of a Writ of *Quo Warranto* against Respondent No. 15 and 16?

13. As far as the first question is concerned the High Court has given a finding that wearing of *hijab* by Muslim women does not form a part of Essential Religious Practice in Islamic faith. On the second

question it was held that prescription of school uniform places only a reasonable restriction which is Constitutionally permissible and cannot be objected by the students. As regards the third, i.e., the G.O of 5 February 2022 it was again held that the Government has powers to issue such an order and no case is made out for its invalidation. The fourth point was also given in the negative.

14. One of the grounds raised by the Petitioners in their challenge to the validity of the G.O. dated February 5, 2022 is that it is merely an Executive Order. But it has far reaching consequences as far as curtailment of Fundamental Rights of the Petitioner are concerned given to her under Article 19(1)(a) and 25(1) of the Constitution. It was submitted that the settled position of law is that restrictions on Fundamental Rights can only be imposed by a statutory law and not by executive order. The decision of this Court in **Kharak Singh** v**. State of Uttar Pradesh**[2] was relied upon. This submission, however, is not correct and therefore

2 (1964) 1 SCR 332

declined. The reasons being, that under Section 133[3] of the Karnataka Education Act, 1983 the Government has powers to give directions. Section 145 of the 1983 Act gives the State Government powers to make Rules, which have been made and are called the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula Etc.,) Rules, 1995. Rule 11(1),[4] of the above Rules' states that the recognized educational institutions can prescribe uniform. Therefore, the State Government in any case has powers to prescribe a uniform/dress code. Therefore, the submissions that the G.O is not a valid law is not correct. The G.O draws its source from the statue and the statutory rules. Therefore, it has the force of law. Nevertheless, the fact remains that it still has to pass

---

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

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

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

4 '*11.* ***Provision of Uniform, Clothing, Text Books etc.,*** *(1) Every recognised education institution may specify its own set of Uniform. Such uniform once specified shall not be changed within the period of next five years.*

muster the provisions of Articles 19 and 25 of the Constitution.

15. Out of the four questions formulated by the Karnataka High Court the first question is in fact the crucial one. Everything depended on the determination on this question. But then the Court had set a very tall order for the Petitioners to prove their case. The Petitioners had to prove that wearing of *hijab* forms a core belief in the religion of Islam. ERP also meant that such a practice should be fundamental to follow as a religious belief or practice as ERP was held to be the foundation, on which the superstructure of the religion was erected. Essential Religious Practice would mean a practice without which religion would not remain the same religion. Also, the Petitioners had to prove that the practice of wearing *hijab* is a practice which is being followed since the very beginning of their religion. This was the task set up for the Petitioners to prove their case. But this was not enough, this was only the threshold requirement. The Petitioners also had to prove that the ERP does not militate against any of the

Constitutional values. This perhaps was right, because an ERP which is an invasion on the Fundamental Rights of others will not be given the protection. The Court held as follows[5]:

> "…There is absolutely no material placed on record to prima facie show that wearing of hijab is a part of an essential religious practise 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 practise 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'…"

As the Petitioners did not meet the threshold requirement, the High Court did not feel it necessary to touch on the aspect of Constitutional Values. Therefore, they stated that :-

> "It hardly needs to be stated that if Essential Religious Practice as a threshold requirement is not satisfied

5 Para XII at Page 87 of the Judgement

> then the case would by extension not travel to the merits surrounding the domain of those Constitutional Values."

16. The Judgement then upholds the validity of the G.O dated February 5, 2022 and holds that the authorities have power to prescribe uniform in schools.

17. In my opinion, the question of Essential Religious Practices, which we have also referred in this judgement as ERP, was not at all relevant in the determination of the dispute before the Court. I say this because when protection is sought under Article 25(1) of the Constitution of India, as is being done in the present case, it is not required for an individual to establish that what he or she asserts is an ERP. It may simply be any religious practice, a matter of faith or conscience! Yes, what is asserted as a Right should not go against "*public order, morality and health*," and of course, it is subject to other provisions of Part III of the Constitution.

18. Partly, the Petitioners had to be blamed for the course taken by the Court as it was indeed the Petitioners or some of the Petitioners who had claimed

that wearing of *hijab* is an essential practice in Islam. Before us, however, when arguments were raised at the Bar, some of the Counsels did admit that ERP was not the core issue in the matter, but the Petitioners before the Karnataka High Court had no choice as they were, *inter alia*, attacking the Government Order dated 5 February 2022, which clearly stated that prohibiting *hijab* in schools will not be violative of Article 25 of the Constitution of India. Be that as it may, the fact remains that the point was raised. It was made the core issue by the Court, and it went against the Petitioners.

19. The approach of the High Court could have been different. Instead of straightaway taking the ERP route, as a threshold requirement, the Court could have first examined whether the restriction imposed by the school or the G.O on wearing a hijab, were valid restrictions? Or whether these restrictions are hit by the Doctrine of Proportionality. In **Bijoe Emmanuel and Ors. vs State of Kerala and Ors[6].** this is what the Court had to say:

> "…Therefore, whenever the Fundamental Right to freedom of

6 1986 3 SCC 615; Para 19

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

20. Be that as it may, let us examine as to how and what the entire concept of Essential Religious Practice has been defined by this Court.

21. The test of ERP has been laid down by this Court in the past to resolve disputes of a particular nature, which we shall discuss in a while. By and large these were the cases where a challenge was made to State interference on what was claimed to be an "*essential religious practice*." What was raised was the protection of Article 25 as well as Article 26 of the Constitution of India. In other words, these were the cases where both Article 25 (1) and (2) and Article 26 were in play. Essentially, these were the cases where the rituals and

practices of a denomination or a sect of a particular religion sought protection against State intervention. Even when Rights of an individual were raised, as we may say in the case of **Shayara Bano** v. **Union of India and Ors.**[7] which is the Triple Talaq case or the case of **Indian Young Lawyers Association and Ors, (Sabarimala Temple, In Re.)** v. **State of Kerala and Ors.**[8] which is commonly known as the Sabarimala case, these were cases where an individual right was asserted against a religious practice or where there was an assertion, primarily on a religious identity. In the case at hand, the question is not merely of religious practice or identity but also of 'freedom of expression,' given to a citizen under Article 19(1)(a) of the Constitution of India, and this makes this case different.

22. The expression *'essential religious practices'* it seems was taken from the Constituent Assembly Debates. In response to a query, Dr. Ambedkar categorically said that what is protected under Article 25 of the Constitution is not every religious practice but only such practices which are essentially religious. The

7 (2017) 9 SCC 1
8 (2019) 11 SCC 1

relevant passage of the Constituent Assembly Debates VII: 781 is reproduced hereunder:

> "...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..."

23. The first case, all the same, in this regard which came up for consideration before the Supreme Court was **Commissioner, Hindu Religious Endowments, Madras** v**. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**[9] which is famously known as the *Shirur Mutt* case. The facts of this case were that the Mathadhipati of Shirur Math at Udupi had preferred a challenge to the powers of the Commissioner under the Madras Hindu Religious Endowments Act (Act 2 of 1927) who was exercising control over the affairs of Shirur Math. The Writ Petition was allowed by the Madras High Court and a Writ of *Prohibition* was granted in favour of the Mathadhipati. This order was challenged before the Supreme Court by the Commissioner, Hindu Religious

9 (1954) SCR 1005

Endowments, Madras. *Inter-alia,* therefore before the Supreme Court was the question of whether the provisions of the Act were an invasion on the exercise of Fundamental Rights of the Mathadhipati and the Management of the Temple, given to them under Article 25 and 26 of the Constitution. This Court then proceeded to elaborate on the meaning of religion and how it has to be understood in the context of the Constitution. While delivering the concurring opinion on behalf of the Seven Judge Constitutional Bench, Justice B.K. Mukherjea held as follows:

> "…Religion is certainly a matter of faith with individuals or communities 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 models of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.[10]"

10 Para 17 of Shirur Mutt Cae *(supra)*

24. The Court held that the guarantee under her Constitution not only protects the freedom of religious opinion but it protects also, acts done in pursuance of a religion and this is made clear using the expression '*practice of religion*,' in Article 25. This Court rejected the submissions of the Ld. Attorney General of India, as he then was, that the State must be allowed to regulate the secular activities which are associated with a religion which do not constitute the essential part of it. The observations falling from the court in the **Shirur Mutt Case** (supra), in this regard were as follows:

> "19. ...The learned Attorney-General lays stress upon clause 2(a) of the article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.
>
> 20. ... The contention formulated in such broad terms cannot, we think, be supported. **In the first place, what constitutes the essential part of a 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 mere fact that they involve expenditure of money or employment of priests and servants or the use of 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].'
>
> **(emphasis supplied)**

Thereafter though the concept like ERP had come, but what constitutes Essential Religious Practices was left to the doctrine of that religion itself.

25. The next case which came up for consideration of this Court was in **Ratilal Panachand Gandhi** v. **State of Bombay and Ors.**[12] wherein the Petitioners had challenged the Constitutional validity of the Act known as the Bombay Public Trusts Act, 1950 *inter-alia*, on grounds that the provisions in the Act were an invasion of their Fundamental Rights, given to them under Article 25 as well as Article 26 of the Constitution. Basically, it followed the same line of thought as laid down in the

11 Para 19 & 20
12 1954 SCR 1055; Para

Shirur Mutt (supra) case. The observations of the court are:

> "10. ...The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause 2 of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices."

26. We now come to the decision of the Supreme Court in **Durgah Committee, Ajmer, and Anr.** v. **Syed Hussain Ali and Ors.**[13] In this case the *'khadims'* of the *Hazrat Haji Moinuddin Chishti* had challenged the Constitutional Validity of the Dargah Hazrat Khwaja Saheb Act, 1955 before the Rajasthan High Court. The *'khadims'* of the Durgah of *Khwaja Moin-ud-din Chishti* (also known as the Durgah Khwaja Saheb, Ajmer), claimed to be the followers of a *Sufi* sect or *Silsila* called *Chishti* and they claimed they were doing service in the Dargah of *Sufi* Saint *Hazrat Haji*

13 (1962) 1 SCR 383

Moinuddin Chishti. Their case was that the interference of the Dargah Committee amounts to an invasion of the Fundamental Rights, *inter alia*, guaranteed to them under Article 25(1) of the Constitution of India. The Rajasthan High Court had substantially allowed their claim and against the said order the Dargah Committee was before the Supreme Court. The questions which fell for consideration before this Court was whether any person as a *Sunni* Muslim could manage the affairs of the Durgah or whether this could only be done by the followers of *Chishti Silsila*. There were some other questions as well, which would not be relevant for discussion in the context of this decision. The Supreme Court had allowed the appeal of the Durgah Committee by setting aside the order of the Rajasthan High Court, holding, *inter alia* that *khadims* could not claim the right under Article 25(1) of the Constitution of India. The Supreme Court in this case, went on to determine as to what would be an ERP and how the Court would determine the same. All the same this was done again as there was an interplay of Article 25 and Article 26 of

the Constitution, and what was being asserted were the Rights of a Sect or a denomination against State intervention.

27. The Judgements of this Court in **Acharya J. Avadhuta & Ors.** v. **Commissioner of Police, Calcutta & Anr.**[14] and **Commissioner of Police & Ors.** v. **Acharya J. Avadduta**[15] both relate to the performance of *tandav* dance in a public place by the followers of the faith of '*Anand Margis*.' The Kolkata Police had banned such performance of *tandav* dance in public places under Section 144 of the Code of Criminal Procedure, 1973. The matter ultimately came up before this Court in 1983 and it was held that performing *tandav* dance in public places is not an essential part of the '*Anand Margi*' faith. The matter again reached before this Court in 2004 and a 3-Judge bench of this Court reached the same conclusion by relying upon the earlier Judgement of 1983.

28. Therefore, what can be clearly distinguished here is that while dealing with the concept of Essential Religious Practices or whether a particular practice can

14 (1983) 4 SCC 522
15 (2004) 12 SCC 770

be termed as an ERP, this Court was dealing with questions related to both Article 25 as well as Article 26 of the Constitution. These were the cases which were either concerned with the management of an activity related to a religious shrine or Institution or where the State had met some kind of resistance or challenge by the citizens, who claimed rights both under Article 25 and 26 of the Constitution of India. These were also the cases where a community, sect or a religious denomination of a religion was against the State action. This, however, is not presently the case before this Court. We have before us a case of assertion of individual Right as different from what would be a community Right. We are concerned only with Article 25(1) and not with Article 25(2) or Article 26 of the Constitution of India. Whereas Clause 1 of Article 25 deals with individual rights, Article 25(2) and Article 26 of the Constitution of India, deal by and large with community-based rights. In that sense what has been decided by this Court earlier as ERP would not be of much help to us. For this reason, the entire exercise

done by the Karnataka High Court, in evaluating the rights of the Petitioners only on the touchstone of ERP, was incorrect.

29. In the more recent case of **Shayara Bano** (supra) the majority opinion of 3:2 held that Triple Talaq constitutes an irregular and not an essential practice amongst *Sunni Muslims*. It was stated as follows:

> "54. …Applying the aforesaid tests, it is clear that Triple Talaq is only a form of talaq which is permissible in law, but at the same time, stated to be sinful by the very Hanafi School which tolerates it. According to Javed[16], therefore, this would not form part of any essential religious practice. Applying the test stated in Acharya Jagadishwarananda it is equally clear that the fundamental nature of the Islamic religion, as seen through an Indian Sunni Muslim's eyes, will not change without this practice…"

30. In the **Sabarimala Temple** (supra) case the question before the Constitutional Bench was whether women devotees between the ages of 10-50 years had the Right to enter the temple of *Lord Ayyappa* located in Sabarimala, Kerala. Subsequently, this Right was denied to them by the Temple Authorities, on the basis of customary practice and tradition. Allowing the Writ

16 Javed v State of Haryana, (2003) 8 SCC 369 [cited in **Shayara Bano** *(supra)*]

Petition by 4:1 majority, the bench held in favour of women devotees and struck down the restrictions placed upon them to be violative of their Fundamental Rights under the Constitution of India.

31. In both the cases cited above again the essential determination before the Court was of religion and religious practice. Freedom of expression given to a citizen under Article 19(1)(a) was not an issue, and if at all it was it was on the periphery. In other words, not the central issue.

32. We are presently concerned with an entirely different set of facts. We must deal with only Article 25(1), and not with Article 25(2), or even with Article 26 of the Constitution of India. Article 25(1) deals with the Rights of an individual, whereas Article 25 (2), and Article 26 deal with the Rights of communities or religious denominations, as referred above. Additionally, we must deal with the Fundamental Rights given to an individual under Article 19(1)(a) and its interplay with Article 25(1) of the Constitution.

33. Article 25 gives a citizen the “freedom of conscience and free profession, practice and propagation of religion.” It does not speak of Essential Religious Practice. This concept comes in only when we are dealing with Article 25(2) or Article 26, and where there is an inter-play of these two Articles.

34. We have before us two children, two girl students, asserting their identity by wearing *hijab*, and claim protection under Article 19 and Article 25 of the Constitution of India. Whether wearing *hijab* is an ERP in Islam or not is not essential for the determination of this dispute. If the belief is sincere, and it harms no one else, there can be no justifiable reasons for banning *hijab* in a classroom.

35. The Karnataka High Court, however, has made a detailed study as to what is ERP and whether wearing a *hijab* constitutes a part of ERP in Islam. *Suras* and verses from the Holy Quran have been referred and explained, and then taking assistance of a commentary on the Holy Book, the High Court concludes that

wearing of *hijab* is not an essential religious practice in Islam and at best it is directory in nature, not mandatory. The decisions of the Supreme Court which we have referred above, and some other decisions as well have been considered while dealing as to what constitutes an ERP, and then a determination has been made that what is being claimed as a right is not an essential religious practice at all!

36. Apart from the fact that ERP was not essential to the determination of the dispute, which we have already said above, there is another aspect which is even more important, which would explain as to why the Courts should be slow in the matters of determining as to what is an ERP. In my humble opinion Courts are not the forums to solve theological questions. Courts are not well equipped to do that for various reasons, but most importantly because there will always be more than one viewpoint on a particular religious matter, and therefore nothing gives the authority to the Court to pick one over the other. The Courts, however, must interfere when the boundaries set by the Constitution

are broken, or where unjustified restrictions are imposed.

37. In the case of **M. Siddiq (Dead) Through LR's** v. **Mahant Suresh Das and Ors.**[17] popularly known as the Ram Janmabhoomi Case this Court had cautioned not to venture into areas of theology with which the Courts are not well equipped. There may be diversity of views within a religion and to choose one over others, may not be correct. Courts should steer clear from interpreting religious scriptures. It was observed by the Court as follows:

> "90. During the course of the submissions, it has emerged that the extreme and even absolute view of Islam sought to be portrayed by Mr. P.N. Mishra does not emerge as the only available interpretation of Islamic law on a matter of theology. Hence, in the given set of facts and circumstances, it is inappropriate for this Court to enter upon an area of theology and to assume the role of an interpreter of the Hadees. The true test is whether those who believe and worship have faith in the religious efficacy of the place where they pray. The belief and faith of the worshipper in offering namaz at a place which is for the worshipper a mosque cannot be challenged. It would be preposterous for this Court to question it on the ground that a true Muslim would

17 (2020) 1 SCC 1; Para 90 & 91

not offer prayer in a place which does not meet an extreme interpretation of doctrine selectively advanced by Mr. Mishra. **This Court, as a secular institution, set up under a constitutional regime must steer clear from choosing one among many possible interpretations of theological doctrine and must defer to the safer course of accepting the faith and belief of the worshipper.'**

91. Above all, the practice of religion, Islam being no exception, varies according to the culture and social context. That indeed is the strength of our plural society. Cultural assimilation is a significant factor which shapes the manner in which religion is practiced. In the plural diversity of religious beliefs as they are practiced in India, cultural assimilation cannot be construed as a feature destructive of religious doctrine. On the contrary, this process strengthens and reinforces the true character of a country which has been able to preserve its unity by accommodating, tolerating, and respecting a diversity of religious faiths and ideas. **There can be no hesitation in rejecting any attempt to lead the Court to interpret religious doctrine in an absolute and extreme form and question the faith of worshippers. Nothing would be as destructive of the values underlying Article 25 of the Constitution.[18]'**

(emphasis supplied)

18 Paras 90 & 91

38. In any case as to what constitutes an Essential Religious Practice, in all its complexities, is a matter which is pending consideration before a Nine Judge Constitutional bench of this Court[19] and therefore in any case it may not be proper for me to go any further into this aspect.

39. The decision which is of essential importance in this case for our purposes is the decision given by this Court in the case of **Bijoe Emmanuel** (supra). It is necessary to refer to this case in some detail, as in my opinion this case is the guiding star which will show us the path laid down by the well established principles of our Constitutional values, the path of understanding and tolerance, which we may also call as "reasonable accommodation," as explained by some of the lawyers before this Court. Karnataka High Court, all the same, chose not to rely on this seminal Judgement for reasons that "*Bijoe Emmanuel is not the best vehicle for drawing a proposition essentially founded on the*

19 Kantaru Rajeevaru vs Indian Young Lawyers Assn. and Ors. [R.P. (C) No. 3358 of 2018 in W.P. (C) No. 373 of 2006]

freedom of conscience[20]." But this is not correct. This decision of the Supreme Court is most relevant in the present case, both on the facts as well as on law.

40. Let us now look into the facts of that case:

Three girl children in Kerala who belonged to a faith called Jehovah's Witnesses, were attending a government school. Every morning when the National Anthem was sung in the school these three students used to respectfully stand up for the National Anthem, like other children in the school; but they did not sing the National Anthem. They did so as their faith forbid them to sing for anyone else but Jehovah. Initially this was not noticed but then someone complained before the highest authority in the State, which led to the expulsion of these three children from their school, by orders passed by the Deputy Inspector of schools and then the Headmistress of the school. The children filed their Writ Petition before the Kerala High Court which was dismissed by the learned Single Judge as also their appeal by a division bench of Kerala High Court. They finally approached the Supreme Court of India

20 Para X1(iii) at Page 85 of the Impugned Judgement

and filed their Special Leave Petition before this Court. Their case was simple: they do not show disrespect to the National Flag or the National Anthem. They stand respectfully when the National Anthem is sung, they only do not participate in singing as they sincerely believe their faith forbids them to sing for anyone but Jehovah.

41. The Petition of these three girl children was dismissed by the Kerala High Court as the Kerala High Court did not find any word or thought in the Indian National Anthem which could offend anyone’s religious susceptibilities. Hence the Kerala High Court concluded that there was absolutely no reason for the children not to sing the national anthem! While examining their case Justice O. Chinnappa Reddy, who wrote this Judgement for the Court rejected the approach of the High Court and said that the High Court had actually misdirected itself in doing so and it went off at a tangent. The objection of the Petitioners was not to the language of the National Anthem, but they simply refused to sing any National Anthem, irrespective of any country as

they sincerely believe that this is what their religion prescribes them to do.

42. The Supreme Court then cites two judgements of the United States Supreme Court, which we must refer here as well, since they relate to schools and the 'discipline' imposed by the schools. The first is the case of **Minersville School District** v. **Gobitis**[21] and the second is **West Virginia State Board of Education** v. **Barnette**[22]**.** While referring to the two judgement(s) my source shall remain the Judgement of **Bijoe Emmanuel** (supra).

43. In **Minersville** (supra) the question was whether compulsory saluting of the National Flag infringed upon the liberties guaranteed by the Fourteenth Amendment of the Constitution of the United States of America. The majority opinion delivered by Justice Frankfurter upheld the requirement on grounds that such decisions are to be left to the school boards. Justice Stone gave his dissent and said,

> "History teaches us that there have been but few infringements of personal liberty

21 310 US 586 (1940)
22 319 US 624 (1943)

> by the State which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been dictated, as they are now, at politically helpless minorities[23].”

In short, the US Supreme Court did not interfere in the compulsory saluting of the National Flag in a Public School. The reference of this case, is however, important here as very soon this decision was overruled by the Supreme Court in the case of **Barnetta** (supra) which is the second case.

44. The second case is the one which only a few years later, overruled **Gobitis** (supra). Justice Jackson, the author of the Judgement in **Barnetta** referred to the famous dilemma of Abraham Lincoln which was *“Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?”* Justice Jackson then said:

> “It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school…”

23 Para 21 of Bijoe Emmanuel (supra)

45. While going into the logic of Justice Frankfurter of non-interference with the School Authorities, as that would make the Court a School Board, Justice Jackson went onto say:

> "There are village tyrants as well as village Hampdens, but none who acts under colour of law is beyond the reach of the Constitution….. We cannot, because of modest estimates of our competence in such specialities as public education, withhold the judgement that history authenticates as the function of this Court when liberty is infringed." Justice Jackson then concludes:[24],
>
> > "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
> >
> > We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

24 Para 22 of Bijoe Emmanuel *(supra)*

46. Justice O. Chinnappa Reddy in his Judgement has traced the struggles and the difficulties faced by the faithful of Jehovah in different countries where they had met similar restrictions. The Court then invokes Article 19(1)(a) and Article 25(1), in favor of the petitioners. It says:

> "Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Article 19(2) provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution."

47. It was then held that it is not disrespectful to the National Anthem if the girls respectfully stand when the National Anthem was sung, but may not have joined in the singing. Their expulsion from school was therefore

held to be in violation of their Fundamental Right of Freedom of Speech and Expression given to them under Article 19(1)(a) of the Constitution of India. The Government Circular which directed that the entire school should sing National Anthem was not '*law*' as given in Clause 2 of Article 19 of the Constitution. The law i.e., the statutory law was 'The Prevention of Insults to National Honour Act, 1971'. A person who respectfully stands when the National Anthem is sung but does not participate in the singing does not commit an offence under the Act. Offence is only committed when a person prevents another from singing National Anthem. The Court thus impliedly also meant that the freedom to sing would also mean freedom to remain silent.

48. Article 25 of the Constitution, was described as an article of faith and it was observed as follows:

> "18. …Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Article 25."

49. The girls before us today face the same predicament as the Jehovah's Witnesses in the above case. The present Petitioners too wear *hijab* as an article of their faith. They too believe that it is a part of their religion and social practice. In my considered opinion therefore, this case is squarely covered by the case of **Bijoe Emmanuel** (supra) and the ratio laid down therein.

50. Coming back to the order of Karnataka High Court there is another finding which is difficult to accept. This is where the High Court determines that the Petitioners cannot assert their Fundamental Rights inside a classroom which the Court terms as "qualified public places" and the rights inside a school are only "derivative right." The court states as under:

> "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 repeal the assertion of individual rights to the detriment of the general discipline and decorum. Even the substantive rights themselves metamorphise into a kind of derivatives rights in such places."[25]

25 Para XIV (iv) at Page 100 of the Impugned Judgement

The Hight Court rejects the case of the Petitioners on 'reasonable accommodation,' and also the argument that schools are a showroom for diversity of culture, for reason that the schools being '*qualified public places*' schoolgirls have to follow the dress code, which does not prescribe hijab. It says:

> "It hardly needs to be stated the content and scope of a right, in terms of its exercise are circumstantially dependent. Ordinarily, liberties of persons stand curtailed inter-alia by his position, placement and the like. The extent of autonomy is enormous at home, since ordinarily resident of a person is treated as his inviolable castle. However, in qualified public places like schools, courts, war rooms, defense camp, etc., the freedom of individuals as of necessity, is curtailed consistent with the discipline and decorum and function and purpose[26]."

51. Comparison of a school with a war room or defense camp, seems odd, to say the least. Schools are not required to have the discipline and regimentation of a military camp. Nevertheless, in my understanding, what the High Court wanted to convey was that all public places have a certain degree of discipline and

26 Para XIV (vii) at Page 104 of the Impugned Judgement

limitations and the degree of enjoyment of a Right by an individual inside his house or anywhere outside a public space is different to what he or she would enjoy once they are inside a public space. As a general principle, one can have no quarrel with this proposition. But then let us come to the facts of the case. Laying down a principle is one thing, justifying that to the facts of a case is quite another. We must be a judge of fact as well as a judge of law. Do the facts of the case justify the restrictions inside a classroom, which is admittedly a public place? In my opinion there is no justification for this.

52. School is a public place, yet drawing a parallel between a school and a jail or a military camp, is not correct. Again, if the point which was being made by the High Court was regarding discipline in a school, then that must be accepted. It is necessary to have discipline in schools. But discipline not at the cost of freedom, not at the cost of dignity. Asking a pre university schoolgirl to take off her *hijab* at her school gate, is an invasion on her privacy and dignity. It is clearly violative of the

Fundamental Right given to her under Article 19(1)(a) and 21 of the Constitution of India. This right to her dignity[27] and her privacy[28] she carries in her person, even inside her school gate or when she is in her classroom. It is still her Fundamental Right, not a "derivative right" as has been described by the High Court.

53. In the **Puttaswamy** judgement (supra), Justice D.Y. Chandrachud in Paragraph 298 of his Judgement says as under:

> '298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the

27 Maneka Gandhi vs Union of India and Anr. [(1978) 1 SCC 248]; Para 85
28 K.S. Puttaswamy and Anr. vs Union of India and Ors. [(2017) 10 SCC 1]

true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a

> myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.'

54. The counsels representing the State before this Court had underlined the importance of G.O dated 05.02.2022 which was to enforce discipline in schools, including in Pre-University classes, and apply a dress code. The object of the act therefore was the betterment of education and to inculcate a sense of discipline among school going children. The learned Advocate General of Karnataka submitted that the law in the present case which is the G.O dated 5th February,

2022, is primarily for the enforcement of dress code in schools including Pre-University classes. It may only incidentally be giving an impact on the rights which the Petitioners claim under Article 19 and 25 of the Constitution of India. What has to be seen is the pith and substance of the law which is the enforcement of uniforms in schools, which in turn is to maintain discipline in schools. For this submission the learned Advocate General has relied upon **Bachan Singh** v. **State of Punjab**[29] which says:

> "60. From a survey of the cases noticed above, a comprehensive test which can be formulated, may be restated as under:
>
> > "Does the impugned law, in its pith and substance, whatever may be its form and object, deal with any of the fundamental rights conferred by Article 19(1)? If it does, does it abridge or abrogate any of those rights? And even if it does not, in its pith and substance, deal with any of the fundamental rights conferred by Article 19(1), is the direct and inevitable effect of the impugned law such as to abridge or abrogate any of those rights?"
> >
> > The mere fact that the impugned law incidentally, remotely or

29 (1980) 2 SCC 684

> collaterally has the effect of abridging or abrogating those rights, will not satisfy the test. If the answer to the above queries be in the affirmative, the impugned law in order to be valid, must pass the test of reasonableness under Article 19. But if the impact of the law on any of the rights under clause (1) of Article 19 is merely incidental, indirect, remote or collateral and is dependent upon factors which may or may not come into play, the anvil of Article 19 will not be available for judging its validity."

All the same, I do not see the applicability of the above submission in the facts of the controversy before this Court. The G.O specifically seeks to address the question of *hijab*, which is evident from the preamble of the G.O. Moreover, the above submission of the learned Advocate General is not correct in view of the **Puttaswamy** judgement (supra) which says:

> "24. The decisions in M.P. Sharma [M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865 : 1954 SCR 1077] and Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] adopted a doctrinal position on the relationship between Articles 19 and 21, based on the view of the majority in Gopalan [A.K. Gopalan v. State of Madras, AIR 1950 SC 27 : 1950 SCR 88] . This view stands abrogated particularly by the judgment in Cooper [Rustom Cavasjee

Cooper v. Union of India, (1970) 1 SCC 248] and the subsequent statement of doctrine in Maneka [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] . The decision in Maneka [Maneka Gandhi v. Union of India, (1978) 1 SCC 248], in fact, expressly recognised that it is the dissenting judgment of Subba Rao, J. in Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] which represents the exposition of the correct constitutional principle. The jurisprudential foundation which held the field sixty-three years ago in M.P. Sharma [M.P. Sharma v. Satish Chandra, AIR 1954 SC 300: 1954 Cri LJ 865 : 1954 SCR 1077] and fifty-five years ago in Kharak Singh [Kharak Singh v. State of U.P., AIR 1963 SC 1295 : (1963) 2 Cri LJ 329 : (1964) 1 SCR 332] has given way to what is now a settled position in constitutional law. Firstly, the fundamental rights emanate from basic notions of liberty and dignity and the enumeration of some facets of liberty as distinctly protected rights under Article 19 does not denude Article 21 of its expansive ambit. Secondly, the validity of a law which infringes the fundamental rights has to be tested not with reference to the object of State action but on the basis of its effect on the guarantees of freedom. Thirdly, the requirement of Article 14 that State action must not be arbitrary and must fulfil the requirement of reasonableness, imparts meaning to the constitutional guarantees in Part III."

55. We would now be examining some decisions of foreign Courts as in order to appreciate the assertion of

religious and cultural rights in our school premises, it would be worthwhile to refer to some of the similar controversies which had come up before the Courts of other Countries which have a Constitutional Democracy. There are two cases which I would like to refer here. The first case is the *'nose-stud'* case of the Constitutional Court of South Africa and the second one is a decision of the House of Lords in England.

56. The South African case though has to be seen in the background of the Constitutional Law of South Africa where dignity is a right given to its citizens under its Constitution. Equality Courts have also been established in South Africa to hear the disputes relating to cases of discrimination. But nevertheless, the basic principle and the law remains the same.

57. Sunali was a student of Class 10 in Durban Girls High School (DGHS). The Code of Conduct of the school prohibited wearing jewellery in school. When Sunali was in class 10, her mother gave her a nose stud to wear, which was not a fashion statement, but a part of Sunali's Hindu-Tamil culture. The school objected to the

nose-stud and Sunali was asked to remove it. When Sunali refused to remove the nose stud her mother was called. Her mother reasoned with the authorities that this is a part of her Hindu-Tamil culture and it cannot be removed. Ultimately, Sunali through her mother had to file a Petition before the Equality Court, where such matters of discrimination are heard since Sunali had alleged discrimination by her school. The Equality Court held that though a *prima facie* case for discrimination had been made out, it could not be termed as 'unfair'[30], thus dismissing her case. Thereafter, the matter was taken in appeal before the High Court which allowed her appeal and held that asking Sunali to remove her nose stud amounts to discrimination which is wrong. Both the school and the administration went to the Constitutional Court which heard the matter and again decided in favour of Sunali.

58. As to the argument of the school that nose stud was not central to Sunali's religion or culture and it is only an optional practice, this is what was said by the Constitutional Court, the Highest Court of South Africa:

30 Para 14 at Page 14 of the Judgement

“86. The School further argued that the nose stud is not central to Sunali’s religion or culture, but it is only an optional practice. I agree that the centrality of a practice or a belief must play a role in determining how far another party must go to accommodate that belief. The essence of reasonable accommodation is an exercise of proportionality. Persons who merely appear to adhere to a religious and/or cultural practice, but who are willing to forego it if necessary, can hardly demand the same adjustment from others as those whose identity will be seriously undermined if they do not follow their belief. The difficult question is how to determine centrality. Should we enquire into centrality of the practice or belief to the community, or to the individual?

87. While it is tempting to consider the objective importance or centrality of a belief to a particular religion or culture in determining whether the discrimination is fair, that approach raises many difficulties. In my view, courts should not involve themselves in determining the objective centrality of practices, as this would require them to substitute their judgement of the meaning of a practice for that of the person before them and often to take sides in bitter internal disputes. This is true both for religious and cultural practices. If Sunali states that the nose stud is central to her as a South Indian Tamil Hindu, it is not for the Court to tell her that she is wrong because others do not relate to that religion or culture in the same way.”

59. What was also pleaded on behalf of the School was that the nose stud after all is a cultural and not a religious issue and therefore the infringement of any right, if at all, is much less. This issue was dealt with as follows:

> "91. The next string of the School's centrality bow was that the infringement of Sunali's right to equality is less severe because the nose stud is cultural rather than a religious adornment. This was also the basis originally relied upon by the School for refusing the exemption and why it could recognise the stud's cultural significance without granting Sunali an exemption. To my mind the argument is flawed. As stated above, religious and cultural practices can be equally important to a persons' identity. What is relevant is not whether a practice is characterised as religious or cultural but its meaning to the person involved.
>
> 92. The School also argued that if Sunali did not like the Code, she could simply go to another school that would allow her to wear the nose stud. I cannot agree. In my view the effect of this would be to marginalise religions and cultures, something that is completely inconsistent with the values of our Constitution. As already noted, out Constitution does not tolerate diversity as a necessary evil, but affirms it as one of the primary treasures of our nation. There may, however, be occasions where the specific factual circumstances make the availability of another school a relevant consideration in searching for a reasonable

accommodation. However, there are no such circumstances in this case and the availability of another school is therefore not a relevant consideration."

60. Ultimately what was held is given below as follows:

"112. The discrimination has had a serious impact on Sunali and, although the evidence shows that uniforms serve an important purpose, it does not show that the purpose is significantly furthered by refusing Sunali her exemption. Allowing the stud would not have imposed an undue burden on the School A reasonable accommodation would have been achieved by allowing Sunali to wear the nose stud. I would therefore confirm the High Court's finding of unfair discrimination."

61. The other case, which was also relied by the Karnataka High Court is **Regina (SB)** v. **Governors of Denbigh High School[31].** Primarily the controversy was that the school, allowed wearing of *hijab,* but what was further insisted was wearing of *jilbab* (which is more or less a burqa). *Jilbab* was denied and this led to the litigation where the restriction of the school on *jilbab* was upheld. In this background we must appreciate the observations of the Court, it was said:

"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

31 [2007] 1 AC 100

> 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. But it does more than that. Like it or not, this is a society committed, in principle and in law, to equal freedom for men and women to choose how they will lead their lives within the law. Young girls from ethnic, cultural or religious minorities growing up here face particularly difficult choices: how far to adopt or to distance themselves from the dominant culture. A good school will enable and support them. This particular school is a good school: that, it appears, is one reason why Shabina Begum wanted to stay there. It is also a mixed school. That was what led to the difficulty. It would not have arisen in a girls' school with an all female staff."

62. When a decision has to be made between school discipline and cultural and religious rights of minorities a balance has to be maintained. That is what was held. Baroness Hale of Richmond while elaborating on this issue referred to *"Culture, Religion and Gender" (2003)*

by Professor Frances Raday the exact Paragraph at 98 which reads like this:

> "genuine individual consent to a discriminatory practice or dissent from it may not be feasible where these girls are not yet adult. The question is whether patriarchal family control should be allowed to result in girls being socialised according to the implications of veiling while still attending public educational institutions . . . A mandatory policy that rejects veiling in state educational institutions may provide a crucial opportunity for girls to choose the feminist freedom of state education over the patriarchal dominance of their families. Also for the families, such a policy may send a clear message that the benefits of state education are tied to the obligation to respect women's and girl's right to equality and freedom . . . **On the other hand, a prohibition of veiling risks violating the liberal principle of respect for individual autonomy and cultural diversity for parents as well as students. It may also result in traditionalist families not sending their children to the state educational institutions. In this educational context, implementation of the right to equality is a complex matter, and the determination of the way it should be achieved depends upon the balance between these two conflicting policy priorities in a specific social environment"**
>
> (**emphasis supplied**)

63. The Karnataka High Court has placed reliance upon two US Judgements passed by the District Courts there, that is **Miller** v. **Gills**[32] and **Christmas** v. **El Reno Board of Education**[33]. All the same the facts of these cases are different and in none of the two cases the action of the school authorities debarred students from attending their classes. There is another judgement relied upon by Karnataka High Court which is **Employment Division** v**. Smith**[34].This is a US Supreme Court Judgement.

64. The facts of the case were quite different. The issue being examined was whether the State of Oregon was justified in denying unemployment benefits to persons who had been dismissed from their jobs owing to their consumption of "*peyote*," which had been classified as a '*controlled substance*' (under the Controlled Substances Act, 1970), when it was being consumed as a part of religious beliefs. The consumption of peyote was admittedly a criminal offence. It was contended by the respondents that as it

32 315 F. Supp. 94 (N.D. Ill. 1969)
33 313 F. Supp. 618 (W.D. Okla. 1970)
34 494 US 872 (1990)

was only being consumed in pursuance of their religious belief and they would not be liable to be subjected to the applicable criminal law. This argument was rejected and it was held that if certain conduct (such as consumption of peyote), which is prohibited by law, then there would be no federal right to engage in such conduct. It was in this particular context of the applicability of the criminal law on an individual for a conduct already prohibited that such law was said to be 'facially neutral.' On this note, the following was stated:

> "13. ...We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. As described succinctly by Justice Frankfurter in Minersville School Dist. Bd. of Ed. v. Gobitis, 310 U.S. 586, 594-595, 60 S.Ct. 1010, 1012-1013, 84 L.Ed. 1375 (1940): "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from

> the discharge of political responsibilities."

65. Another question which the School Administration and the State must answer in the present case is as to what is more important to them: Education of a girl child or Enforcement of a Dress Code! We have been informed at the Bar by many of the Senior counsels appearing for the Petitioners, that the unfortunate fallout of the enforcement of *hijab* ban in schools in Karnataka has been that some of the girl students have not been able to appear in their Board examinations, and many others were forced to seek transfer to other schools, most likely *madrasas*, where they may not get the same standard of education. This is for a girl child, for whom it was never easy, in the first place, to reach her school gate.

66. One of the best sights in India today, is of a girl child leaving for her school in the morning, with her school bag on her back. She is our hope, our future. But it is also a fact, that it is much more difficult for a girl child to get education, as compared to her brother. In

villages and semi urban areas in India, it is commonplace for a girl child to help her mother in her daily chores of cleaning and washing, before she can grab her school bag. The hurdles and hardships a girl child undergoes in gaining education are many times more than a male child. This case therefore has also to be seen in the perspective of the challenges already faced by a girl child in reaching her school. The question this Court would therefore put before itself is also whether we are making the life of a girl child any better by denying her education, merely because she wears a *hijab*!

67. All the Petitioners want is to wear a hijab! Is it too much to ask in a democracy? How is it against public order, morality or health? or even decency or against any other provision of Part III of the Constitution. These questions have not been sufficiently answered in the Karnataka High Court Judgement. The State has not given any plausible reasons either in the Government Order dated 5 February 2022, or in the counter affidavit before the High Court. It does not appeal to my logic or

reason as to how a girl child who is wearing a hijab in a classroom is a public order problem or even a law-and-order problem. To the contrary reasonable accommodation in this case would be a sign of a mature society which has learnt to live and adjust with its differences. In his famous dissent delivered in **United States** v**. Schwimmer**[35] Justice Oliver Wendell Holmes Jr., said as under:

> "22. …if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought-not free thought for those who agree with us but freedom for the thought that we hate…"

68. A girl child has the right to wear hijab in her house or outside her house, and that right does not stop at her school gate. The child carries her dignity and her privacy even when she is inside the school gates, in her classroom. She retains her fundamental rights. To say that these rights become derivative rights inside a classroom, is wholly incorrect.

69. We live in a Democracy and under the Rule of Law, and the Laws which govern us must pass muster the

35 279 US 644 (1929); Para 22

Constitution of India. Amongst many facets of our Constitution, one is Trust. Our Constitution is also a document of Trust. It is the trust the minorities have reposed upon the majority. Commenting on the report of the Advisory committee on minorities, Sardar Vallabh Bhai Patel made a statement before the Constitute Assembly on 24 May 1949, which should be referred here. He said, "…. *it is not our intention to commit the minorities to a particular position in a hurry. If they really have to come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good- sense and sense of fairness of the majority, and to place confidence in them. So also, it is for us who happened to be in a majority to think about what the minorities feel, and how we in their position would feel if we were treated in the manner in which they are treated*.[36]"

70. The question of diversity, raised by the Petitioners before the Karnataka High Court, was not considered by

36 25th May, 1949: Constituent Assembly Debates, Volume VIII

the Court since it was thought to be a 'hollow rhetoric,' and the submissions made by the lawyers on 'unity and diversity,' were dismissed as an "oft quoted platitude." This is what was said, "*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 and ethically) in its deeper analysis is only a hollow rhetoric, 'unity in diversity' being the oft quoted platitude....*[37]"

71. The question of diversity and our rich plural culture is, however, important in the context of our present case. Our schools, in particular our Pre-University colleges are the perfect institutions where our children, who are now at an impressionable age, and are just waking up to the rich diversity of this nation, need to be counselled and guided, so that they imbibe our constitutional values of tolerance and accommodation, towards those who may speak a different language, eat different food, or even wear different clothes or apparels! This is the time to foster in them sensitivity, empathy and understanding towards different religions,

37 Para XIV(v) at Page 101 of Impugned Judgement

languages and cultures. This is the time when they should learn not to be alarmed by our diversity but to rejoice and celebrate this diversity. This is the time when they must realise that in diversity is our strength.

72. The National Education Policy 2020, of the Government of India underlines the need for inculcating the values of tolerance and understanding in education and making the children aware of the rich diversity of this country. The Principles of the Policy state that '*It aims at producing engaged, productive, and contributing citizens for building an equitable, inclusive, and pural society as envisaged by our Constitution.'*

73. In the case of **Aruna Roy** v. **Union of India**[38] this Court had elaborated on the Constitutional Values of religious tolerance and diversity of culture and its need in our education system. It was observed as follows by Justice Dharmadhikari in the concurring opinion authored by him:

> "25. ...These need to be inculcated at appropriate stages in education right from the primary years. Students have to be given the awareness that the essence of every religion is common, only the practices differ..."

38 (2002) 7 SCC 368

At another place in their judgement the court has said as under:

> “86. …The complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State have not helped in removing mutual misunderstandings and intolerance inter se between sections of the people of different religions, faiths and belief. ‘Secularism’, therefore, is susceptible to a positive meaning that is developing and understanding and respect towards different religion.”

74. A Constitutional Bench of this Court in **Navtej Singh Johar and Ors.** v**. Union of India, Ministry of Law and Justice**[39] while speaking on diversity, dissent, liberty and accommodation spoke the following while delivering concurring opinions:-

> “375. The Constitution brought about a transfer of political power. But it reflects above all, a vision of a society governed by justice. Individual liberty is its soul. The constitutional vision of justice accommodates differences of culture, ideology and orientation. The stability of its foundation lies in its effort to protect diversity in all its facets; in the beliefs, ideas and ways of living of her citizens. Democratic as it is, out Constitution does not demand conformity. Nor does it contemplate the mainstreaming of culture. It nurtures dissent as the

39 (2018) 10 SCC 1

> safety valve for societal conflict. Our ability to recognise others who are different is a sign of our own evolution. We miss the symbols of a compassionate and humane society only at our peril[40].”

75. In the case of **St. Stephen’s College** v. **University of Delhi[41]** while delivering the majority opinion on behalf of the bench, Justice K Jagannatha Shetty held as follows:

> “81. Even in practice, such claims are likely to be met with considerable hostility. It may not be conducive to have a relatively homogeneous society. It may lead to religious bigotry which is the bane of mankind. In the nation building with secular character sectarian schools or colleges segregated faculties or universities for imparting general secular education are undesirable and they may undermine secular democracy. They would be inconsistent with the central concept of secularism and equality embedded in the Constitution. Every educational institution irrespective of community to which it belongs is a ‘melting pot’ in our national life. The students and teachers are the critical ingredients. It is there they develop respect for, and tolerance of, the cultures and beliefs of others. It is essential therefore, that there should be proper mix of students of

40 Para 375, Concurring Opinion by Dr. Justice D.Y. Chandrachud, *(supra)*
41 (1992) 1 SCC 558

different communities in all educational institutions[42]."

76. It is the Fundamental Duty of every citizen, under Part IV A of the Constitution of India to '*value and preserve the rich heritage of our composite culture.*' [43]

77. Adverting to the Statutory Provisions applicable in this case, namely, the Karnataka Education Act, 1983 which is the source of the G.O. dated 05.02.2022 speaks *inter-alia* that the curriculum in schools and colleges must promote the rich and composite culture of our country. Section 7 of the above Act prescribes that one of the curriculum in the school can be "*moral and ethical education*" and the it further says that the school should also "*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*"

78. The preamble to the Constitution secures to all its citizens "LIBERTY of thought, expression, belief, faith and worship." It is the Preamble again which seeks to promote among them all, "FRATERNITY assuring the

42 Para 81 *(supra)*
43 Article 51A(f) of the Constitution of India

dignity of the individual and the unity and integrity of the Nation."

The Government Order dated 5 February, 2022, and the restrictions on the wearing of *hijab*, also goes against our constitutional value of fraternity and human dignity. Liberty, equality, fraternity, the triptych of the French Revolution is also a part of our Preamble. It is true that whereas liberty and equality are well established, properly understood, and recognized concepts in politics and law, fraternity for some reasons has largely remained incognito. The framers of our Constitution though had a different vision. Fraternity had a different, and in many ways a much larger meaning with the main architect of our Constitution, Dr Ambedkar. In his own words: "*my social philosophy may be said to be enshrined in these words: liberty, equality and fraternity. Let no one, however, say that I have borrowed my philosophy from the French Revolution. I have not. My philosophy has roots in religion and not in political science. I have derived them from my Master, the Buddha*[44]." Dr Ambedkar gave the highest place to

44Ministry of Social Justice and Empowerment, Government of India, Dr. Babasaheb Ambedkar: Writings and Speeches, 2020 (Vol XVII, Part III); Preface
Accessed at https://www.mea.gov.in/Images/CPV/Volume17_Part_III.pdf

fraternity as it was the only real safeguard against the denial of liberty or equality. "*These principles of liberty, equality and fraternity are not to be treated as separate items in trinity. They form a union of trinity in the sense that to diverse one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce a supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity liberty and equality could not become a natural course of things.*[45]"

79. Fraternity, which is our Constitutional value, would therefore require us to be tolerant, and as some of the learned Counsels would argue to be, reasonably accommodating, towards the belief and religious practices of others. We should remember the appeal made by Justice O. Chinnappa Reddy in **Bijoe Emmanuel** (supra) "*Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it.*"

45 Speech of Dr. Ambedkar on 25th November, 1949: Constituent Assembly Debates, Volume XI

80. Under our Constitutional scheme, wearing a *hijab* should be simply a matter of Choice. It may or may not be a matter of essential religious practice, but it still is, a matter of conscience, belief, and expression. If she wants to wear *hijab*, even inside her class room, she cannot be stopped, if it is worn as a matter of her choice, as it may be the only way her conservative family will permit her to go to school, and in those cases, her *hijab* is her ticket to education.

81. The unfortunate fallout of the *hijab* restriction would be that we would have denied education to a girl child. A girl child for whom it is still not easy to reach her school gate. This case here, therefore, has also to be seen in the perspective of the challenges already faced by a girl child in reaching her school. The question this Court would put before itself is also whether we are making the life of a girl child any better by denying her education merely because she wears a *hijab*!

82. Our Constitution has visualised a just society and it is for this reason that the first virtue that is secures for the

citizens is ‘Justice’ which is the first of our Preambular promises. Rawls in his ‘A Theory of Justice’ writes: *“... Justice is the first virtue of social institutions, as truth is of system of thoughts...” “...Therefore in a just society the liberties of equal citizenship are taken as settled, the rights secured by justice are not subject to political bargaining or to the calculus of social interest...*” [46]

83. By asking the girls to take off their *hijab* before they enter the school gates, is first an invasion on their privacy, then it is an attack on their dignity, and then ultimately it is a denial to them of secular education. These are clearly violative of Article 19(1)(a), Article 21 and Article 25(1) of the Constitution of India.

84. Consequently, I allow all the appeals as well as the Writ Petitions, but only to the extent as ordered below:

a) The order of the Karnataka High Court dated March 15, 2022, is hereby set aside;

b) The G.O. dated February 5, 2022 is hereby quashed and,

46 Rawls, John (1921): A Theory of Social Justice, Rev. Ed.; The Belknap Press of the Harvard University Press, Cambridge, Massachusetts

c) There shall be no restriction on the wearing of *hijab* anywhere in schools and colleges in Karnataka.

.....J.
[SUDHANSHU DHULIA]

New Delhi,
October 13, 2022.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

CIVIL APPEAL NO. 7095 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 5236 OF 2022)

AISHAT SHIFA .....APPELLANT(S)

VERSUS

THE STATE OF KARNATAKA & ORS. .....RESPONDENT(S)

W I T H

WRIT PETITION (CIVIL) NO. 120 OF 2022

CIVIL APPEAL NO. 7075 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15405 OF 2022)

CIVIL APPEAL NO. 6957 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 9217 OF 2022)

CIVIL APPEAL NOS. 7078-7083 OF 2022
(ARISING OUT OF SLP (CIVIL) NOS. 15407-15412 OF 2022)

CIVIL APPEAL NO. 7077 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15419 OF 2022)

CIVIL APPEAL NO. 7074 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15403 OF 2022)

CIVIL APPEAL NO. 7076 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15418 OF 2022)

CIVIL APPEAL NO. 7072 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 11396 OF 2022)

CIVIL APPEAL NO. 6934 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 7794 OF 2022)

CIVIL APPEAL NO. 7084 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15402 OF 2022)

CIVIL APPEAL NO. 7085 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15416 OF 2022)

CIVIL APPEAL NO. 7092 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15404 OF 2022)

CIVIL APPEAL NO. 7088 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15414 OF 2022)

WRIT PETITION (CIVIL) NO. 95 OF 2022

CIVIL APPEAL NO. 7087 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15413 OF 2022)

CIVIL APPEAL NO. 7090 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15401 OF 2022)

CIVIL APPEAL NO. 7096 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 5690 OF 2022)

CIVIL APPEAL NO. 7091 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15399 OF 2022)

CIVIL APPEAL NO. 7089 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15417 OF 2022)

CIVIL APPEAL NO. 7086 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 15400 OF 2022)

CIVIL APPEAL NO. 7069 OF 2022
ARISING OUT OF SLP (CIVIL) NO. 17648 OF 2022
(DIARY NO. 21273 OF 2022)

CIVIL APPEAL NO. 7098 OF 2022
ARISING OUT OF SLP (CIVIL) NO. 17656 OF 2022
(DIARY NO. 9117 OF 2022)

CIVIL APPEAL NO. 7093 OF 2022
ARISING OUT OF SLP (CIVIL) NO. 17653 OF 2022
(DIARY NO. 25867 OF 2022)

CIVIL APPEAL NO. 7099 OF 2022
ARISING OUT OF SLP (CIVIL) NO. 17663 OF 2022
(DIARY NO. 11577 OF 2022)

A N D

CIVIL APPEAL NO. 7070 OF 2022
ARISING OUT OF SLP (CIVIL) NO. 17647 OF 2022
(DIARY NO. 21272 OF 2022)

O R D E R

In view of the divergent views expressed by the Bench, the matter be placed before Hon'ble The Chief Justice of India for constitution of an appropriate Bench.

.....J.
[HEMANT GUPTA]

.....J.
[SUDHANSHU DHULIA]

New Delhi;
OCTOBER 13, 2022.